CPLR 1207: Settlement of Action or Claim by Infant or Incompetent

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these circumstances from obtaining this relief could not have been intended by the legislature.

_CPLR 1207: Settlement of action or claim by infant or incompetent._

CPLR 1207 provides the defendant with the only sure method whereby he can obtain a release from an infant or incompetent for a claim settled out of court. The section prescribes two procedures: (1) when an action is pending, a motion should be made, and (2) where this is not the case, the section provides for the commencement of a special proceeding. While this distinction appears to be only formal, it has been enforced by denying the application for approval of a settlement when the wrong procedure was utilized.

The practitioner should note that this section alters prior law in that it extends coverage to the judicially declared incompetent, prohibits the parent from moving or petitioning for a settlement when he is not the child's legal guardian and does not require an infant to join in the motion or petition.

**ARTICLE 20—MISTAKES, DEFECTS, IRREGULARITIES AND EXTENSIONS OF TIME**

_CPLR 2003: Irregularity in judicial sale._

A foreclosure sale scheduled for January 6, 1965, was postponed to the following day due to the referee's illness. An order to that effect was signed by the court. The defendant-owner's motion to set aside the sale on the ground that there was no publication of the substituted date was denied. The court held that under CPLR 2003, the omission was a mere irregularity which could be the basis for setting aside the sale only if substantial rights of a party were prejudiced. In the instant case no prejudice was shown. In fact, approximately fourteen bids were received and the bidding was described as "spirited."

This decision is in accord with prior law, the attitude of the CPLR as expressed in sections 2001 and 2003, and the reports

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126 2 Weinstein, Korn & Miller, New York Civil Practice ¶ 1207.06 (1964).
127 Bittner v. MVAIC, 45 Misc. 2d 584, 257 N.Y.S.2d 521 (Sup. Ct. N.Y. County 1965).
130 CPA § 109-a(1); 2 Weinstein, Korn & Miller, New York Civil Practice ¶ 2003.01, .03 (1964).