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CPLR 5015: Default Judgments Vacated Sua Sponte

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Collectively, millions of dollars are at stake.[139] Moreover, whenever a choice of venue is possible, a conflict arises between the creditor, seeking a 7.5 percent forum and parity with existing interest rates, and the debtor, already beset with financial burdens, adamantly resisting said forum via a motion for a change of venue.[140]

Rachlin represents the first appellate pronouncement on whether the interest rate under article 50 has been increased by the action of the Banking Board. Based on the soundness of the decisions thus far, it is improbable that any one approach can be considered the correct one.[141] Hence, it is conceivable that without prompt legislative action, the conflict will merely be transposed onto the appellate level rather than resolved.

CPLR 5015: Default judgments vacated sua sponte.

CPLR 5015 provides that the "court which rendered a judgment . . . may relieve a party . . . upon such terms as may be just, on motion of an interested person." Does the phrase "interested person" allow for a motion by the court itself? In *All-State Credit v. Riess*[142] this question was answered in the affirmative. There, the appellate term affirmed a Nassau County District Court's sua sponte vacatur of default judgments and the underlying complaints in 669 actions which had been consolidated.

The actions were based on various retail installment contracts. None of the defendants were residents of Nassau County, nor were they served with process there. Instead, jurisdiction was predicated upon the long-arm provision of the UDCA.[143] Since personal service had not been effected, and the plaintiff failed to include the requisite allegation concerning the basis for jurisdiction, the court concluded that it lacked personal jurisdiction over the defendants.[144]

Although the *All-State* decision ostensibly exceeds a court's express power under CPLR 5015, it is justifiable in view of a court's inherent authority to vacate judgments.[145] Indeed, it would be an ab-

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139 *See* 7B McKINNEY's CPLR, commentary at 132-34 (1969).

140 CPLR 511(a).

141 *See* 7B McKINNEY's CPLR 5004, commentary at 132-34 (1969).

142 61 Misc. 2d 677, 306 N.Y.S.2d 596 (App. T. 2d Dep't 1970).

143 UDCA § 404(a)(1) & (b).

144 *Cf.* Coffman v. National Union Fire Ins. Co., 60 Misc. 2d 81, 302 N.Y.S.2d 480 (Dist. Ct. Nassau County 1969).

145 CPLR 5015 contains five grounds for relief: (1) excusable default; (2) newly discovered evidence; (3) fraud, misrepresentation or other misconduct of an adversary; (4) lack of jurisdiction, and (5) reversal, modification or vacatur of a prior judgment or order. Nevertheless, courts have consistently opined that these grounds are not exclusive. Rather, the court's power is inherent. Ladd v. Stevenson, 112 N.Y. 325, 19 N.E. 842 (1889). *See also*

surdity to maintain that a court cannot remedy an essential defect that it has recognized. Moreover, some time in the future, the defaults would be subject to motions to vacate — 669 to be exact! Thus, in the interest of judicial economy, the decision is warranted. And, while undoubtedly motivated by a concern for the consumer, the *All-State* rationale will, hopefully, be adopted in other areas.

CPLR 5226: Public welfare recipient not exempt from installment payment order.

CPLR 5226 provides that "[w]here it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation . . . ," the judgment creditor may move for an installment payment order directing the judgment debtor to make certain specified payments periodically in satisfaction of the judgment against him. Thus, the judgment creditor is afforded some recourse against his debtor's "invisible" means of support.[146] And, unlike an income execution,[147] the installment payment order contains no monetary limitations.[148]

In *Prior v. Cunningham*,[149] the defendant attempted to counter a motion for an installment payment order by arguing that sections 137[150] and 137-a[151] of the Social Services Law evidenced a legislative intent to exempt recipients of public assistance from the ambit of CPLR 5226. Nonetheless, the Appellate Division, Third Department, held that these exemptions only applied to those funds which were specifically enumerated, and, therefore, should not be interpreted as exempting recipients of public welfare assistance from every levy and execution.[152]

If a judgment debtor has a hidden source of income, there is no reason why the fact that he is also receiving public assistance should preclude the issuance of an installment payment order if the court finds that he can afford it.[153] In such circumstances, it is likely that

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7B McKINNEY'S CPLR 5015, commentary at 580 (1963); THIRD REP. 204; 5 WK&M ¶ 5015.12.

146 7B McKINNEY'S CPLR 5226, commentary at 112 (1963).

147 CPLR 5231(e).

148 Under CPLR 5205(e), the income execution is good only up to 10 percent of the judgment debtor's income.

149 33 App. Div. 2d 853, 306 N.Y.S.2d 22 (3d Dep't 1969).

150 N.Y. Soc. SERVICES LAW § 137 (McKinney 1941).

151 N.Y. Soc. SERVICES LAW § 137-a (McKinney supp. 1968).

152 33 App. Div. 2d at 853, 306 N.Y.S.2d at 23.

153 CPLR 5226 provides that:

In fixing the amount of the payments, the court shall take into consideration the