

152 Misc.2d 782, 587 N.Y.S.2d 471
 (Cite as: 152 Misc.2d 782, 587 N.Y.S.2d 471)

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Supreme Court, Appellate Term, New York,
 Second and Eleventh Judicial Districts.
 GLASS CONTRACTORS, INC., Appellant,
 v.
 TARGET SUPPLY AND DISPLAY, INC., Respon-
 dent.
 June 10, 1992.


Seller of custom-made glass moved for summary judgment, in lieu of complaint, based on Nebraska default judgment for goods sold and delivered. The Civil Court, Kings County, [152 Misc.2d 305, 578 N.Y.S.2d 1000](#), Fuchs, J., denied motion for summary judgment. Appeal was taken. The Supreme Court, Appellate Term, held that: (1) inquiry in action to enforce Nebraska default judgment was limited to determining whether **foreign** court possessed personal jurisdiction, and (2) defendant had sufficient contacts within Nebraska to subject it to in personam jurisdiction under Nebraska long-arm statute.

Reversed and summary judgment granted.


West Headnotes

[1] Judgment 228  **925**

[228](#) Judgment
[228XXI](#) Actions on Judgments
[228XXI\(B\)](#) **Foreign** Judgments
[228k925](#) k. **Foreign** Judgment as Cause of
 Action in General. [Most Cited Cases](#)

Judgment 228  **946**

[228](#) Judgment
[228XXI](#) Actions on Judgments
[228XXI\(B\)](#) **Foreign** Judgments
[228k946](#) k. Judgment, and Enforcement
 Thereof. [Most Cited Cases](#)
Foreign judgments obtained by default may only be
 enforced in plenary action, which may be initiated by
 motion for summary judgment in lieu of complaint.
[McKinney's CPLR 3213](#).

[2] Judgment 228  **925**


[228](#) Judgment
[228XXI](#) Actions on Judgments
[228XXI\(B\)](#) **Foreign** Judgments
[228k925](#) k. **Foreign** Judgment as Cause of
 Action in General. [Most Cited Cases](#)
 In reviewing **foreign** judgment obtained by default in
 plenary action commenced for enforcement, court's
 inquiry is limited to ascertaining whether courts of
foreign jurisdiction possess personal jurisdiction over
 defendants. [McKinney's CPLR 3213](#).

[3] Constitutional Law 92  **3964**

[92](#) Constitutional Law
[92XXVII](#) Due Process
[92XXVII\(E\)](#) Civil Actions and Proceedings
[92k3961](#) Jurisdiction and Venue
[92k3964](#) k. Non-Residents in General.
[Most Cited Cases](#)
 (Formerly 92k305(5))

Courts 106  **12(2.5)**

[106](#) Courts
[106I](#) Nature, Extent, and Exercise of Jurisdiction
 in General
[106k10](#) Jurisdiction of the Person
[106k12](#) Domicile or Residence of Party
[106k12\(2\)](#) Actions by or Against Non-
 residents; "Long-Arm" Jurisdiction in General
[106k12\(2.5\)](#) k. Contacts with Forum
 State. [Most Cited Cases](#)
 Unilateral activity by party claiming relationship will
 not satisfy minimum contacts requirement for exercise
 of long-arm jurisdiction since due process requires
 some act by which defendant purposely availed itself
 of privilege of conducting activities in forum state.
[U.S.C.A. Const.Amends. 5, 14](#).

[4] Courts 106  **12(2.5)**

[106](#) Courts
[106I](#) Nature, Extent, and Exercise of Jurisdiction
 in General

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[106k10](#) Jurisdiction of the Person

[106k12](#) Domicile or Residence of Party

[106k12\(2\)](#) Actions by or Against Non-residents; “Long-Arm” Jurisdiction in General

[106k12\(2.5\)](#) k. Contacts with Forum State. [Most Cited Cases](#)

Even single contact can support in personam jurisdiction under long-arm statute as long as contact creates substantial connection with forum state. [U.S.C.A. Const.Amends. 5, 14.](#)

[5](#) Courts [106](#)  [12\(2.30\)](#)

[106](#) Courts


[106I](#) Nature, Extent, and Exercise of Jurisdiction in General

[106k10](#) Jurisdiction of the Person

[106k12](#) Domicile or Residence of Party

[106k12\(2\)](#) Actions by or Against Non-residents; “Long-Arm” Jurisdiction in General

[106k12\(2.30\)](#) k. Contract Cases. [Most Cited Cases](#)

[Judgment 228](#)  [818\(1\)](#)

[228](#) Judgment

[228XVII](#) Foreign Judgments

[228k814](#) Judgments of State Courts

[228k818](#) Want of Jurisdiction

[228k818\(1\)](#) k. In General. [Most Cited Cases](#)

Contacts with state of Nebraska were sufficient to warrant in personam jurisdiction under Nebraska's long-arm statute where defendant initiated and conducted contract negotiations for sale of custom made glass with Nebraska manufacturer by telephone, fax, and letters, and separately contracted with shipper to pick up goods in Nebraska; thus, default judgment entered in Nebraska could be enforced. [McKinney's CPLR 3213](#); [U.S.C.A. Const.Amends. 5, 14](#); [Neb.Rev.St. § 25-536.](#)

[*783](#) [**471](#) [Kevin J. Farrelly](#), New York City, for appellant.

Keilson & Keilson, Valley Stream (Joseph Keilson, of counsel), for respondent.

Before MONTELEONE, J.P., and ARONIN and [SCHOLNICK](#), JJ.

MEMORANDUM.

Appeal by plaintiff from an order of the Civil Court, Kings County, (Fuchs, J.) entered on January 10, 1992 which denied plaintiff's motion for summary judgment in lieu of complaint (*see*, [152 Misc.2d 305, 578 N.Y.S.2d 1000](#), N.O.R.).

Order unanimously reversed without costs and motion for summary judgment granted in the amount prayed for in the complaint.

[\[1\]\[2\]](#) This is an action to enforce a default judgment entered in the District Court of the Fourth Judicial District of Nebraska. At the outset we note that enforcement of **foreign** judgments except those obtained by default in appearance or ****472 confession of judgment** are governed by Article 54 of the CPLR. **Foreign** judgments obtained by default may only be enforced in a plenary action which may be initiated, as in the case, at bar by a motion for summary judgment in lieu of complaint (*see*, [CPLR 3213](#)). In reviewing such **foreign** judgments, this court's inquiry is limited to ascertaining whether the courts of Nebraska possessed personal jurisdiction over defendants (*see*, [Augusta Lumber & Supply, Inc. v. Sabbeth \[App.Div.2nd Dept.\], 101 A.D.2d 846, 475 N.Y.S.2d 878](#); *see also*, 5 Weinstein-Korn-Miller, N.Y.Civ.Prac. ¶¶ 5011.16, 5011.19). Nebraska's “long-arm” statute permits the courts to exercise jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person transacting any business within the state or “who has any other contact with or maintains any other relation to this state to afford a basis for the exercise of personal jurisdiction consistent with the Constitution of the United States” (*see*, [Nebraska Revised Statutes § 25-536](#)).

[\[3\]](#) In [International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95](#), the Supreme Court of the United States set forth the standard by which the exercise of long arm jurisdiction is measured: “[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’ ” ([supra](#) at p. 316, 66

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S.Ct. at p. 158, quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278). Unilateral activity by the party claiming a relationship will not satisfy the minimum contacts requirement. (see, *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283). Rather, it is essential that there be some act by which the defendant “purposefully avails itself of *784 the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” (*Hanson v. Denckla*, *supra* at p. 253, 78 S.Ct. at p. 1240). This requirement “ensures that a defendant will not be haled into a jurisdiction solely as the result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts ... or of the ‘unilateral activity of another party or third person’ ” (*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528). “Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a ‘substantial connection’ with the forum State.” (*Burger King Corp. v. Rudzewicz*, *supra* at p. 475, 105 S.Ct. at 2183; citing *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223).

[4] In *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 527 N.Y.S.2d 195, 522 N.E.2d 40, the Court of Appeals noted that jurisdictional strictures have been relaxed in view of the technological advances which permit a party to conduct an enormous volume of business in a State without ever entering the State. It was there stated: “So long as a party avails itself of the benefits of the forum, has sufficient minimum contacts with it, and should reasonably expect to defend its actions there, due process is not offended if that party is subjected to jurisdiction even if not ‘present’ in that State (see, *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-223 [78 S.Ct. 199, 200-201, 2 L.Ed.2d 223]; see also, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 [105 S.Ct. 2174, 85 L.Ed.2d 528]; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 [100 S.Ct. 559, 564, 62 L.Ed.2d 490]; *International Shoe Co. v. Washington*, 326 U.S. 310 [66 S.Ct. 154, 90 L.Ed. 95]). Specifically, in the *International Shoe* case the court held that ‘the privilege of conducting activities within a state ... may give rise to obligations, and, so far as those obligations *arise out of* or are connected with the activities within the state, a procedure which requires [a party] to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue’ (*id.* at 319 [66 S.Ct. at 160] [emphasis added])” (*Kreutter v. McFadden Oil Corp.*,

supra, 71 N.Y.2d at pp. 466-467, 527 N.Y.S.2d 195, 522 N.E.2d 40). Indeed, even a single contact can support **473 in personam jurisdiction as long as it creates a “substantial connection” with the forum (see, *Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at p. 475 n. 18, 105 S.Ct. at p. 2184 n. 18; see also, *McGee v. International Life Ins. Co.*, *supra*, 355 U.S. at 223, 78 S.Ct. at 201; *China Express Inc. v. Volpi & Son Machine Corp.*, 126 A.D.2d 239, 244, 513 N.Y.S.2d 388). However, in some instances, “single or occasional acts” related to the forum may be insufficient to establish jurisdiction if “their nature and quality and the circumstances of their commission” merely create an “attenuated” connection. (*International Shoe Co. v. Washington*, *supra*, 326 U.S. at p. 318, 66 S.Ct. at p. 159; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299, 100 S.Ct. 559, 567, 62 L.Ed.2d 490; *785 *China Express Inc. v. Volpi & Son Machine Corp.*, *supra*, 126 A.D.2d at p. 243, 513 N.Y.S.2d 388). A critical consideration in such cases is whether “the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” (*World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at p. 297, 100 S.Ct. at p. 567; *China Express Inc. v. Volpi & Son Machine Corp.*, *supra*, 126 A.D.2d at p. 243, 513 N.Y.S.2d 388).

[5] The jurisdictional contacts in the instant case consisted of contract negotiations between the parties initiated by defendant. Said negotiations were conducted by telephone, fax and letters. In addition, defendant separately contracted with a shipper to pick up the goods in Nebraska and air ship them to Philadelphia. Defendant was billed for said services, deducted the costs from plaintiff’s bill and paid plaintiff the difference. Based upon the foregoing it is clear that the contacts with the State of Nebraska resulted from the actions of defendant and that defendant’s conduct and connection with the forum state were such that he should have reasonably anticipated out of state litigation (see, *Hanson v. Denckla*, *supra*, 357 U.S. at p. 253, 78 S.Ct. at 1239; *Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at pp. 474-476, 105 S.Ct. at pp. 2183-2184).

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