

## CPLR 5520(c): Amendment

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and since the "long-arm" basis is the furthest the United States Supreme Court has gone in sustaining the extraterritoriality of state court process.

Assuming that the aforementioned difficulties were resolved by equating in rem and in personam jurisdiction, another problem now arises. Since New York courts must entertain a suit brought by one of its residents,<sup>101</sup> the litigation resulting from this decision could add to our already overburdened calendars. Previously, a resident could not sue a foreign domiciliary in New York if he had no jurisdiction over the latter; however, as a result of this case, our courts would give the plaintiff jurisdiction of the defendant, since many foreign insurers have sufficient presence in New York to make them garnishees in a New York action.

*CPLR 5206(b): Amendment.*

The amendment to this section rectifies an inaccuracy which had heretofore existed. Instead of recording the property exempted as a homestead in the county clerk's office, the section is now worded so that such recording is done in the office of the *recording officer*. This clause was necessitated by the fact that in some counties the office of the county clerk is not the office of the recording officer.

*CPLR 5252: Amendment.*

This section, effective January 1, 1967, protects an employee from discharge when his employer has been served with an income execution. However, if an employer is served with more than one income execution within a twelve-month period, this section does not apply and the employer can discharge his employee. An employee who is wrongfully discharged under this section is given the opportunity to institute a civil action for wages lost if such action is commenced within ninety days after the discharge. The court, in addition to giving the employee damages, can also order his reinstatement.

For a more detailed discussion of this amendment, see Professor David D. Siegel's *1966 Commentary* in McKinney's CPLR.

ARTICLE 55 — APPEALS GENERALLY

*CPLR 5520(c): Amendment.*

Due to an increasing number of appeals wherein there are defective notices of appeal and motions directed thereto, the Judicial

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<sup>101</sup> See *Wagner v. Braunsberg*, 5 App. Div. 2d 564, 173 N.Y.S.2d 525 (1st Dep't 1958).

Conference recommended the insertion of this provision. This subsection vests in the appellate court the discretion, when the interests of justice so demand, to treat as valid and effective a notice of appeal which is either premature or which contains an incorrect description of the order or judgment appealed from.

#### ARTICLE 57 — APPEALS TO THE APPELLATE DIVISION

##### *CPLR 5704(b): Amendment.*

This amendment eliminates a limitation on the general appellate power of the appellate term in the first and second departments. Prior to the CPLR, the appellate term could hear *ex parte* orders under their rules only from expressly enumerated courts. The original CPLR section limited the hearing of *ex parte* orders to the Civil Court of the City of New York. The new amendment eliminates this limitation, and provides that the appellate term may review such orders made "by any court or a judge thereof from which an appeal would lie to such appellate term . . ."

#### ARTICLE 62 — ATTACHMENT

##### *CPLR 6212: Recovery for legal services allowed in wrongful attachment when there is inducement and causation.*

Upon a motion for an order of attachment, the moving party is required to furnish an undertaking promising to pay all of the defendant's legal fees sustained by reason of the attachment "if the defendant recovers judgment or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property . . ." <sup>102</sup> The present wording of the statute was employed by the revisers to make clear that "the undertaking is not to be used to pay the defendant if an attachment is vacated for merely technical defects . . . [or where] it is no longer necessary." <sup>103</sup> Where, however, the cause of action, as a matter of law, did not furnish a basis for a warrant of attachment, the defendant cannot later recover the cost of legal services in vacating the attachment. <sup>104</sup> The reason for this rule is that the defendant should not recover his legal costs where he has proceeded to defend on the merits and thereby incurred additional expenses *if* the attachment could have been vacated by motion. <sup>105</sup>

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<sup>102</sup> CPLR 6212(b); see 7 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶¶ 6212.07-08 (1965).

<sup>103</sup> THIRD REP. 341.

<sup>104</sup> *Olsen v. United States Fid. & Guar. Co.*, 230 N.Y. 31, 128 N.E. 908 (1920). This was an equity action to compel specific performance of a contract for money damages, whereas plaintiff is entitled to an order of attachment only in an action for a money judgment.

<sup>105</sup> *Id.* at 36; 128 N.E. at 909.