

## Motion to Reargue May Not Be Used to Extend Time to Appeal

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presently written. A transfer for the benefit of creditors was held ineffective as to a previously executed restraining notice. In deciding the case, the court made note of the intentional deletion of the lien clause, but stated that to deny the superiority of the judgment creditor who issued the notice would be to "make a mockery of the provisions of CPLR 5222."<sup>202</sup>

The decision of the court is a great aid to plaintiffs in collecting judgments, and the practitioner should follow this case closely in the appellate courts to see if this interpretation of CPLR 5222 will receive further judicial sanction.

#### ARTICLE 55 — APPEALS GENERALLY

*Motion to reargue may not be used to extend time to appeal.*

In *Liberty National Bank & Trust Co. v. Bero Construction Corp.*,<sup>203</sup> plaintiff made a motion for reargument of its motion to strike defenses after its time to appeal had expired. The appellate division, fourth department, relying on *In re Huie*,<sup>204</sup> reversed special term's order which had granted plaintiff's motion. The holding of *Huie*, was reasserted. A motion to reargue cannot be used to extend the time to appeal; such a motion must be made before the time to appeal has elapsed.<sup>205</sup>

Allowing a reargument is within the discretion of the court,<sup>206</sup> but it now appears, that the time limitation for appeal is also the limitation period for a motion to reargue. An appeal or motion to reargue will be granted after the time limit has expired only under the special circumstances treated in CPLR 5015, e.g., the discovery of new evidence, fraud, or lack of jurisdiction.

The practitioner is thus advised, if the situation warrants, to file his notice of appeal first, and then if he desires, he may move for reargument.<sup>207</sup>

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<sup>202</sup> *Id.* at 605, 289 N.Y.S.2d at 684.

<sup>203</sup> 29 App. Div. 24 627, 286 N.Y.S.2d 287 (4th Dep't 1967).

<sup>204</sup> 20 N.Y.2d 568, 232 N.E.2d 642, 285 N.Y.S.2d 610 (1967). See *The Quarterly Survey of New York Practice*, 43 ST. JOHN'S L. REV. 140, 165 (1968).

<sup>205</sup> See 2 CARMODY-WAIT 2d, CYCLOPEDIA OF NEW YORK PRACTICE §8:81 (1965).

<sup>206</sup> *Ellis v. Central Hanover Bank & Trust Co.*, 198 Misc. 912, 102 N.Y.S.2d 337, 338 (Sup. Ct. N.Y. County 1951).

<sup>207</sup> See 7B MCKINNEY'S CPLR 2221, supp. commentary 18 (1967).