

## CPLR 5004: Amendment of the Legal Rate of Interest Applied Prospectively

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## ARTICLE 50 — JUDGMENTS GENERALLY

*CPLR 5004: Amendment of the legal rate of interest applied prospectively.*

Prior to 1968, the CPLR provided for interest upon judgment,<sup>123</sup> verdict<sup>124</sup> or accrual of an action<sup>125</sup> at the legal rate of six percent, as stated in General Obligations Law § 5-501. In 1968 that statute was amended to confer upon the Banking Board the power to prescribe the legal rate of interest at from five percent to seven and one-half percent per annum.<sup>126</sup> The Board subsequently raised the rate to the maximum permitted by statute.<sup>127</sup> Confusion as to what, if any, effect a change by the Board was meant to have on litigation-related interest was laid to rest by the amendment to CPLR 5004, effective September 1, 1972, providing a fixed rate of six percent, independent of the provisions of § 5-501.

In *Yamamoto v. Costello*,<sup>128</sup> the Supreme Court, Nassau County, considered the question of whether the new six percent rate should apply retroactively to a recorded verdict which had not been reduced to judgment, or whether the computation should be made in accordance with the effective date of the amendment. In following the latter approach, the court relied on a decision by the Appellate Division, First Department, involving the 1968 amendment to § 5-501. In that case, *Rachlin & Co. v. Tra-Mar, Inc.*,<sup>129</sup> the rate of interest upon the accrual of the cause of action was held to be controlled by the figure fixed by the statute in effect during the period in question.

*Rachlin* did not address itself directly to the retroactivity issue; the question was whether the new rates should affect the unsatisfied obligation at all, even prospectively. The court determined that an increase in the legal rate should be applied to the debt as of the effective date of the amendment, reasoning that to allow interest lower than the legal rate to remain with the debt would encourage debtors to delay payment, knowing that they would receive a higher return on the open market. The *Yamamoto* facts varied to the extent that the new

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<sup>123</sup> CPLR 5003.

<sup>124</sup> CPLR 5002.

<sup>125</sup> CPLR 5001(a).

<sup>126</sup> See N.Y. GEN. OBLIG. LAW § 5-501(1) (McKinney 1972) and N.Y. BANKING LAW § 14-a(2)(a)(1) (McKinney 1971). See also discussion in *Rachlin & Co. v. Tra-Mar, Inc.*, 33 App. Div. 2d 370, 374-75, 308 N.Y.S.2d 153, 157-58 (1st Dep't 1970), discussed in *The Quarterly Survey*, 45 ST. JOHN'S L. REV. 145, 163 (1970).

<sup>127</sup> See 3 NYCRR 4.1 (1969).

<sup>128</sup> 73 Misc. 2d 592, 342 N.Y.S.2d 33 (Sup. Ct. Nassau County 1973).

<sup>129</sup> 33 App. Div. 2d 370, 308 N.Y.S.2d 153 (1st Dep't 1970).

rate was lower, not higher, than the one previously appended to the verdict. But Judge Harnett in the instant case deemed *Rachlin* to be authority for fragmenting the interest periods according to the effective date of the amendment, and thus applied the new CPLR 5004 prospectively. The court also relied on the presumption of prospective construction<sup>130</sup> and on prior case law sustaining fragmentation of time periods for interest purposes in other contexts.<sup>131</sup> The holding was further supported by policy considerations, for, as correctly noted by the court, "retroactive imposition of the six percent rate as a substitute for the prior seven and one-half figure would bring a windfall to the judgment debtor who has delayed satisfying his outstanding obligations."<sup>132</sup>

Although the amendment to CPLR 5004 is silent as to unsatisfied judgments entered prior to its effective date, or as to actions accruing theretofore, the *Rachlin* holding was seen as a barometer for future First Department action.<sup>133</sup> It is hoped that the *Yamamoto* court's utilization of this method of fragmenting time periods for interest purposes will encourage other courts to follow the same approach when confronted with this issue.

#### ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

*CPLR 5236: Purchase of judgment by professional collector for purposes of execution on real property held permissible.*

By enacting CPLR 5236, the Legislature eliminated the equity of redemption in execution sales, which was designed to ensure a fair sale price<sup>134</sup> and to give the judgment debtor an opportunity to raise

<sup>130</sup> 73 Misc. 2d at 595, 342 N.Y.S.2d at 37, citing *Mulligan v. Murphy*, 14 N.Y.2d 223, 199 N.E.2d 496, 250 N.Y.S.2d 412 (1964); *Graziano v. Donohue*, 33 App. Div. 2d 578, 304 N.Y.S.2d 121 (3d Dep't 1969), *aff'd mem.*, 25 N.Y.2d 955, 252 N.E.2d 852, 305 N.Y.S.2d 353 (1969).

<sup>131</sup> 73 Misc. 2d at 595, 342 N.Y.S.2d at 37, citing *City of Buffalo v. J. W. Clement Co., Inc.*, 34 App. Div. 2d 24, 311 N.Y.S.2d 98 (4th Dep't 1970); *Stull v. Joseph Feld, Inc.*, 34 App. Div. 2d 655, 309 N.Y.S.2d 985 (2d Dep't 1970) (mem.). See also *O'Brien v. Young*, 95 N.Y. 428 (1884); *Rachlin & Co. v. Tra-Mar, Inc.*, 33 App. Div. 2d 370, 308 N.Y.S.2d 153 (1st Dep't 1970).

<sup>132</sup> 73 Misc. 2d at 596, 342 N.Y.S.2d at 38, citing *Emigrant Indus. Sav. Bank v. Sexton*, 284 N.Y. 57, 29 N.E.2d 469 (1940).

<sup>133</sup> 5 WK&M ¶ 5004.01:

In the First Department it would seem that the determination in *Rachlin* would prevail and interest will be computed at the various rates in effect during the periods in which interest properly could be charged. In the remaining Departments the question of what are the applicable rates for periods prior to September 1, 1972 may yet have to be determined.

<sup>134</sup> Paradoxically, the [redemption] provisions have probably had an exactly op-