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CPLR 5201: Seider v. Roth Again Held Consitutional by Lower Court

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brought a second action after the first had been dismissed "on the merits." The Court of Appeals held that where the plaintiff had offered no additional proof, the mere fact of dismissal indicated nothing more than a non-suit. The addition of the words "on the merits" added virtually nothing to the claim that the second action was barred.

In the recent case of *Palmer v. Fox*,[82] the plaintiffs failed to comply with defendant's demand for a bill of particulars and a ten-day conditional preclusion order was granted. When the plaintiffs made no attempt to comply with the order, the complaint was dismissed "on the merits." The plaintiffs unsuccessfully attempted to vacate the dismissal. Subsequently, the plaintiffs served a second complaint for the same cause of action.

The appellate division, fourth department, dismissed the complaint, noting that the plaintiffs brought the second action primarily to circumvent the effect of the preclusion order granted in the first action. Emphasizing that the power to bar a second suit should be "sparingly exercised," the court noted that the plaintiffs' evasive tactics constituted the "exceptional circumstances" contemplated by CPLR 5013 which would warrant such a dismissal of the first suit prior to the completion of the plaintiffs' case as would bar the second action herein brought.

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5201: Seider v. Roth *again held constitutional by lower court.*

The many facets of the problem created by *Seider v. Roth*[83] again came to light in the recent case of *Lefcourt v. Seacrest Hotel & Motor Inn, Inc.*[84] There, the obligation of defendant's insurer, licensed and doing business in New York, to investigate, defend, indemnify, and make medical payments constituted the res in New York by which jurisdiction was obtained. The defendant alleged a violation of due process and equal protection guarantees for two reasons: he had no property which could be deemed a res within the State, and CPLR 320(c) was unfair in making submission to personal jurisdiction a requisite to a defense on the merits.

On plaintiff's motion, the Supreme Court, Queens County, dismissed the objection relating to the lack of a res within the

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[82] 28 App. Div. 2d 968, 283 N.Y.S.2d 216 (4th Dep't 1967).

[83] 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). For a prior discussion of the constitutionality of *Seider*, see *The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 130, 157 (1967), discussing Jones v. McNeil, 51 Misc. 2d 527, 273 N.Y.S.2d 517 (Sup. Ct. Albany County 1966).

[84] 54 Misc. 2d 376, 282 N.Y.S.2d 896 (Sup. Ct. Queens County 1967).

State, holding that a debt, whether liquidated or not, is a sufficient basis on which to predicate quasi in rem jurisdiction, at least to the value of the debt.[85] The court found the equal protection argument to be without merit since the defendant's treatment was the same as that of any other non-resident defendant who is insured by a carrier doing business in New York. Furthermore, defendant here was in no worse position than a resident New Yorker who is subject to in personam jurisdiction.

As to the due process defense, the court held that it was not legally insufficient and, thus, concluded that it could not be dismissed on motion. The court seemed disturbed by the consequence CPLR 320(c) might have on the defendant's right to have an adequate and realistic opportunity to appear and be heard in defense. Analyzing 320(c) to have a leverage effect, the court recognized that while the attachment of the contractual obligations only gives the New York court jurisdiction to declare rights in that property, the *condition* attached to defendant's right to defend its interest in that property is that it submit to in personam jurisdiction. The court further realized that if the defendant had defaulted, judgment would be rendered against him, and the attached obligations, after evaluation, would be paid to the plaintiff. Then, under CPLR 6204, the insurer would be discharged from his obligations to investigate, defend and indemnify the defendant if the plaintiff later brought suit in defendant's home state. This would deprive the defendant, both in New York and in its home state, of the defense for which it contracted unless it submitted to in personam jurisdiction.

DOMESTIC RELATIONS LAW—THE NEW COOLING-OFF AND CONCILIATION PROVISIONS

Marriage is often acclaimed the cornerstone of an ordered society, and yet, until comparatively recently, there has been an unfortunate failure of our domestic relations laws to provide effective means to salvage marriages needlessly headed to complete or partial dissolution. Traditionally, the machinery of the law had been primarily directed toward the alteration or extinguishment of the status. However, the general consensus of the domestic relations bar is that many couples reluctantly pursue marital litigation when they might, with professional guidance, attempt to reconcile their differences.

This note will attempt to survey the various methods that have recently been developed to foster reconciliation with a view

[85] *See* Pennoyer v. Neff, 95 U.S. 714 (1878). The Court relied mainly upon New York Life Ins. Co. v. Dunlevy, 241 U.S. 518 (1916) and Harris v. Balk, 198 U.S. 215 (1905).