

# CCA § 212: Court Can Grant Stay of Execution in Proceeding to Recover Possession of Commercial Realty

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§ 1513—since no change in substance was intended by the draftsmen.

#### DOMESTIC RELATIONS LAW

*Dom. Rel. Law § 240. Children can enforce their rights under separation agreement.*

Under Section 240 of the Domestic Relations Law, the court must give direction for the custody, care, education, and maintenance of the children in any proceeding brought for separation. In *Forman v. Forman*,<sup>122</sup> the wife breached a separation agreement, which provided for the support of the children, thus relieving the husband of his obligation under the agreement. However, in a subsequent action, the husband was ordered to pay the wife pursuant to the Uniform Support of Dependents Law<sup>123</sup> the amount the agreement had originally provided for. The children then sought a declaratory judgment embracing parts of the separation agreement which were purported to have been made for them as third-party beneficiaries.

As a general rule only the mother can enforce the agreement directly against the father.<sup>124</sup> However, in the instant case, the Court of Appeals held that where the mother's violation of the agreement makes her incapable of enforcing it on behalf of the infants, a procedural facility must be provided for the enforcement of the rights of the infants. Therefore, in such a case, children may enforce, as third-party beneficiaries, their rights under separation agreements.

#### NEW YORK CITY CIVIL COURT ACT

*CCA § 212. Court can grant stay of execution in proceeding to recover possession of commercial realty.*

In *Pepsi-Cola Metropolitan Bottling Co. v. Miller*,<sup>125</sup> the question was raised as to whether the Civil Court could grant a stay of execution in a proceeding to recover possession of commercial real property. Under Sections 751, 753, and 755 of the RPAPL, courts are given explicit power to grant stays with respect to residential property. However, there is no specific grant

<sup>122</sup> 17 N.Y.2d 274, 217 N.E.2d 645, 270 N.Y.S.2d 586 (1966).

<sup>123</sup> N.Y. DOM. REL. LAW §§ 30-43. The purpose of this law is to secure support for dependents from persons legally responsible for their support.

<sup>124</sup> *Kendall v. Kendall*, 200 App. Div. 702, 193 N.Y. Supp. 658 (1st Dep't. 1922).

<sup>125</sup> 50 Misc. 2d 40, 269 N.Y.S.2d 471 (Civil Ct. Bronx County 1966).

of such power with respect to commercial property. Therefore, unless the court is given the power to issue a stay under some other statute it will be deemed to lack such power.

In *MacLeod v. Shapiro*,<sup>126</sup> the first department held that Section 212 of the New York City Civil Court Act<sup>127</sup> made the CPLR's general stay provision (CPLR 2201)<sup>128</sup> applicable to the Civil Court in a proceeding involving residential property. Thus, in effect, the court held that both the RPAPL and the CPLR, combined with the CCA, give the Civil Court power to grant stays involving residential property. Noting this, the court in *Pepsi-Cola* concluded that:

If C.P.L.R. Section 2201 is applicable to stays in situations involving residential property, to which specific reference is made in the Real Property Actions and Proceedings Law, then *a fortiori* . . . [it] must logically be deemed to be applicable to summary proceedings affecting commercial property, to which no such reference is made in the Real Property Actions and Proceedings Law.<sup>129</sup>

In granting the stay, the court rejected the argument that the absence of a grant of power with regard to commercial property under the RPAPL evidenced a legislative intent to curtail the power to grant stays in such proceedings.

It should be noted that CCA § 212 is not the only provision which the court might have relied on, since Section 2102 of the New York City Civil Court Act provides for the applicability of the CPLR's provisions if they are not in conflict with the act. Thus, the broad stay power of CPLR 2201 would seem to be available to the practitioner in the Civil Court.

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<sup>126</sup> 20 App. Div. 2d 424, 247 N.Y.S.2d 423 (1st Dep't 1964). See 29A MCKINNEY'S CCA § 212, *supp.* commentary 16 (1965).

<sup>127</sup> Section 212 states that "the court shall have all of the powers that the supreme court would have in like actions and proceedings."

<sup>128</sup> CPLR 2201 states that: "Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just."

<sup>129</sup> *Pepsi-Cola Metropolitan Bottling Co. v. Miller*, 50 Misc. 2d 40, 42, 269 N.Y.S.2d 471, 474 (Civil Ct. Bronx County 1966).