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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

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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).

As one authority indicated at the time of the lower-court holding, the fear that excluding a section 59 designation will hinder the valid application of *Seider* is unfounded.[160] If the basis for a *Seider* attachment exists — if the insurer is doing business in New York — it is likely that he will maintain an office in-state and service could be effected there.[161] In *Saggese*, the record failed to show that the insurer *did* business in New York; he was merely authorized (under section 59) to *do* business. This alone was not sufficient presence "to justify this particular levy in the circumstances of this particular action"[162] and the attachment was properly vacated.

CPLR 6214(e): Time extension after expiration of ninety-day period permitted subject to the rights of intervening lienors.

The problems inherent in the holding of *Seider v. Roth*[163] are manifold.[164] One illustration is the difficulty involved in perfecting the levy made pursuant to an order of attachment. For, under CPLR 6214(e), a levy is only effective for a period of ninety days after service of process unless: the sheriff has taken actual custody of the property; a special proceeding to take custody has been commenced; or, the court extends the ninety-day period. Where, as in *Seider*, the attached property consists of the defendant's interest in an insurance policy, the plaintiff is placed in the unenviable position of attempting to secure custody of an intangible.[165]

Postulating that an extension of the ninety-day period is the only real remedy available in this situation, the court in *Cenkner v. Shafer*[166] recently denied a motion to vacate an attachment upon the condition that plaintiff move for said extension within[167] twenty days.

Since ninety days had already elapsed, the *Cenkner* court qualified its order by adding that the extension would not prejudice the rights of an intervening creditor.[168] Thus, the lien of a second attaching creditor would move into first position on the ninety-first day, and the

160 7B McKINNEY'S CPLR 5201, supp. commentary at 30-31 (1969).

161 *See, e.g.*, Simpson v. Loehmann, 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967), *reargument denied*, 21 N.Y.2d 990, 238 N.E.2d 317, 290 N.Y.S.2d 914 (1968).

162 33 App. Div. 2d at 901, 307 N.Y.S.2d at 120.

163 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

164 *See, e.g.*, Siegel, *Simpson Upholds Seider — Problems for Both Sides*, 159 N.Y.L.J. 16, Jan. 23, 1968, at 1, col. 3.

165 *See* 7B McKINNEY'S CPLR 6214, supp. commentary at 34 (1967).

166 61 Misc. 2d 807, 306 N.Y.S.2d 634 (Sup. Ct. Herkimer County 1970).

167 CPLR 6223.

168 *See* Seider v. Roth, 28 App. Div. 2d 698, 280 N.Y.S.2d 1005 (2d Dep't 1967). Presumably, the plaintiff must continue to move for a time extension for the duration of the action. *See* 7B McKINNEY'S CPLR 6214, supp. commentary at 34 (1967).