

## CPLR 5201, 5222: Proceeds of an Action May Be the Subject of Restraining Notices

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year lease. The New York City Civil Court, however, held that since no debt was presently due and since payments of future rent were contingent, the attachment was invalid. On appeal, the appellate term, first department, reversed.<sup>117</sup>

The court reasoned: CPLR 6202 allows attachment of a debt falling within the scope of CPLR 5201;<sup>118</sup> 5201 must be read in conjunction with CPLR 5231; under 5231 income not due presently nor certain to become due may be used to satisfy a money judgment;<sup>119</sup> therefore, the same type of income as would support an income execution under 5231 would support an attachment under 6202. Rentals accruing under a long-term lease, the court concluded, were that type of income.

It would appear that while 6202 would sanction attachment pursuant to 5231, the amount of income thus attached should be equivalent to the amount available for execution under 5231, *i.e.*, ten per cent.<sup>120</sup> Therefore, examination of 5231 does not appear to give a satisfactory explanation of the result in the present case. It seems, rather, that this case evidences another effort by the courts to expand 5201(a) to include items that formerly would be considered contingent.<sup>121</sup>

*CPLR 5201, 5222: Proceeds of an action may be the subject of restraining notices.*

In *Iguanti v. Kronish*,<sup>122</sup> plaintiff, after obtaining a judgment against the defendant, sought, by way of restraining notices,<sup>123</sup> to prevent payment to the defendant of any proceeds which might become due to him in a suit by the defendant against a third party. The court stated that while an assignment of a cause of

<sup>117</sup> *Glassman v. Hyder*, 52 Misc. 2d 618, 276 N.Y.S.2d 453 (App. T. 1st Dep't 1966).

<sup>118</sup> CPLR 6202 provides: "Any debt or property against which a money judgment may be enforced as provided in section 5201 is subject to attachment. . . ."

<sup>119</sup> THIRD REP. 101, 275.

<sup>120</sup> *Cf. Cohen v. Carl M. Loeb, Rhoades & Co.*, 48 Misc. 2d 159, 264 N.Y.S.2d 463 (Sup. Ct. N.Y. County 1965) (future trust income held attachable to the extent of ten per cent in spite of its contingent character). For a thorough discussion of this area, see generally *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 644, 659 (1967) and *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 121, 153-55 (1966).

<sup>121</sup> See *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966); *Baumgold Bros., Inc. v. Schwarzschild Bros., Inc.*, 276 App. Div. 158, 93 N.Y.S.2d 658 (1st Dep't 1949); *Glassman v. Hyder*, *supra* note 117.

<sup>122</sup> 52 Misc. 2d 306, 276 N.Y.S.2d 130 (Sup. Ct. Bronx County 1966).

<sup>123</sup> CPLR 5222(b): "A judgment debtor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he has an interest. . . ."

action for personal injuries was forbidden,<sup>124</sup> an assignment of the proceeds of a personal injuries action was not.<sup>125</sup> Being assignable, or transferable, the future proceeds came within the purview of CPLR 5201, and, consequently, their transfer might be restrained under CPLR 5222.

5201(a) allows a money judgment to be enforced against "any debt past due or . . . to become due certainly or upon demand of the judgment debtor. . . ." It is often recited that if the right to payment rests upon an unfulfilled condition the debt is not one within the meaning of 5201.<sup>126</sup> If this caveat were absolutely true it would seem that a right to proceeds which *may* be paid is not sufficiently certain to satisfy the statute. However, past cases, such as *Baumgold Bros., Inc. v. Schwarzschild Bros., Inc.*<sup>127</sup> and *Seider v. Roth*,<sup>128</sup> indicate that certain debts, though contingent, are, nevertheless, within the purview of 5201(a). This judicial expansion of the seemingly even language of the section offers strong, albeit tangential, support for the court's conclusion.

*CPLR 5231: Procedure for withholding of installments.*

After a judgment was obtained in *Spatz Furniture Corp. v. Lee Letter Serv., Inc.*,<sup>129</sup> copies of the subject income execution were served on the judgment debtor and, after twenty days, on defendant, his corporate employer.<sup>130</sup> Defendant, at the time, under a prior income execution, was deducting less than 10 per cent of the judgment debtor's weekly salary pursuant to an agreement with the marshal to whom said deductions were being forwarded. It subsequently satisfied the prior obligation, began deducting an equal percentage from the judgment debtor's salary to pay the plaintiff's judgment, and then ceased paying altogether before the income execution was fully satisfied. Plaintiff then instituted a special proceeding under CPLR 5231(e) predicated upon defendant's failure to honor the execution.

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<sup>124</sup> N.Y. GEN. OBLIGATIONS LAW § 13-101.

<sup>125</sup> *Grossman v. Schlosser*, 19 App. Div. 2d 893, 244 N.Y.S.2d 749 (2d Dep't 1963). Apparently an assignment of this nature is not violative of public policy.

<sup>126</sup> *E.g.*, 6 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5201.04 (1966); 7B MCKINNEY'S CPLR 5201, commentary 25 (1963).

<sup>127</sup> 276 App. Div. 158, 93 N.Y.S.2d 658 (1st Dep't 1949). In this case, decided under the Civil Practice Act, a levy was allowed on the proceeds of an insurance policy after the loss, but before the proof of loss was filed.

<sup>128</sup> 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). Here, the Court of Appeals allowed the attachment of an auto liability policy on the ground that the carrier's obligations to defend and indemnify were "debts" within the definition of CPLR 5201(a).

<sup>129</sup> 52 Misc. 2d 291, 276 N.Y.S.2d 219 (N.Y.C. Civ. Ct. 1966).

<sup>130</sup> CPLR 5231(c), (d).