

CPLR 5225: Special Proceedings Involving Substantial Disputes

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should be alert to this interaction. Where the debtor is making the prescribed payments, the employer cannot be served.

CPLR 5225: Special proceedings involving substantial disputes.

Under prior law, a summary disposition of ownership of property for enforcement purposes could only be made when there was no substantial dispute as to the judgment creditors' rights in the property.²⁵³ Today, the CPLR provides for a special proceeding for the adjudication of the rights of adverse parties without resort to the plenary action. This procedure is governed generally by Article 4 and specifically by Article 52.²⁵⁴

The new plenary nature of the special proceeding in the enforcement area is illustrated by several recent decisions. In *Ruvolo v. Long Island R.R.*,²⁵⁵ the judgment creditor, the divorced wife of the judgment debtor, commenced a special proceeding against the defendant who was stakeholder of a fund which was in settlement of the husband's personal injury action against defendant. The creditor, pursuant to CPLR 5225(b) and 5227 sought to have her rights determined under the judgment and have distributed out of the fund that part to which she was entitled. The defendant stakeholder sought by cross-motion a protective order against other creditors before making the disbursement. In denying defendant's motion, the court recognized that proceedings under CPLR 5225(b) and 5227 are plenary in nature and that interested third parties may intervene formally to have their claims determined although there is no requirement that notice be given to such claimants or that they be joined as parties. The court suggested, however, that in cases of doubt as to the other claimants' rights the defendant could interplead such claimants if they failed to intervene and thus, in a single proceeding obtain a determination of all claims.

In a subsequent decision,²⁵⁶ the special proceeding was again utilized but, in this instance, to determine the issue of ownership. The judgment creditor contended that although the judgment debtor's daughter was the record holder of certain stock, the judgment debtor was in fact the actual owner and thus the stock was subject to levy. The court noted that resort to a plenary action was no longer necessary where, as here, there arose a substantial dispute as to the judgment creditor's rights and that adjudication

²⁵³ CPA § 796; *Matter of Delaney*, 256 N.Y. 315, 176 N.E. 407 (1931); see generally 6 WEINSTEIN, KORN & MILLER, *op. cit. supra* note 216, ¶ 5225.14.

²⁵⁴ See, *e.g.*, CPLR 5225, 5227 and 5239.

²⁵⁵ 45 Misc. 2d 136, 256 N.Y.S.2d 279 (Sup. Ct. Queens County 1965).

²⁵⁶ *First Small Business Inv. Corp. v. Zaretsky*, 46 Misc. 2d 328, 259 N.Y.S.2d 700 (Sup. Ct. Queens County 1965).

of factual disputes could be obtained in a special proceeding. The effect of this special proceeding will be to expedite the satisfaction of money judgments.

*CPLR 5234: Distribution of proceeds of personal property—
priorities.*

Under the CPA, except for execution, there was no express provision for priority between judgment creditors.²⁵⁷ As a result, the law became complex and somewhat confused. Recognizing this state of affairs and attempting to clarify existing law, CPLR 5234 was enacted with a resultant statutory basis for determining priorities.²⁵⁸

Recently, the first department reversed a lower court's interpretation of this section.²⁵⁹ In that case Judgment Creditor *A* had: (1) served a restraining notice on a garnishee pursuant to CPLR 5222; (2) served an information subpoena on the garnishee pursuant to CPLR 5224; and (3) commenced a special proceeding against the garnishee pursuant to CPLR 5227 in order to obtain a turnover order against the debtor's property. Judgment Creditor *B*, who had recovered the earlier judgment, delayed in executing his judgment but obtained a levy on the garnishee *prior* to the issuance of *A's* turnover order. The question presented was which of the creditors had priority. The lower court, because of *A's* diligence and in reliance upon precedent which antedated the CPLR, held that Judgment Creditor *A* had priority. In reversing, the appellate division fully investigated the legislative history of CPLR 5234 and concluded that this provision established an order of priority which is determined strictly in accordance with the chronological service of execution levies and the filing of orders for turnover or receivership. The court noted that by prescribing the ranking of priorities, the section eliminated the earlier decisional variations and factual tests attempting to make such a determination based on the comparative diligence of the creditors.

The practitioner should note that regardless of the priority of obtaining judgment, the judgment creditor who first levies execution or files a turnover order will always prevail.

²⁵⁷ THIRD REP. 734.

²⁵⁸ FIFTH REP. 637.

²⁵⁹ *City of New York v. Panzirel* (Sup. Ct. N.Y. County), 151 N.Y.L.J., April 10, 1964, p. 14, col. 3, *rev'd*, 23 App. Div. 2d 158, 259 N.Y.S.2d 284 (1st Dep't 1965); see 7B MCKINNEY'S CPLR 5234, *supp. commentary* 42 (1965).