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CPLR 5015: Court Has Inherent Discretionary Power To Relieve Party from Judgment After Lapse of Statutory Period

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when a litigant files an affidavit setting forth "grounds" therefor within twenty days after arbitration.[110]

In *Bayer v. Ras*,[111] the Rochester City Court granted the plaintiff's motion to dismiss the defendant's application for a trial de novo after a hearing before an arbitration panel had resulted in an award for the plaintiff. The defendant alleged that there was a question of fact to be decided by a jury — the evidence of an alleged contract of purchase by the defendant. The Monroe County Court reinstated the application, holding that the "simple affidavit required" should be treated not "as an application addressed to the discretion of the de novo court, but . . . rather in the nature of a note of issue, a procedural mechanism only."[112]

The *Bayer* decision was a necessary step to insure that no constitutional deficiency or litigant dissatisfaction jeopardizes the compulsory arbitration program's tremendous potential for reducing the courts' civil case load.[113]

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5015: Court has inherent discretionary power to relieve party from judgment after lapse of statutory period.

CPLR 5015(a) allows a defendant to open an excusable default "within one year after service of a copy of the judgment or order with written notice of its entry on the moving party," or, if he has entered the judgment or order, within one year after entry. This provision however, does not preempt a court's inherent common-law right to set aside its own judgments at any time in the interest of justice.[114] Recently, in

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110 22 NYCRR 28.12.

111 71 Misc. 2d 464, 336 N.Y.S.2d 261 (Monroe County Ct. 1972).

112 *Id.* at 468, 336 N.Y.S.2d at 265. A prior rule required an affidavit setting forth "substantial grounds" for a trial de novo.

113 In Capital Traction Co. v. Hof, 174 U.S. 1, 23 (1899), the United States Supreme Court held that compulsory arbitration does not violate the seventh amendment as long as an appeal from the decision is allowed, stating:

> [The Constitution] does not prescribe at what stage of an action a trial by jury must, if demanded, be had, or what conditions may be imposed upon the demand of such a trial, consistently with preserving the right to it.

Pennsylvania has had a program similar to New York's in operation since 1952. Its constitutionality was upheld in *In re* Smith, 381 Pa. 223, 112 A.2d 625, *appeal dismissed sub. nom.* Smith v. Wissler, 350 U.S. 858 (1955).

114 The Advisory Committee on Practice and Procedure has stated that "[t]he court's inherent power to relieve a party from the operation of a judgment in the interest of substantial justice is not limited in any way by the proposed rules [*i.e.*, the CPLR]." THIRD REP. 204.

Star Credit Corp. v. Ingram,[115] the New York City Civil Court, New York County, used its inherent power to open a default after the lapse of the statutory period where strong evidence of unconscionability was presented.

The defendant moved pursuant to CPLR 5015 to vacate a default judgment entered against her more than three years previously on the ground that the court lacked jurisdiction to render the judgment. The defendant alleged that she had not been served with process in the action, but had learned of the default judgment shortly after its entry. For more that three years, she made payments on the judgment exceeding $1,700, leaving a balance of over $300 at the time of the motion to vacate. The original purchase price of the freezer which was the subject matter of the action was approximately $1270. The defendant, realizing that the judgment was exorbitant, complained to the New York City Department of Consumer Affairs which provided her with an attorney who made the motion. The court held that the defendant had waived any objection to jurisdiction over the person by voluntarily making payments on the judgment over the three-year period.[116] Nonetheless, the court vacated the default in the interest of justice, declaring that "[t]he courts must provide the necessary instrumentality to pierce the shield of *caveat emptor* when it is sought to be used as a sword at the throats of the poor and the illiterate."[117] The defendant was granted leave to file an answer in the action so as to permit her to establish that she was the victim of a fraudulent sales scheme.

The court's use of its inherent power to open defaults in the interest of justice should prove particularly useful in combatting the contemporary problems of the low income consumer beset by the prev-

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The inherent power of New York courts to set aside their own judgments has long been well-established. *See, e.g.*, Ladd v. Stevenson, 112 N.Y. 325, 19 N.E. 842 (1889); *In re* Marsh, 242 App. Div. 290, 275 N.Y.S. 79 (2d Dep't 1934) (per curiam); Mondo v. Estate of Mento, 33 App. Div. 2d 650, 305 N.Y.S.2d 341 (4th Dep't 1969) (mem.); Maloney v. McMillan Book Co., 52 Misc. 2d 1006, 277 N.Y.S.2d 499 (Syracuse City Ct. 1967). *See also* 9 CARMODY-WAIT 2d, § 63:163, at 105 n.16 (1966); 5 WK&M ¶ 5015.12.

One authority has suggested that the statute imposes a requirement of stronger evidence explaining the default when a judgment is to be opened after the lapse of the one-year period. 7B MCKINNEY'S CPLR 5015, commentary at 580 (1963).

[115] 71 Misc. 2d 787, 337 N.Y.S.2d 245 (N.Y.C. Civ. Ct. N.Y. County 1972).

[116] *Id.* at 788, 337 N.Y.S.2d at 247.

[117] *Id.* at 789, 337 N.Y.S.2d at 248, *citing* 7B MCKINNEY'S CPLR 5015, commentary at 580 (1963). The court also cited Jones v. Star Credit Corp., 59 Misc. 2d 189, 298 N.Y.S.2d 264 (Sup. Ct. Nassau County 1969), a case involving the same plaintiff, wherein a sales transaction was declared unconscionable under § 2-302 of the Uniform Commercial Code.

alence of "sewer service" and the consequent abundance of default judgments.[118]

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR art. 52: Court voids assignment of judgment to buyer of judgments for the purpose of execution.

New York has established a public policy against champerty and maintenance,[119] presently embodied in section 489 of the Judiciary Law,[120] which prohibits the purchase of claims by persons engaged in the business of buying claims for the purpose of bringing an action or proceeding thereon. In *Bottenus v. Blackman*,[121] the Supreme Court, Nassau County, recently applied the statute to void an assignment of a judgment to a person in the business of buying judgments who sought to execute thereon.

The respondent, admittedly in that business, acquired a judgment against the petitioners for a nominal consideration and sought to levy on their home pursuant to CPLR 5236.[122] Holding that the respondent was in the business of collecting claims,[123] that a money judgment is a claim,[124] and that the judgment enforcement procedure under CPLR article 52 is a proceeding within the purview of the Judiciary Law,[125] the court refused to enforce the judgment. "The essential policy considerations of section 489," the court concluded, "apply fully to the case at bar."[126]

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118 *See* DeFeis, *Abuse of Process and Its Impact on the Poor*, 46 ST. JOHN'S L. REV. 1 (1971).

119 *See* Transbel Inv. Co. v. Roth, 36 F. Supp. 396 (S.D.N.Y. 1940). Champerty is an arrangement under which an uninterested third party maintains another's suit, at his own expense, in consideration of receiving a part of the proceeds of the litigation. Maintenance is the support or promotion of the litigation of another. BLACK'S LAW DICTIONARY 292 (4th rev. ed. 1968).

120 N.Y. JUDICIARY LAW § 489 (McKinney 1968).

121 71 Misc. 2d 583, 336 N.Y.S.2d 790 (Sup. Ct. Nassau County 1972).

122 CPLR 5236 sets forth the procedure for the sale of real property to satisfy a judgment. The debtor's right of redemption after an execution sale has been abolished. *See* 6 WK&M ¶ 5236.02.

123 71 Misc. 2d at 584-85, 336 N.Y.S.2d at 793.

124 *Id.* at 585, 336 N.Y.S.2d at 794, *citing* Blackman v. Pincus, 167 N.Y.L.J. 18, Jan. 26, 1972, at s 15, col. 3 (App. T. 2d Dep't); Roslyn Sav. Bank v. Jones, 69 Misc. 2d 733, 330 N.Y.S.2d 954 (Sup. Ct. Nassau County 1972).

125 71 Misc. 2d at 586, 336 N.Y.S.2d at 794-95, *citing* Blackman v. Pincus, 167 N.Y.L.J. 18, Jan. 26, 1972, at s 15, col. 3 (App. T. 2d Dep't); Lee v. Community Capital Corp., 67 Misc. 2d 699, 324 N.Y.S.2d 583 (Sup. Ct. Nassau County 1971), *discussed in The Quarterly Survey*, 46 ST. JOHN'S L. REV. 561, 578 (1971). *But see* Rosenkrantz v. Salvo Realty Corp., 65 Misc. 2d 467, 317 N.Y.S.2d 809 (Sup. Ct. Nassau County 1971); People v. Berlin, 65 Misc. 2d 245, 317 N.Y.S.2d 191, *dismissed*, 66 Misc. 2d 1034, 323 N.Y.S.2d 349 (Nassau County Ct. 1971); *cf.* First Nat'l Bank v. Felder, 69 Misc. 2d 812, 331 N.Y.S.2d 306 (Dist. Ct. Suffolk County 1972).

126 71 Misc. 2d at 587, 336 N.Y.S.2d at 795.