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CPLR 3215(c): Default Not Equivalent to Admission of Allegations of Complaint

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rule.[134] The need of extrinsic proof should not necessarily bar invocation of CPLR 3213.

CPLR 3215(c): Default not equivalent to admission of allegations of complaint.

CPLR 3215(c) provides that a plaintiff must seek entry of judgment within one year after default or see the complaint dismissed as abandoned unless said plaintiff shows sufficient reason why the court should not so dismiss.[135] The purpose of this section is to prevent plaintiffs from unreasonably delaying termination of their actions.[136]

In *Ballard v. Billings & Spencer Co.*[137] plaintiff secured restoration of this action to the trial calendar by falsely stating that all pleadings had been served. At the time defendants United and Houdaille had been in default for more than one year, but plaintiff's conduct indicated that he had expected them to serve their answers eventually. While a jury was being selected, defendants learned that plaintiff intended to treat their failures to answer as admissions of the complaints' allegations. Plaintiff refused to accept proposed answers, and the trial court, exasperated by the defendants' dilatoriness, denied their motions to serve answers and for mistrial and directed trial of the issue of damages only.[138] Defendants appealed *inter alia* the court's denial of their motions to serve answers.

The Appellate Division, Fourth Department, ruled that denial of the motions was an abuse of discretion and ordered a new trial.[139] Express limiting statutory provisions thwarted the trial court's attempt to punish defendant's failure to move to vacate the note of issue including a certificate of readiness stating that all pleadings had been served by equating default with admission of complaint.[140] Plaintiff could not circumvent CPLR 3215(c).[141] Plaintiff suffered no legal prejudice by the default, for he was aware of defendants' positions, and in fact waived the default. Since the law prefers disposition of cases

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134 *Accord,* Instituto Per Lo Sviluppo Economico Dell 'Italia Meridionale v. Sperti Prods., Inc., 47 F.R.D. 310, 315 (S.D.N.Y. 1969).

135 *See* 7B McKINNEY'S CPLR 3215, commentaries 11-13 (1970); 4 WK&M ¶¶ 3215.13-3215.16.

136 *See* 4 WK&M ¶ 3012.09.

137 36 App. Div. 2d 71, 319 N.Y.S.2d 191 (4th Dep't 1971).

138 *Id.* at 73-75, 319 N.Y.S.2d at 193-95.

139 *Id.* at 76, 319 N.Y.S.2d at 197.

140 *See* DeRosa v. La Sala, 31 App. Div. 2d 745, 297 N.Y.S.2d 483 (2d Dep't 1969); Herzbrun v. Levine, 23 App. Div. 2d 744, 259 N.Y.S.2d 237 (1st Dep't 1965); Kohn v. Kohn, 5 Misc. 2d 288, 158 N.Y.S.2d 978 (Sup. Ct. Monroe County 1957); 4 WK&M ¶¶ 3012.09; 3215.13-3215.14 (1969).

141 36 App. Div. 2d at 75, 319 N.Y.S.2d at 196.

upon their merits in the absence of prejudice, interposition of the answers should have been permitted.[142]

Perhaps treatment of defaults as admissions of the complaints is a proper solution to the problem of dilatory calendar practice. Nevertheless, such sanction has not been authorized by the Legislature. The appellate division's decision in *Ballard* is both consistent with the relevant statutes and just in the circumstances of the case, especially in light of plaintiff's culpability in filing a false note of issue and in not applying for judgment upon the default. Nevertheless, an attorney should seek entry of judgment within one year of default as directed by CPLR 3215(c), to avoid the sundry problems inherent in failure to comply.

Res Judicata: Doctrine applicable only to those issues actually raised in prior taxpayer suit.

Under the doctrine of res judicata, when a cause of action has been adjudicated on the merits, the parties to the action and their privies are bound by the judgment, in which the cause of action merges, and may not relitigate the same cause of action between themselves.[143] The general rule is that

> [a] judgment in one action is conclusive in a later one not only as to any matters actually litigated therein, but also as to any that might have been litigated, when the two causes of action have such a measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first . . . .[144]

The doctrine of res judicata applies to class actions.[145] The United States Supreme Court held that "[w]here the parties interested in the suit are numerous," convenience requires that "the decree bind[s] all of them the same as if all were before the court."[146] A judgment rendered in a taxpayer suit has been held in New York to bar a subsequent suit by different taxpayers.[147] Is the scope of the doctrine as

142 *Id.* at 76, 319 N.Y.S.2d at 196.

143 *See* RESTATEMENT OF JUDGMENTS § 68, comment *a* at 294 (1942).

144 Schuylkill Fuel Corp. v. B&C Nieberg Realty Corp., 250 N.Y. 304, 306-07, 165 N.E. 456, 457-58 (1929). *See* Pagano v. Arnstein, 292 N.Y. 326, 331, 55 N.E.2d 181, 183 (1944); 5 WK&M ¶ 5011.17. *See, e.g.*, Hochster v. City Bank Farmers Trust Co., 260 App. Div. 712, 719, 24 N.Y.S.2d 110, 117 (1st Dep't 1940), *aff'd without opinion*, 288 N.Y. 588, 42 N.E. 2d 600 (1942).

145 *See In re* Sullivan's Will, 123 N.Y.S.2d 159, 160 (Sur. Ct. Kings County 1953); 5 WK&M ¶ 5011.35.

146 Smith v. Swormstedt, 57 U.S. (16 How.) 288, 303 (1857).

147 Campbell v. Nassau County, 274 App. Div. 929, 83 N.Y.S.2d 511 (2d Dep't 1948); *see* Ashton v. City of Rochester, 133 N.Y. 187, 192-94 (1892); People's Gas & Elec. Co. v.