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CPLR 5208: Enforcement After Death of Judgment Debtor; Leave of Court

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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.