CPLR 5201: Court of Appeals Holds Seider v. Roth Constitutional

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It is obvious that while a court maintains discretionary power to vacate a judgment,\textsuperscript{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,*\textsuperscript{189} decided in late December, the Court of Appeals upheld the constitutionality of *Seider v. Roth.*\textsuperscript{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,*\textsuperscript{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,*\textsuperscript{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,*\textsuperscript{193} plaintiff commenced a personal injury action pursuant to the procedure authorized by *Seider v. Roth,*\textsuperscript{194}

\textsuperscript{188} S Weinstei, Korn & Miller, New York Civil Practice § 5015.01 (1965).
\textsuperscript{190} 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).
\textsuperscript{191} 281 F. Supp. 488 (S.D.N.Y. 1968).
\textsuperscript{192} Simpson v. Loehmann, 21 N.Y.2d 990, 238 N.E.2d 319, 290 N.Y.S.2d 914 (1968) (mem.).
\textsuperscript{193} 29 App. Div. 2d 315, 288 N.Y.S.2d 521 (2d Dep't 1968).