

## CPLR 5231(b): Drawing Accounts Subject to Income Execution

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

on a judgment debtor's income source. In addition, those who deal with persons having few assets aside from their earning power are advised to evaluate their credit policies in view of the *Beahm* decision.

*CPLR 5231(b): Drawing accounts subject to income execution.*

Judgment debtors, who work on commission or percentage bases and are paid principally by means of a drawing account charged against future commissions, provide considerable difficulties whenever their earnings are subjected to income execution. A drawing account is an arrangement whereby the employer agrees to advance to his employee a certain sum, usually weekly, against commissions to be earned. The employee agrees to repay that part of the sums advanced which is in excess of his commissions subsequently earned.<sup>179</sup> The cause of the difficulty is that the employer, by advancing sums sufficient to exceed the employee's accrued commissions, can consistently avoid being the holder of any money due the employee.<sup>180</sup> The income execution sections of both the CPLR and the CPA were designed to reach only moneys due the judgment debtor from the garnishee (employer).<sup>181</sup> Therefore, the judgment debtor, under such a drawing account arrangement and with the cooperation of his employer, could substantially immunize himself from income execution under CPLR 5231.

In *Larry Goldwater, Inc. v. C. B. Snyder Nat'l Realty Co.*,<sup>182</sup> the Civil Court of New York City was faced with the possibility of a salesman on commission avoiding income execution under CPLR 5231(b). Defendant employer made the orthodox argument that deduction need only be made from sums due and owing the judgment debtor and, that the advances always exceeded the earnings. The *Goldwater* court passed unhindered through the

---

<sup>179</sup> We do not concern ourselves here with agreements by which the employer advances moneys without any obligation on the employee's part to repay, which are merely advance wage payments and clearly subject to execution under CPLR 5231. See *Laird v. Carton*, 196 N.Y. 169, 175, 89 N.E. 822, 824 (1909).

<sup>180</sup> See *Franklin Simon & Co. v. Pease Elliman, Inc.*, 238 App. Div. 614, 616, 255 N.Y. Supp. 199, 201 (1st Dep't), *motion for leave to appeal denied*, 262 N.Y. 693, 188 N.E. 124 (1933).

<sup>181</sup> CPA § 684(7) provided that compensation through such a drawing account should be treated as wages. And under CPA § 684(1) any wages "due and owing to the judgment debtor" were subject, to the extent of ten per cent, to garnishment for the benefit of the judgment creditor. CPLR 5231 (b) & (e) provide that "where a judgment debtor is receiving or will receive" more than thirty dollars from a person, such person upon his service with an income execution shall withhold, under CPLR 5231(e), "from money then or thereafter due to the judgment debtor" installments of ten per cent.

<sup>182</sup> 48 Misc. 2d 669, 265 N.Y.S.2d 542 (N.Y.C. Civ. Ct. 1965).

obstacles it thought precedent had established<sup>183</sup> and decided that legislative policy required that such salesmen on commission "should not be insulated from creditor claims when ordinary wage earners are not."<sup>184</sup> The court further held that, even where there is a genuine system of loans made by the employer, with a fixed obligation of repayment, the employer, once he is on notice of the judgment creditor's claim, is bound by the statute to withhold the ten per cent. Finally, the court in *Goldwater* developed a simple, practical formula delineating the exact extent to which such a drawing account is subject to income execution. Under the *Goldwater* rule,

once the advances prior to execution [are] fully repaid, the employer [is] bound to honor that execution and apply ten per cent not of the weekly drawings, but of the employee's actual earnings by way of commission thereafter until the execution was satisfied.<sup>185</sup>

What the court did in *Goldwater* was to develop a viable formula to replace the vague case law which surrounded CPA § 684. The *Goldwater* rule offers an effective solution to the problems which drawing account situations have hitherto caused in income execution. It is fair to the employers who make these advances, since only the earnings of their employees after the levy is made are subject to the ten per cent withholding provision. It relegates the employee receiving these drawing-account advances to the same position as any ordinary wage earner for the purposes of income execution. Finally, it provides judgment creditors with an effective tool with which to reach the income of judgment debtors who are paid by this drawing account arrangement.

#### ARTICLE 75 — ARBITRATION

*CPLR 7510: One-year statute of limitations runs from date arbitrators render final determination and not from date of original award.*

Under prior law, the arbitrators' authority to alter or review an award terminated once their decision was announced.<sup>186</sup> If any formal errors were involved in the decision, such as mathematical mistakes or defects in form, an application to correct the defects could be made to the court.<sup>187</sup> In any event, it was necessary to petition the court to confirm the award within one year from the

---

<sup>183</sup> *Id.* at 671, 265 N.Y.S.2d at 545.

<sup>184</sup> *Id.* at 672, 265 N.Y.S.2d at 546.

<sup>185</sup> *Ibid.* (Emphasis added.)

<sup>186</sup> SECOND REP. 144.

<sup>187</sup> CPLR 7511(c).