

CPLR 5201: Determination of What Is a Debt Subject to Attachment

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It would appear that this case is authority (at least in the first department) for the enforcement of a judgment, by contempt, against any defendant found by the court to be a "constructive trustee."

With respect to the court's construction of CPLR 5105(2) it should be remembered that the public policy of this state is vigorously opposed to imprisonment for debt.¹⁹⁵ It is, in fact, this very policy that prohibits the use of the contempt power to enforce purely legal money judgments.¹⁹⁶ It is respectfully submitted, therefore, that as the use of the contempt power is broadened, courts must remain mindful of our policy and assure defendants sufficient protection against any possible misuse of this section.

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5201: Determination of what is a debt subject to attachment.

Recently, the issue of the attachability of certain commercial paper was raised in New York.¹⁹⁷ Involved were twenty drafts with a face value of \$100,000 each drawn on a Uruguayan bank and guaranteed by the central bank of Uruguay. The drafts were scheduled to be sold in New York, but this was prevented by the petitioner's attachment. Subsequently, the Uruguayan bank became insolvent. The court held that these drafts were not attachable, noting that the instruments on their face did not represent money owed to the bank, but rather money owed by it. Thus it was held that the drafts were not property, and therefore, unattachable.¹⁹⁸ It was noted, however, that if the respondent had obligated itself to purchase all or part of the drafts, there would have existed a debt running to the bank which would be susceptible of attachment. In response to the argument that the written instruments themselves, as distinguished from the rights to which they related,¹⁹⁹ were attachable, the court considered the drafts to have no intrinsic value, and thus refused to order an attachment of these "trifles."

In essence, this case portrays to the practitioner the difficulties created by a premature levy. If the creditors of the bank had waited until the issuance of the drafts, the conditions of the guaranty of the central bank of Uruguay would have been met and the

¹⁹⁵ See N.Y. CIV. RIGHTS LAW § 21; *Burns v. Newman*, 274 App. Div. 301, 83 N.Y.S.2d 285 (1st Dep't 1948).

¹⁹⁶ See 5 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5105.07 (1965).

¹⁹⁷ *Underwriters Bank, Inc. v. First Chicago Int'l Banking Corp.*, 47 Misc. 2d 539, 262 N.Y.S.2d 828 (Sup. Ct. N.Y. County 1965).

¹⁹⁸ Cf. *Coddington v. Gilbert*, 17 N.Y. 489 (1858).

¹⁹⁹ N.Y. GEN. CONSTR. LAW § 39.

guaranty made effective. In addition, the debts owed to the bank from the sale of the drafts would also be attachable. The court's holding that these drafts were not a property within the meaning of CPLR 5201 and thus not subject to attachment appears justifiable.

CPLR 5208: Enforcement after death of judgment debtor; leave of court.

In *In re Casey's Estate*,²⁰⁰ the administratrix of an estate commenced a proceeding in the surrogate's court to vacate a restraining notice issued pursuant to CPLR 5222 to enforce a judgment obtained against the debtor's representative. The creditor's contention, that the surrogate's court lacked the authority to grant such relief, was rejected and the notice vacated. In so doing, the court noted that CPLR 5208 prohibits the enforcement of a money judgment after the death of the debtor without leave of the surrogate's court which granted letters of administration upon the estate. The court noted that, without the surrogate's leave, Article 52 enforcement procedures are not effective against the property of the deceased when the judgment was obtained prior to his death but where execution was delayed until after death. The court reasoned, therefore, that no greater relief should be afforded a creditor whose judgment was obtained initially against the deceased's representative.

CPLR 5222: Restraining Notices.

In *Sumitomo Shoji v. Chemical Bank N.Y. Trust Co.*,²⁰¹ the court was presented with the issue of determining the effectiveness of a restraining notice served upon a bank. The restraining notice specified several accounts, two of which were corporate checking accounts not in the judgment debtor's name. Subsequently, the bank honored checks signed and made payable to "cash" by the debtor which closed out these corporate checking accounts. The bank contended that since there had been no adjudication as to the judgment debtor's interest in these accounts, it was obligated to honor the checks or suffer liability for wrongful dishonor.²⁰² The court held that by disregarding the restraining notice, the bank assumed the risk of liability if the creditor could establish that the corporate accounts constituted property of the debtor. The court then directed that this issue be set for trial.

The creditor subsequently moved to reargue the question of the bank's liability, setting up a summary judgment obtained pursuant

²⁰⁰ 46 Misc. 2d 776, 260 N.Y.S.2d 816 (Surr. Ct. Rensselaer County 1965).

²⁰¹ 47 Misc. 2d 741, 263 N.Y.S.2d 354 (Sup. Ct. N.Y. County 1965).

²⁰² N.Y. U.C.C. §§ 4-302, 4-402.