

## CPLR 5201: Bonuses Earned Will Be Prorated for Purposes of Determining Amount Available for Satisfaction of Judgment

St. John's Law Review

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brought New York into line with most other jurisdictions<sup>97</sup> which view future rents as so speculative that they are not subject to attachment or garnishment.

CPLR 6202 states that any debt against which a money judgment may be enforced under CPLR 5201 is subject to attachment for the purpose of obtaining jurisdiction over a defendant. Under CPLR 5201, a debt is subject to levy only where it will become due certainly or upon demand. While this would appear to eliminate contingent debts, an exception is provided in CPLR 5231 which permits execution on income or future wages even though they are not yet certain to become due.<sup>98</sup>

It is significant that the *Glassman* Court left two important questions unanswered when it stated that “[i]t need not be decided whether the income execution provision is available as a basis for attachment, or whether future rents are covered by that provision.”<sup>99</sup> Thus, the issue of whether or not CPLR 5231 is ever available as a basis for attachment is still left open, as is the question of whether future rents are ten percent leviable as income under CPLR 5231.

A question raised under CPLR 301 was also decided in the instant case—telephone conversations between an independent New York City real estate broker and the New Mexico defendants who hired the broker did not constitute a “transaction of business” within the City of New York so as to secure in personam jurisdiction over the non-resident defendants.

*CPLR 5201: Bonuses earned will be prorated for purposes of determining amount available for satisfaction of judgment.*

Girard Trust Bank obtained a judgment in the amount of \$4,291 against John Sample, Jr., defensive back for the New York Jets, a team owned by the defendant, Gotham Football Club. Avis-Rent-A-Car, a second judgment creditor, had obtained a judgment against Sample for \$362; it was conceded that Avis, first to execute, had priority. Sample's salary for the 1967 season (July 20, 1967 to December 24, 1967) was \$20,000. In addition to his salary, Sample received two bonuses; one, a \$2,000 bonus for playing in 50 percent of the offensive or defensive plays, and the other, a merit bonus of \$1,000 for outstanding overall performance.

In an action by the Girard Trust Bank against the Gotham Foot-

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<sup>97</sup> See, e.g., *United States Fidelity & Guaranty Co. v. Wrenn*, 89 F.2d 838 (D.C. Cir. 1937); *Calechman v. Great Atlantic & Pacific Tea Co.*, 120 Conn. 265, 180 A. 450 (1935).

<sup>98</sup> See 7B MCKINNEY'S CPLR 5021, *supp. commentary* 25 (1963).

<sup>99</sup> 23 N.Y.2d at 358, 244 N.E.2d at 262, 296 N.Y.S.2d at 787.

ball Club, Inc., the supreme court, special term, entered an order directing the defendant to pay ten percent of the monies held by it to Avis and the balance to Sample. On appeal by Girard Trust Bank, the Appellate Division, First Department,<sup>100</sup> held that a bonus paid to a professional football player for maintaining a positive attitude for the best interest of the team and professional football was to be considered wages earned for services rendered over the *entire* season, for the purpose of determining what portion was subject to the 90 percent exemption of earnings of the judgment debtor for personal services rendered within 60 days prior to the delivery of execution to the sheriff under CPLR 5205(e)(2). Determination of whether any portion of an additional bonus for participating in 50 percent of the offensive or defensive plays fell within the exemption depended upon whether the last play occurred before or after the 60 day period.

Had the money been sought two months after the close of the season, the judgment creditor could have avoided the 90 percent exemption. However, the advantages apparent in acting so late are offset by many disadvantages. A multitude of judgment creditors may serve income executions at an earlier date or, if other judgment creditors are planning a similar course of action, the sixty-first day may herald a race to the sheriff's office. Additionally, there is always the possibility that neither the judgment debtor nor his money could be located at such a late date.

#### ARTICLE 55 — APPEALS GENERALLY

*CPLR 5513(a): Time to appeal begins to run when service of judgment with notice of entry is made.*

Appeals as of right have to be taken within thirty days following service upon the appellant of a copy of the judgment or order appealed from. However, when *the appellant* has entered the judgment or order, or served notice of its entry, his appeal must be taken within thirty days after doing either.<sup>101</sup>

In an Article 78 proceeding, special term, after rendering its decision, directed that an order be settled. The respondents had submitted a proposed judgment, and the appellant had filed a proposed counter judgment. The special term judge signed the appellant's proposed counter judgment on May 29, 1968, and on June 13, 1968, at

<sup>100</sup> 31 App. Div. 2d 142, 295 N.Y.S.2d 741 (1st Dep't 1968).

<sup>101</sup> Previously, the time limit was 60 days. 7B MCKINNEY'S CPLR 5513(a), *supp. commentary* 297 (1967). See 7 WEINSTEIN, KORN & MILLER, *NEW YORK CIVIL PRACTICE* ¶ 5513.03 (1968).