

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.¹²⁶ 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.¹²⁷

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.¹²⁸

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.¹²⁹ 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,¹³⁰ the attitude of the CPLR as expressed in sections 2001 and 2003, and the reports

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).

¹²⁸ 7B MCKINNEY'S CPLR 1207, commentary 512 (1963).

¹²⁹ *Criterion Capital Corp. v. Valven Holding Corp.*, 23 App. Div. 2d 878, 259 N.Y.S.2d 946 (2d Dep't 1965).

¹³⁰ CPA § 109-a(1); 2 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶¶ 2003.01, .03 (1964).