

CPLR 6201: Attachment Vacated Since Cause of Action Merged in the Foreign Judgment

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The court in *Spatz* found that had the defendant deducted the full 10 per cent, he would have been able to satisfy both the prior and the subject income execution. Thus, it held him liable to the plaintiff for the balance due on the plaintiff's income execution. The court reasoned that while an agreement modifying the terms of an income execution was permissible,¹³¹ as soon as a subsequent judgment creditor's rights become involved, defendant continued to pay less than 10 per cent at his peril. The court indicated that the proper procedure would be for a person deducting less than 10 per cent of the debtor's salary by agreement under a prior income execution to make a motion, on notice to the second judgment creditor, to allow such a percentage to be deducted, thereby adequately insuring the subsequent creditor's right to be heard on a matter of possible prejudice to his interest.

ARTICLE 62 — ATTACHMENT

CPLR 6201: Attachment vacated since cause of action merged in the foreign judgment.

In *McCormick v. American Press Publications, Inc.*,¹³² plaintiff sought to recover the proceeds of a foreign judgment for fraud and deceit by an action on the judgment in New York. A warrant of attachment on defendant's property was obtained by virtue of CPLR 6201(7) which allows an attachment when "there is a cause of action to recover damages . . . for fraud or deceit." Defendant moved to vacate the attachment. The court, in granting defendant's motion, ruled that the attachment could not be based on CPLR 6201(7) since the suit was "not [one] to recover damages for fraud or deceit."

The court distinguished a suit for fraud or deceit from a suit to recover on a foreign judgment resulting from a suit for fraud or deceit. A suit of the latter type did not fall within the scope of 6201(7) since the fraud or deceit, if any, merged in the prior judgment being sued upon.

ARTICLE 75 — ARBITRATION

CPLR 7503(c): Service of demand for arbitration deemed complete when first attempt at delivery is made.

CPLR 7503(c) provides that "a party may serve upon another party a notice of intention to arbitrate . . . stating that

¹³¹ *Spatz Furniture Corp. v. Lee Letter Serv., Inc.*, 52 Misc. 2d 291, 296, 276 N.Y.S.2d 219, 224 (N.Y.C. Civ. Ct. 1966).

¹³² 52 Misc. 2d 297, 275 N.Y.S.2d 429 (Sup. Ct. N.Y. County 1966).