

CPLR 5003: Second Department Requires the Party Who Delayed Final Judgment To Suffer the Monetary Consequences

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ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5003: Second Department requires the party who delayed final judgment to suffer the monetary consequences.

It has long been held that interest upon damages should only be awarded from the date of entry of the final judgment.⁷¹ In the recent case of *Trimboli v. Scarpaci Funeral Home, Inc.*,⁷² the Appellate Division, Second Department, held that when a defendant appeals from an interlocutory decision fixing liability and obtains a stay of the portion of the trial to ascertain damages,⁷³ the interest is computed from the date of interlocutory judgment.⁷⁴

In *Trimboli*, the defendant, upon interlocutory judgment assessing liability, immediately appealed and obtained a stay of the remainder of the trial. Although the defendant's liability was eventually upheld,⁷⁵ the assessment of damages, totalling \$41,000, was delayed for almost a year.⁷⁶ The defendant claimed that under New York law he should only have been assessed interest from the date that the final monetary judgment was entered.

The appellate division rejected the defendant's argument, stating:

The intent of the statute awarding interest is to indemnify the plaintiffs for the nonpayment of what is due to them. Hence, the delay in the rendition of damages may properly be charged against the party causing it, in considering the allowance of interest, and the courts have followed this rule in applying the terms of the statute.⁷⁷

Thus, the court was influenced by the optional nature of a stay of the damages portion of the trial, which could have been continued while an appeal on the liability portion could have been taken.⁷⁸

The purpose of the Second Department's decision is unmistakably clear:⁷⁹ An individual must suffer the consequences of his actions. A

⁷¹ 5 WK&M ¶ 5003.01 (1971).

⁷² 37 App. Div. 2d 386, 326 N.Y.S.2d 227 (2d Dep't 1971).

⁷³ CPLR 4011 states: "The court may determine the sequence in which the issues shall be tried and otherwise regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue"

⁷⁴ 37 App. Div. 2d at 389, 326 N.Y.S.2d at 230.

⁷⁵ *Trimboli v. Scarpaci Funeral Home, Inc.*, 34 App. Div. 2d 1103, 313 N.Y.S.2d 984 (2d Dep't 1970) (mem.).

⁷⁶ The interlocutory judgment was entered Oct. 28, 1969, while the judgment for damages was entered Sept. 21, 1970.

⁷⁷ 37 App. Div. 2d at 389, 326 N.Y.S.2d at 230.

⁷⁸ "Without the stay the plaintiffs' damages would have been quickly ascertained before the same jury which decided the issue of liability or another jury speedily convened." *Id.* at 388, 326 N.Y.S.2d at 229.

⁷⁹ An additional issue was encountered in this case. The appellate division upheld a 7½% interest rate on all damages. *Id.* at 389-90, 326 N.Y.S.2d at 230-32. This is in

defendant who causes delay in the formulation of a final judgment, will not be permitted to use this delay as an excuse for not paying interest during that time. He who procrastinates in the Second Department is now on notice that he will pay for the privilege.

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5240: Protecting the abused judgment debtor.

All too often, pursuant to CPLR 5235, a levy of execution is made against the residence of an ignorant small judgment debtor who, although admittedly at fault for nonpayment of his debt, is nonetheless being treated with such indignity that he is, in effect, deprived of due process of law.⁸⁰ Subsequent to the sheriff's levy, the debtor's property is sold at public auction at a mere fraction of its fair market value.⁸¹ Had the debtor been counselled by an attorney at any time prior to the actual sale, such judicial abuses would never have materialized.⁸² But even assuming that such has not been the case, and further assuming that the debtor's property has already been sold pursuant to CPLR 5236, there still exists legal remedies available to the judgment debtor under CPLR 5240. Thereunder, the court may at any time, upon motion or on its own initiative, make any order regarding any enforcement proceeding of the CPLR. The court may deny, limit, condition, regulate, extend or modify the use of any enforcement proceeding of the CPLR.⁸³

A recent example of a court's willingness to aid the abused judgment debtor subsequent to the sheriff's sale of his residence was a refusal to sanction a deviation from the statutory norm of CPLR 5235. In *Community Capital Corp. v. Lee*,⁸⁴ a declaratory judgment action in which, had the sale been allowed, the plaintiff-buyer would have "come into a present equity of \$13,000 for the paltry sum of \$197.25," the court,

apparent disagreement with the finding in a recent federal decision, applying New York law, allowing only 6% interest on tort recoveries. *Caldecott v. Long Island Lighting Co.*, 417 F.2d 994 (2d Cir. 1969). See also *The Quarterly Survey*, 45 ST. JOHN'S L. REV. 145, 164 (1970); *The Quarterly Survey*, 44 ST. JOHN'S L. REV. 313, 340 (1969).

⁸⁰ 7B MCKINNEY'S CPLR 5236, *supp. commentary* at 153-54 (1970).

⁸¹ CPLR 5235 provides for restoration of the expired lien value of a judgment until the mechanics of CPLR 5236 have been finalized. It is important that the debtor understand exactly the action being taken against him. CPLR 5236 eliminates the equity of redemption, thereby preventing the judgment debtor from reaching the property subsequent to its sale. See 6 WK&M ¶ 5236.02.

⁸² 7B MCKINNEY'S CPLR 5236, *supp. commentary* at 154 (1970). See *Cook v. H.R.H. Constr. Corp.*, 32 App. Div. 2d 806, 302 N.Y.S.2d 364 (2d Dep't 1969), *discussed in The Quarterly Survey*, 44 ST. JOHN'S L. REV. 532, 574 (1970).

⁸³ See 6 WK&M ¶ 5240.02.

⁸⁴ 58 Misc. 2d 34, 294 N.Y.S.2d 336 (Sup. Ct. Nassau County 1968), *discussed in The Quarterly Survey*, 43 ST. JOHN'S L. REV. 688, 702 (1969).