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CPLR 5226: Public Welfare Recipient Not Exempt from Installment Payment Order

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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

the source of income has also been hidden from the public authority granting the assistance, and to require the judgment creditor to have the public assistance revoked so that he can collect his judgment would be unduly burdensome.[154] Reading the Social Services Law together with the legislative plan evinced by CPLR 5226, especially in light of the exemptions already provided by CPLR 5205, the inference is strong that the section 137 and 137-a exemptions were meant to be strictly construed.

CPLR 6214(a): Designation of agent for service of process made pursuant to section 59 of Insurance Law held insufficient for service of attachment levy.

Under the doctrine of *Seider v. Roth*,[155] a New York plaintiff may, through the process of attachment, gain quasi-in-rem jurisdiction over an out of state defendant's interest in an insurance policy, provided that interest is *present* in New York. In other words, the insurer must be amenable to New York attachment proceedings. CPLR 6214(a) provides that service of the order of attachment may be made in the same manner as service of a summons with the exception that "such service shall not be made by delivery of a copy to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318." Notwithstanding this clear exclusion the Supreme Court, Bronx County held, in *Saggese v. Peare*,[156] that a designation made under section 59 of the New York Insurance Law[157] was "supplementary" to a designation under rule 318 and that an order of attachment served pursuant thereto was valid. In so doing, the court expressed the fear that an opposite holding would allow foreign insurance companies to frustrate the remedies contemplated by *Seider*. The Appellate Division, First Department, reversed[158] this holding, pointing out that even if the section 59 designation is "supplementary," the language of that section limits its applicability to "a contract delivered or issued for delivery or a cause of action arising in this state."[159] And, since plaintiff's action was based on an accident in New Hampshire, the section was inapplicable.

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reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him . . . in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received. . . .

154 *See generally* Kripke, *Consumer Credit Regulation: A Creditor-Oriented Viewpoint*, 68 COLUM. L. REV. 445, 475-76 (1968).

155 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

156 161 N.Y.L.J. 87, May 5, 1969, at 18, col. 5 (Sup. Ct. Bronx County).

157 N.Y. INS. LAW § 59 (McKinney 1966).

158 33 App. Div. 2d 900, 307 N.Y.S.2d 118 (1st Dep't 1970) (mem.).

159 N.Y. INS. LAW § 59 (McKinney 1966).