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CPLR 5002: Interest Allowed from Date of Arbitration Award

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plaintiffs.[173] The court reasoned that subdivision 2 must either apply to commercial actions or to all actions wherein it is the *defendant* who applies for the preference.[174]

The court's decision appears to be especially sound in view of the rationale underlying the grant of a preference in an attachment situation. The preference is for the benefit of the defendant so that his property is not unnecessarily encumbered for long periods of time.

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5001(a): Interest from time of accident denied in breach of warranty action for personal injuries.

In *Gillespie v. Great Atlantic & Pacific Tea Co.*,[175] the Court of Appeals ruled on the question of whether or not interest will be allowed from the date of injury in personal injury actions based on breach of warranty. Plaintiff, injured by flying glass when a carton of quinine water exploded, contended that since the action was based on "breach of performance of a contract"[176] interest should be recoverable from the date of the accident.

In a previous warranty action for personal injury, *Gellman v. Hotel Corp. of America*,[177] interest was allowed from the date of the accident. It was reasoned that since the action was grounded in contract, interest should be allowed.[178] *Gillespie*, however, makes it clear that where the action is based on personal injury, no interest will be allowed.

CPLR 5002: Interest allowed from date of arbitration award.

By virtue of CPLR 5002, interest is recoverable upon a sum awarded "from the date the verdict was rendered or the report or decision was made to the date of entry of final judgment." Until recently there has been some confusion as to whether or not interest could be recovered on an arbitration award. Commentators have stated that since it is arguable that arbitration

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[173] 56 Misc. 2d at 509, 288 N.Y.S.2d at 734.
[174] *Id.*
[175] 21 N.Y.2d 823, 235 N.E.2d 911, 288 N.Y.S.2d 907 (1968) (mem.).
[176] *See* CPLR 5001(a).
[177] 46 Misc. 2d 521, 260 N.Y.S.2d 154 (Civ. Ct. Bronx County 1965).
[178] 5 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5001.07 (1965). *But see* 7B McKINNEY'S CPLR 5001, supp. commentary 84 (1967) (contending that although the action is nominally for breach of warranty, it is in reality basically a tort action).

awards are merely advisory until confirmation, interest probably would not run until confirmation.[179]

In *Matter of Kavares v. MVAIC*,[180] the appellate division, first department, held that the determination of an MVAIC award is not merely advisory, but binding on the parties, and absent fraud or statutory wrongdoing must be confirmed if application is made by a party within one year.[181] The court reasoned that since such awards were final and definite, they would come within the purview of CPLR 5002.[182]

The practitioner should thus be able to obtain compensation for his client for any delay between the time of award and confirmation.

CPLR 5015(a): Court may vacate a judgment it has rendered.

According to CPLR 5015(a) a court which *rendered* a judgment may relieve a party from it in the interests of justice. A court may, thus, reverse its judgment where, for example, there was an excusable default or where evidence, discovered after a trial, makes the result of that trial unjust.[183]

In *Brenner v. Arterial Plaza, Inc.*,[184] plaintiff obtained a default judgment in New York County, and subsequently filed a transcript of it in Fulton County. Defendant moved to have the default vacated, laying the venue of the motion in Saratoga County and asserting the filing in Fulton County as jurisdictional grounds for the motion. In reversing an order which set aside the verdict, the appellate division, third department, cited the provisions of the CPLR requiring that a motion on notice be heard where the action is triable,[185] *i.e.*, "after entry of judgment, the place where the judgment was entered."[186] The court observed that while a judgment may be docketed many times it is *entered* only once, *i.e.*, where the action proceeded to judgment.[187]

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[179] *See* 5 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5002.04 (1965).

[180] 29 App. Div. 2d 68, 285 N.Y.S.2d 983 (1st Dep't 1967).

[181] CPLR 7510. *See also* Wilkins, 169 N.Y. 494, 496-97 (1902) for the grounds upon which an arbitration award will be set aside.

[182] 29 App. Div. 2d at 71, 285 N.Y.S.2d at 987.

[183] CPLR 5015(a) (1) & (2).

[184] 29 App. Div. 2d 815, 287 N.Y.S.2d 308 (3d Dep't 1968) (mem.).

[185] CPLR 2212(a).

[186] CPLR 105(c).

[187] 29 App. Div. 2d 815, 816, 287 N.Y.S.2d 308, 309 (3d Dep't 1968) (mem.).