

## CPLR 5514(a): Time Extension Unnecessary When Appeal Is Transferred Pursuant to New York State Constitution

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to stipulate will be of limited effect, the *Cook* decision forces adversary proceedings in situations where the parties might otherwise be amenable to early settlement. If no evidence of fraud exists in a situation such as this, there is no reason whatsoever for denying priority to the litigant who aids himself and thereby reduces the courts' burden.

#### ARTICLE 55 — APPEALS GENERALLY

*CPLR 5514(a): Time extension unnecessary when appeal is transferred pursuant to New York State Constitution.*

The Court of Appeals decision in *Ryan v. Freeman*<sup>202</sup> is illustrative of an appellate court's duty to transfer an appeal pursuant to Article 6, section 5b, of the New York State Constitution.<sup>203</sup> In *Ryan*, the plaintiff erroneously appealed to the Court from an order of the Civil Court of the City of New York denying his motion for a jury trial. Obviously realizing his error, he made a motion in the Court to transfer the appeal to the appellate term or, in the alternative, to have the appeal dismissed without prejudice in accordance with CPLR 5514(a).<sup>204</sup> The Court of Appeals granted the motion to transfer pursuant to section 5b of the state constitution's judiciary article.

It should be noted that a dismissal pursuant to CPLR 5514(a) invokes that section's time-extension provision, and an appellant would then have thirty days from the date of dismissal to appeal to the proper court.<sup>205</sup> However, this saving provision is superfluous when article 6 governs since the necessity of a new appeal is obviated due to the fact that a *transfer*, and not a dismissal of the appeal or denial of the motion to appeal, is mandated.<sup>206</sup>

#### ARTICLE 62 — ATTACHMENT

*CPLR 6214: Property seized by sheriff pursuant to ineffective levy may be retained under valid order of attachment without loss of priority.*

<sup>202</sup> 24 N.Y.2d 942, 250 N.E.2d 67, 302 N.Y.S.2d 579 (1969).

<sup>203</sup> N.Y. CONST. art. VI, § 5b:

If any appeal is taken to an appellate court which is not authorized to review such judgment or order, the court shall transfer the appeal to an appellate court which is authorized to review such judgment or order.

<sup>204</sup> CPLR 5514(a) provides that

[i]f an appeal is taken or a motion for permission to appeal is made and such appeal is dismissed or motion is denied and, except for time limitations in section 5513, some other method of taking an appeal or of seeking permission to appeal is available, the time limited for such other method shall be computed from the dismissal or denial, unless the court to which the appeal is sought to be taken orders otherwise.

<sup>205</sup> CPLR 5513. 7 WK&M ¶ 5514.01 (1969).

<sup>206</sup> 7 WK&M ¶ 5514.01 (1969).