St. John's Law Review

Volume 43
Issue 2 *Volume 43, October 1968, Number 2*

Article 34

2012

CPLR 3215(h): Judgment May Be Entered Pursuant to Stipulation of Settlement Without Notice to Adversary

St. John's Law Review

Follow this and additional works at: http://scholarship.law.stjohns.edu/lawreview

Recommended Citation
St. John's Law Review (1968) "CPLR 3215(h): Judgment May Be Entered Pursuant to Stipulation of Settlement Without Notice to Adversary," *St. John's Law Review*: Vol. 43: Iss. 2, Article 34.
Available at: http://scholarship.law.stjohns.edu/lawreview/vol43/iss2/34

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.

CPLR 3215(h): Judgment may be entered pursuant to stipulation of settlement without notice to adversary.

CPLR 3215(h) provides, *inter alia:*

1. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof. . . .[125]

In a recent case, *Star Office Supply Co. v. Galton,*[126] an attorney attempted, ex parte, to secure judgment pursuant to a stipulation, but was advised by the clerk that application to the court on notice to defendant was required.

The court held that CPLR 3215(h) eliminated the necessity of a motion to the court and authorized the clerk to enter judgment directly, where there has been a failure to comply with a stipulation of settlement.[127] It was pointed out, however, that notice of motion will be required, in the "exceptional situation," where the parties have so agreed in the stipulation.

CPLR 3216: Held unconstitutional by first department.

In the midst of a standing conflict between the first and second departments, regarding the retroactivity of CPLR 3216,[128]

---

[125] Prior to the enactment of CPLR 3215(h), there existed no uniform procedure for entering judgment upon default or a stipulation of settlement. The procedure varied from county to county, some required a court order, and others did not. *See* 4 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3215.37 (1968).

[126] 56 Misc. 2d 288, 288 N.Y.S.2d 651 (Sup. Ct. N.Y. County 1968).

[127] It should be noted that the stipulation itself must provide for entry of judgment without further notice, the specific sum stipulated, and a basis for computation of interest. The stipulation must be accompanied by an affidavit attesting to the defendant's failure to comply with its terms, as well as a complaint showing the basis of the claim which gave rise to the stipulation. *See* 7B MCKINNEY'S CPLR 3215, supp. commentary 238 (1966).

[128] CPLR 3216 provides a procedure whereby defendants can move to dismiss an action for plaintiff's failure to prosecute. The appellate division, first department, has taken the position that the 1967 amendment should not be applied retroactively, whereas the second department has applied it retroactively. *Compare* Leonard v. Metropolitan Opera Ass'n, Inc., 28 App. Div. 2d 844, 281 N.Y.S.2d 555 (1st Dep't 1967) *with* Levitt v. Ford Motor Co., 29 App. Div. 2d 688, 287 N.Y.S.2d 339 (2d Dep't 1968). For a brief survey of this conflict see *The Quarterly Survey of New York Practice,* 42 ST. JOHN'S L. REV. 436, 456 (1968); 7B MCKINNEY'S CPLR 3216, supp. commentary 247 (1967).