St. John's Law Review

Volume 43, October 1968, Number 2 Article 45

CPLR 5015(a): Court May Vacate a Judgment It Has Rendered

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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.).

It is obvious that while a court maintains discretionary power to vacate a judgment,[188] that judgment must be its own and not merely one which was docketed in the county where the court sits.

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5201: Court of Appeals holds Seider v. Roth *constitutional.*

In *Simpson v. Loehmann*,[189] decided in late December, the Court of Appeals upheld the constitutionality of *Seider v. Roth*.[190] Thus, the *Seider* holding, which allows the attachment of a liability insurer's obligations to defend and indemnify to become the basis of in rem jurisdiction, was reaffirmed.

Subsequently, in February, the Southern District of New York, in *Podolsky v. DeVinney*,[191] held that *Seider* was unconstitutional. The court reasoned from the premise that CPLR 320(c) denies a defendant a limited appearance. Thus, it was recognized that, in order to litigate on the merits, a *"Seider"* defendant is forced into a jurisdiction that has infinitesimal contacts with the action, and subjected to personal liability beyond the insurance policy's limits.

In the most recent *"Seider"* development, the Court of Appeals, in denying a motion to reargue *Simpson*,[192] has indicated that a *"Seider"* defendant, in spite of 320(c), will be allowed a limited appearance to the extent of the face value of the insurance policy attached. Thus, a good deal of the constitutional objection raised by *Podolsky* has been undercut, and the Court of Appeals appears to be adhering to its much criticized decision in *Seider*.

CPLR 5201: "Seider" *action dismissed on forum non conveniens grounds.*

In *Vaage v. Lewis*,[193] plaintiff commenced a personal injury action pursuant to the procedure authorized by *Seider v. Roth*,[194]

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188 5 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5015.01 (1965).

189 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967). For a background discussion see Note, *Seider v. Roth: The Constitutional Phase*, 43 ST. JOHN'S L. REV. 58 (1968).

190 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

191 281 F. Supp. 488 (S.D.N.Y. 1968).

192 Simpson v. Loehmann, 21 N.Y.2d 990, 238 N.E.2d 319, 290 N.Y.S.2d 914 (1968) (mem.).

193 29 App. Div. 2d 315, 288 N.Y.S.2d 521 (2d Dep't 1968).

194 17 N.Y.2d 111, 216 N.E.2d 313, 269 N.Y.S.2d 99 (1966).