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CPLR 5201(b): A debt secured by an artisan's lien is property subject to enforcement, but lien itself is not.

CPLR 5201(b) provides that a money judgment may be enforced against any non-exempt¹²⁷ property which is assignable or transferrable. Such property may constitute a present or a future interest, and may be unvested.¹²⁸ While this seems to include a debt owed to the judgment debtor, a logical incorporation of CPLR 5201(a) would limit enforcement to a debt presently due or "to become due, certainly or upon demand."¹²⁹

In *United States Extrusions Corp. v. Strahs Aluminum Corp.*,¹³⁰ the petitioner sought a determination as to its rights to certain scrap metal in the possession of Davran Industries, Inc.¹³¹ The petitioner had delivered aluminum extrusions to Davran for fabrication with the understanding that the finished products and any leftover metal were to be returned to it upon completion of the work. While completed units were sent to the petitioner, the leftover metal remained with Davran which, by operation of law, had an artisan's lien thereon for its unpaid charges.¹³² Subsequently, Davran's creditors levied on all the property on Davran's premises, including the scrap metal. At issue was the extent to which the scrap metal was subject to execution by Davran's creditors.

The Supreme Court, Nassau County, held that only the claim for money due to Davran (clearly property within the meaning of CPLR 5201), and not the leftover metal, could be sold by the sheriff. In so

¹²⁷ Certain properties are specifically made exempt for enforcement purposes. See CPLR 5205 and 5206.

¹²⁸ See generally 6 WK&M ¶¶ 5201.07-.09.

¹²⁹ CPLR 5201(a). See also 7B MCKINNEY'S CPLR 5201, commentary at 24-25 (1963); 6 WK&M ¶ 5201.07.

¹³⁰ 71 Misc. 2d 1016, 337 N.Y.S.2d 780 (Sup. Ct. Nassau County 1972).

¹³¹ The petitioner brought this proceeding pursuant to CPLR 5239, which gives any interested person the right to institute a special proceeding against a judgment creditor to determine rights to property "[p]rior to the application of property or debt by a sheriff or receiver to the satisfaction of a judgment"

¹³² Davran had a lien on the scrap metal for its reasonable charges for the work done and was entitled to its possession until paid. N.Y. LIEN LAW § 180 (McKinney 1966). Even though certain fabricated units were returned to the petitioner, "the lien attaches to the retained property, to the full extent of work done on the entire order, including the portion returned." 71 Misc. 2d at 1018, 337 N.Y.S.2d at 781-82. See also *Blumenberg Press v. Mutual Mercantile Agency*, 177 N.Y. 362, 69 N.E. 641 (1904); *Hare's Motors, Inc. v. Roeder Mfg. Co.*, 207 App. Div. 670, 202 N.Y.S. 830 (2d Dep't), *aff'd*, 238 N.Y. 590, 144 N.E. 904 (1924) (per curiam).

An artisan's lien is waived if the work is done on open credit. 71 Misc. 2d at 1018, 337 N.Y.S.2d at 782, *citing In re Tele King Corp.*, 137 F. Supp. 633 (S.D.N.Y. 1955). In the instant case, however, the court found no credit agreement.

"A lien against personal property, . . . if in the legal possession of the lienor, may be satisfied by the sale of such property. . . ." N.Y. LIEN LAW § 200 (McKinney Supp. 1972).

holding, the court noted that a lien represents an integral part of the lienor's interest even though a lien is not property within the meaning of CPLR 5201(b).¹³³ On the sale of the debt by the sheriff, the purchaser is therefore entitled to possession of the scrap metal with the right to sell it if the petitioner fails to satisfy the debt.¹³⁴

CPLR 5222: Restraining notice is not cancelled by ex parte stay of execution.

A CPLR 5222 restraining notice allows a judgment creditor to prevent his debtor or a third party from disposing of the debtor's assets before execution.¹³⁵ A third party who disposes of a judgment debtor's assets in violation of a restraining notice is subject to contempt sanctions and liable to the creditor for damages.¹³⁶ Third parties, therefore, should not assume that a restraining notice has ceased to be effective. This point was illustrated in *Nardone v. Long Island Trust Co.*¹³⁷

In *Nardone*, a judgment creditor served a restraining notice on a bank pursuant to CPLR 5222. The judgment debtor moved to open the default judgment and obtained an *ex parte* order staying execution. The bank informally received a copy of this order and permitted the debtor to write checks against his account. When the sheriff attempted to execute the judgment, the account was overdrawn. The creditor sued the bank for damages for violating the restraining notice. Unanimously reversing a judgment for the respondent and granting the petitioner's motion for summary judgment, the Appellate Division,

¹³³ 71 Misc. 2d at 1018, 337 N.Y.S.2d at 782, citing *Merritt v. Bartholick*, 36 N.Y. 44 (1867); *Beak v. Walts*, 266 App. Div. 900, 42 N.Y.S.2d 652 (4th Dep't 1943) (mem.).

There is support, however, for the proposition that a lien itself is property.

[A] lien is property in the broad sense of that word, and although it has no physical existence it exists by operation of law so effectively as to have pecuniary value, and to be capable of being bought and sold.

Haebler v. Myers, 132 N.Y. 363, 368, 30 N.E. 963, 965 (1892). See also *Yarmak v. Perry*, 182 Misc. 268, 43 N.Y.S.2d 304 (N.Y. City Ct. N.Y. County 1943).

¹³⁴ "At any time during this procedure, [the lienee] may redeem its property by paying to the sheriff the amount of the artisan's lien." 71 Misc. 2d at 1019, 337 N.Y.S.2d at 782-83. By requiring the purchaser to sell the property to satisfy the lien, the lienee is afforded the protections of article 9 of the Lien Law, including notice of sale and the right of redemption.

¹³⁵ See 6 WK&M ¶ 5222.01.

¹³⁶ CPLR 5251 expressly provides for contempt sanctions against violators of CPLR 5222. Without express statutory authority, courts have held that the remedy of damages is also available. See *Mazuka v. Bank of North America*, 53 Misc. 2d 1053, 280 N.Y.S.2d 495 (N.Y.C. Civ. Ct. Queens County 1967), discussed in *The Quarterly Survey*, 42 St. JOHN'S L. REV. 436, 466 (1968). See also *Sumitomo Shoji New York, Inc. v. Chemical Bank New York Trust Co.*, 47 Misc. 2d 741, 263 N.Y.S.2d 354 (Sup. Ct. N.Y. County 1965), *aff'd mem.*, 25 App. Div. 2d 499, 267 N.Y.S.2d 477 (1st Dep't 1966) (dictum), discussed in *The Biannual Survey*, 40 St. JOHN'S L. REV. 303, 348 (1966).

¹³⁷ 40 App. Div. 2d 697, 336 N.Y.S.2d 325 (2d Dep't 1972) (mem.).