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.\(^2\) 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.\(^3\)

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.\(^4\)

**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.\(^5\) 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,\(^6\) 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).
129 CPA § 109-a(1); 2 Weinstein, Korn & Miller, New York Civil Practice §§ 2003.01, .03 (1964).