CPLR 3215(h): Judgment May Be Entered Pursuant to Stipulation of Settlement Without Notice to Adversary

St. John's Law Review
CPLR 3215(h): Judgment may be entered pursuant to stipulation of settlement without notice to adversary.

CPLR 3215(h) provides, inter alia:

1. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof.

In a recent case, Star Office Supply Co. v. Galton, an attorney attempted, ex parte, to secure judgment pursuant to a stipulation, but was advised by the clerk that application to the court on notice to defendant was required.

The court held that CPLR 3215(h) eliminated the necessity of a motion to the court and authorized the clerk to enter judgment directly, where there has been a failure to comply with a stipulation of settlement. It was pointed out, however, that notice of motion will be required, in the "exceptional situation," where the parties have so agreed in the stipulation.

CPLR 3216: Held unconstitutional by first department.

In the midst of a standing conflict between the first and second departments, regarding the retroactivity of CPLR 3216,

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125 Prior to the enactment of CPLR 3215(h), there existed no uniform procedure for entering judgment upon default or a stipulation of settlement. The procedure varied from county to county, some required a court order, and others did not. See 4 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3215.37 (1968).


127 It should be noted that the stipulation itself must provide for entry of judgment without further notice, the specific sum stipulated, and a basis for computation of interest. The stipulation must be accompanied by an affidavit attesting to the defendant's failure to comply with its terms, as well as a complaint showing the basis of the claim which gave rise to the stipulation. See 7B MCKINNEY'S CPLR 3215, supp. commentary 238 (1966).