St. John's Law Review

Volume 43, July 1968, Number 1 Article 28

CPLR 5201: Future Rents Not Subject to Attachment

St. John's Law Review

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS *

CPLR 5201: Future rents not subject to attachment.

CPLR 5201 provides in part that a money judgment can be enforced against a debt when the debt is certain to become due.

In *Glassman v. Hyder*,[127] plaintiff attached the future rents payable to defendant under a long-term lease. The appellate division, first department, reversing appellate term,[128] held that rents not yet due are contingent and, therefore, are not attachable as debts to become due "certainly or upon demand."

It is apparent that whether the landlord will receive the rent from a tenant is contingent; dependent upon both parties' abiding by the terms of the contract of lease. If the landlord breaches the contract, the tenant may be released from paying rent. If the entire amount of the rent receipts could be attached, the probability that the landlord will breach the contract is increased, *i.e.*, he will have less money to fulfill his contractual obligations of making repairs, supplying heat, etc.

Thus the instant case appears to be a logical interpretation of CPLR 5201 and is in conformity with prior law.[129]

ARTICLE 55 — APPEALS GENERALLY

CPLR 5522: Intervening decision of United States Supreme Court will not upset a "final" decision.

In *In re Huie*,[130] claimant made a motion for reargument of an earlier decided motion for which the statutory time for appeal had expired. The trial court nevertheless granted the motion because a decision of the United States Supreme Court,[131] in the interim, indicated that claimant's prior motion was erroneously dismissed. The Court of Appeals, in affirming the appellate division's reversal of the lower court's order, held that in the absence of the special circumstances enumerated in CPLR 5015, *e.g.*, the discovery of new evidence, fraud, or lack of jurisdiction, a determination which is not appealed should remain undisturbed.

---

* For a discussion of the latest developments on the *"Seider"* front see the student note in this issue.

[127] 28 App. Div. 2d 974, 283 N.Y.S.2d 419 (1st Dep't 1967).

[128] For a discussion and criticism of the appellate term's decision see *The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 128, 157 (1967).

[129] *In re* Ryan, 294 N.Y. 85, 60 N.E.2d 817 (1945). *But cf.* Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

[130] 20 N.Y.2d 568, 232 N.E.2d 642, 285 N.Y.S.2d 610 (1967).

[131] The intervening case which precipitated this confusion was Schroeder v. City of New York, 371 U.S. 208 (1962).