

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,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

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).