

CPLR 5003: Interest on a Judgment Is Not a Basis for a Separate Action

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court implied that it would exercise its fact-finding authority in a proper case.¹³⁵

The requirement of CPLR 4213(b) is sound and well settled. To insure intelligent appellate review there must be a sufficient factual basis upon which to pass. Exceptions have been made by appellate courts where there is a sufficient record although inadequate findings of fact, and the decision is compelling.¹³⁶ However, the present case comes well within the proscription of CPLR 4213(b), since the total absence of an oral or written decision and findings of fact left the appellate court with a *tabula rasa* to review.

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5003: Interest on a judgment is not a basis for a separate action.

In *Ferguson v. City of New York*,¹³⁷ the Supreme Court, Orange County, was called upon to determine "whether a separate action can be maintained to fix the amount of interest due on a judgment while an appeal is pending, such appeal having been instituted by the plaintiffs in the collateral action."¹³⁸ The court reasoned that

[i]nterest on a judgment has no independent existence from the judgment upon which it is predicated and cannot be the basis for a new and separate action which seeks to modify either the amount, or the rate of interest previously awarded.¹³⁹

Plaintiffs, dissatisfied with the interest awarded to them, were advised to appeal or to apply for modification of their judgments.¹⁴⁰

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5231(d): Service upon judgment debtor as agent of corporation held ineffective.

Income execution against money which a judgment debtor is receiving or will receive is available under CPLR 5231(d). The procedural safeguards for this remedy include service upon the judgment debtor if possible and service upon the third party against whose debt

¹³⁵ See *Power v. Falk*, 15 App. Div. 2d 216, 222 N.Y.S.2d 261 (1st Dep't 1961), where reasons were assigned for not exercising the court's fact-finding authority. The present case approved the *Falk* rationale.

¹³⁶ E.g., *Mellon v. Street*, 23 App. Div. 2d 210, 259 N.Y.S.2d 900 (3d Dep't 1965); *Weidman v. Klot*, 11 App. Div. 2d 641, 201 N.Y.S.2d 476 (1st Dep't 1960) (holding that the trial testimony and documents received in evidence were a sufficient basis upon which to make findings of fact).

¹³⁷ 67 Misc. 2d 812, 324 N.Y.S.2d 894 (Sup. Ct. Orange County 1971).

¹³⁸ *Id.* at 814, 324 N.Y.S.2d at 896.

¹³⁹ *Id.* at 815, 324 N.Y.S.2d at 897.

¹⁴⁰ *Id.*