St. John's Law Review

Volume 43
Number 2 *Volume 43, October 1968, Number 2*

Article 47

CPLR 5201: "Seider" Action Dismissed on Forum Non Conveniens Grounds

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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]

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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).

and recently held constitutional in *Simpson v. Loehmann.*[195] In the instant case, however, unlike *Seider* and *Simpson* neither plaintiff nor defendant was a New York resident. The accident occurred in North Carolina, and the defendant was insured by an Ohio insurance company authorized to do businesss in New York. Thus, the only contact with New York was the rather tenuous one that the defendant's insurance company was authorized to do business in New York.

In a rare application of the doctrine of forum non conveniens in an in rem case,[196] on the basis of the fact that neither party was a New York resident,[197] the appellate division, second department, vacated the attachment. The decision significantly narrows the scope of *Seider's* potential operation and will allay, to some extent, the fear that almost every accident case occuring anywhere in the nation will be triable in New York.[198]

CPLR 5222: Given lien value.

CPLR 5222(b) provides that "[a] judgment debtor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interfere with any property in which he has an interest. . . ." It is expressly provided that transfers in violation of the notice may be punished by contempt, but the effect of a transfer is not clearly delineated. In the preliminary draft, it was expressly provided that no transfer in violation of the notice would be valid against the judgment creditor who served the notice.[199] The elimination of this provision from the present section has created some confusion as to the effect of the statute.[200]

In a recent case, *In re Nassau Expressway,*[201] the supreme court, Queens County, has given lien effect to the section as

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[195] 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1968). *But see* Podolsky v. DeVinney, 281 F. Supp. 488 (S.D.N.Y. 1968).

[196] *See* 7B MCKINNEY'S CPLR, supp. commentary 25-26 (1966).

[197] Important factors in a forum non conveniens discussion are (1) whether or not the parties are subject to personal jurisdiction; (2) convenience to parties and witnesses; (3) differences in conflict of law rules; and (4) special circumstances. *See* 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 301.07 (1965).

[198] *See* Simpson v. Loehmann, 21 N.Y.2d 305, 318, 234 N.E.2d 669, 676, 287 N.Y.S.2d 633, 643 (1968) (dissenting opinion):

> [I]llustrative of the type of case *Seider* would appear to invite into our courts is the *Vaage* case. . . . What purpose allowing suit to be brought here, other than possibly increasing Vaage's hoped for damage award, is beyond me.

[199] THIRD REP. 61.2(b).

[200] *See* 6 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶¶ 5222.20, 5222.21 (1965).

[201] 56 Misc. 2d 602, 289 N.Y.S.2d 680 (Sup. Ct. Queens County 1968).