St. John's Law Review

Volume 45
Number 1 *Volume 45, October 1970, Number 1*

Article 31

December 2012

CPLR 6511(b): Absolute Conformity with Statutory Content Provisions Not Required

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation
St. John's Law Review (1970) "CPLR 6511(b): Absolute Conformity with Statutory Content Provisions Not Required," *St. John's Law Review*: Vol. 45 : No. 1 , Article 31.
Available at: https://scholarship.law.stjohns.edu/lawreview/vol45/iss1/31

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

subsequent time extension would not restore the initial order of priority.[169]

CPLR 6511(b): Absolute conformity with statutory content provisions not required.

CPLR 6501 effectuates the policy that an action should not be defeated (and justice thereby evaded) by the alienation of a defendant's property during the pendency of an action.[170] Under this section, the filing of a notice of pendency constitutes constructive notice that an action affecting the title, possession, use, or enjoyment of real property has been commenced. Thus, any subsequent purchaser from, or encumbrancer against, a defendant in the action is bound by the outcome as if he were himself a party.

In *Mechanics Exchange Bank v. Chesterfield*,[171] the sufficiency of a notice of pendency was challenged by the successful bidder at a foreclosure sale. The filed notice declared that the action was brought for the "foreclosure of a mortgage" for the sum of $13,500, while actually this sum was the total of two mortgages which had been combined; the second mortgage reciting that "they shall constitute in law but one first mortgage . . . for $13,500.00."[172] Both mortgages were recorded.

The defect was derived from the Real Property Actions and Proceedings Law, which requires that the notice contain the date of the mortgage, the names of the parties, and the time and place of recording.[173] The notice fulfilled these requirements only as to the second mortgage.

The court, in determining the adequacy of the notice of pendency, reasoned that the policy considerations underlying such notice[174] only require that the statutory provisions be followed to the extent "that a purchaser or encumbrancer will be informed of the statutory items, *or given such information as to be put on inquiry as to them. . . .*"[175] Since a prospective purchaser or encumbrancer could have ascertained that there were two mortgages involved by an examination of the mortgage properly described in the notice of pendency, the court held that the notice was sufficient and that the sale should be completed.

---

[169] *See* 7B McKINNEY'S CPLR 6214, supp. commentary (1968).

[170] Hailey v. Ano, 136 N.Y. 569, 576, 32 N.E. 1068, 1070 (1893); Lamont v. Cheshire, 65 N.Y. 30, 36 (1875).

[171] 34 App. Div. 2d 111, 309 N.Y.S.2d 548 (3d Dep't 1970).

[172] *Id.* at 113, 309 N.Y.S.2d at 549.

[173] RPAPL § 1331.

[174] *See* 7 WK&M ¶ 6511.06.

[175] 34 App. Div. 2d at 114, 309 N.Y.S.2d at 550 (emphasis added).

While the content requirements of CPLR 6511(b) were met,[176] if a notice of pendency fails to completely conform to that section, but does give such information as to put a potential purchaser or encumbrancer on inquiry notice concerning the items omitted, a court, utilizing the rationale of the Third Department, should find the notice sufficient.

CPLR 7102: Court upholds constitutionality of replevin provision.

In *Sniadach v. Family Finance Corp.*,[177] the Supreme Court declared unconstitutional a Wisconsin statute[178] which authorized wage garnishment without first affording the debtor an opportunity for a hearing.[179] Reasoning that wages are a "specialized type of property,"[180] the Court held that prejudgment garnishment violated the due process clause. Recently, in *Lawson v. Mantell*,[181] New York's replevin provision — CPLR 7102 — was attacked on the grounds that it denied due process and equal protection of the laws.

In holding that CPLR 7102 was not violative of due process, the *Lawson* court cited the essential safeguards contained in article 71: (1) an action to recover the chattel must be commenced, and defendant must be served personally;[182] (2) the replevied chattel is not immediately awarded to the plaintiff;[183] and, (3) the defendant may challenge the adequacy of plaintiff's surety, or move to impound the chattel during the pendency of the action.[184]

Under the guidelines set by the Supreme Court in *Sniadach*, this phase of *Lawson* is justified. For, the New York statute provides substantial opportunity for a hearing, and it should be emphasized that the Wisconsin statute dealt with wages: a special kind of property which requires stricter vigilance.

The plaintiff in *Lawson* also asserted that compelling an undertaking by a poor person in order to secure the return of the chattel[185]

---

176 CPLR 6511(b) requires that the notice of pendency contain:
(a) the names of the parties to the action;
(b) the object of the action; and
(c) a description of the property affected.

177 395 U.S. 337 (1969), *rev'g* 37 Wis. 2d 163, 154 N.W.2d 259 (1967).

178 WIS. STAT. ANN. § 267.07(1) (1963).

179 The statute provided for wage garnishment merely by service on the debtor's employer and notice to the debtor within ten days thereafter. *Id.*

180 "A prejudgment wage garnishment . . . is a taking which may impose tremendous hardship on wage earners and their families." 395 U.S. at 340. *See also* Comment, *Wage Garnishment as a Collector's Device*, 1967 WIS. L. REV. 759, 767.

181 62 Misc. 2d 307, 306 N.Y.S.2d 317 (Sup. Ct. Albany County 1969).

182 CPLR 7102(a) & (b).

183 Under CPLR 7102(f) the chattel is held for a period of three days, during which time the defendant has an opportunity to reclaim it.

184 CPLR 7102(f); CPLR 7103(a) & (b).

185 CPLR 7103(a).