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.\textsuperscript{110}

In \textit{Bayer v. Ras},\textsuperscript{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."\textsuperscript{112}

The \textit{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.\textsuperscript{113}

\textbf{ARTICLE 50 — JUDGMENTS GENERALLY}

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

\textit{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.}\textsuperscript{114}

\textsuperscript{110} 22 NYCRR 28.12.

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

\textsuperscript{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.

\textsuperscript{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 \textit{In re Smith}, 381 Pa. 223, 112 A.2d 625, appeal dismissed sub. nom. Smith v. Wissler, 350 U.S. 858 (1955).

\textsuperscript{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]." \textit{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 than 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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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 139, 298 N.Y.S.2d 294 (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.
alance of "sewer service" and the consequent abundance of default judgments.\textsuperscript{118}

\textbf{ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS}

\textit{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,\textsuperscript{119} presently embodied in section 489 of the Judiciary Law,\textsuperscript{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 \textit{Bottenus v. Blackman},\textsuperscript{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.\textsuperscript{122} Holding that the respondent was in the business of collecting claims,\textsuperscript{123} that a money judgment is a claim,\textsuperscript{124} and that the judgment enforcement procedure under CPLR article 52 is a proceeding within the purview of the Judiciary Law,\textsuperscript{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."\textsuperscript{126}


\textsuperscript{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. \textit{BLACK'S LAW DICTIONARY} 292 (4th rev. ed. 1968).

\textsuperscript{120} N.Y. JUDICIARY LAW § 489 (McKinney 1968).

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

\textsuperscript{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.

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


\textsuperscript{126} 71 Misc. 2d at 587, 336 N.Y.S.2d at 795.