STATE OF NEW YORK

5724--A

Cal. No. 1003

2021-2022 Regular Sessions

IN SENATE

March 17, 2021

Introduced by Sens. THOMAS, BIAGGI, BROOKS, KRUEGER, MYRIE, RAMOS, RIVERA, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules, in relation to the rate of interest applicable to money judgments arising out of consumer debt

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 5004 of the civil practice law and rules, as amended by chapter 258 of the laws of 1981, is amended to read as follows:

§ 5004. Rate of interest. **(a)** Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute**; provided the annual rate of interest to be paid in an action arising out of a consumer debt where a natural person is a defendant shall be two per centum per annum (i) on a judgment or accrued claim for judgments entered on or after the effective date of the chapter of the laws of two thousand twenty-one which amended this section, and (ii) for interest upon a judgment pursuant to section five thousand three of this article from the date of the entry of judgment on any part of a judgment entered before the effective date of the chapter of the laws of two thousand twenty-one which amended this section that is unpaid as of such effective date.**

(b) For the purpose of this section "consumer debt" means any obligation or alleged obligation of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD00043-14-1

has been reduced to judgment, including, but not limited to, a consumer credit transaction, as defined in subdivision (f) of section one hundred five of this chapter.

(c) This section does not affect or create any rights or remedies related to any amounts paid prior to the effective date of this subdivision, including amounts paid to satisfy judgments or to accrued interest or fees paid, or with respect to judgments satisfied prior to the effective date of this subdivision. For amounts paid prior to the effective date of this subdivision and lawfully applied in satisfaction or partial satisfaction of interest or fees accrued prior to the effective date of this subdivision, this section shall not be construed to require a judgment creditor or sheriff to (i) return or refund such amounts to judgment debtors; or (ii) apply such payments to satisfy any part of a money judgment other than fees or interest upon judgment pursuant to section five thousand three of this article.

(d) If any word, phrase, clause, sentence, paragraph, subdivision, or part of this section or its application to any person or circumstance is held invalid by any court of competent jurisdiction after exhaustion of all further judicial review, the invalidity shall not affect, impair, or invalidate the remainder of this section or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

§ 2. Subdivisions (f) and (i) of section 3215 of the civil practice law and rules, subdivision (f) as amended by chapter 453 of the laws of 2006, and subdivision (i) as amended by chapter 31 of the laws of 1967 and relettered by chapter 255 of the laws of 1992, are amended to read as follows:

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due, including, if applicable, a statement that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies, by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value. Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

(i) Default judgment for failure to comply with stipulation of settlement. 1. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based, and, if applicable, a statement that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies.

2. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment dismissing the action, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with the pleadings or a concise statement of the facts on which the claim and the defense were based.

§ 3. Paragraph 1 of subdivision (a) of section 3218 of the civil practice law and rules, as amended by chapter 214 of the laws of 2019, is amended to read as follows:

1. stating the sum for which judgment may be entered, authorizing the entry of judgment, [~~and~~] stating the county where the defendant resides **and, if applicable, stating that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies**;

§ 4. Subdivisions (a) and (b) of section 5230 of the civil practice law and rules, subdivision (a) as amended by chapter 24 of the laws of 2009 and subdivision (b) as amended by chapter 59 of the laws of 1993, are amended to read as follows:

(a) Form. An execution shall specify the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order**, the applicable interest rate and the date as of which the new interest rate applies if the interest rate for consumer debt pursuant to section five thousand four of this chapter applies** and the amount due thereon and it shall specify the names of the parties in whose favor and against whom the judgment or order was entered. **If the applicable interest rate changes pursuant to section five thousand four of this chapter while an execution is ongoing, the judgment creditor shall issue an amended execution within sixty days of the effective date of the chapter of the laws of two thousand twenty-one which amended this subdivision, effective as of the date of the rate change.** An execution shall direct that only the property in which a named judgment debtor or obligor who is not deceased has an interest, or the debts owed to the named judgment debtor or obligor, be levied upon or sold thereunder and shall specify the last known address of that judgment debtor or obligor. Except in cases when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that in those instances the execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.", an execution notice shall state that, pursuant to subdivision (l) of section fifty-two hundred five of this article, two thousand five hundred dollars of an account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments, as defined in paragraph two of subdivision (l) of section fifty-two hundred five of this article, is exempt from execution and that the garnishee cannot levy upon or restrain two thousand five hundred dollars in such an account. Except in cases when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that in those instances the execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for

child support, spousal support, maintenance or alimony.", an execution notice shall likewise state that pursuant to subdivision (i) of section fifty-two hundred twenty-two of this article, an execution shall not apply to an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. Where the judgment or order was entered in a court other than the supreme, county or a family court, the execution shall also specify the date on which a transcript of the judgment or order was filed with the clerk of the county in which the judgment was entered. Where jurisdiction in the action was based upon a levy upon property or debt pursuant to an order of attachment, the execution shall also state that fact, describe all property and debts levied upon, and direct that only such property and debts be sold thereunder. Where the judgment or order was recovered for all or part of a mortgage debt, the execution shall also describe the mortgaged property, specify the book and page where the mortgage is recorded, and direct that no part of the mortgaged property be levied upon or sold thereunder.

(b) Issuance. At any time before a judgment or order is satisfied or vacated, an execution may be issued from the supreme court, county court or a family court, in the county in which the judgment was first docketed, by the clerk of the court or the attorney for the judgment creditor as officer of the court, to the sheriffs of one or more counties of the state, directing each of them to satisfy the judgment or order out of the real and personal property of the judgment debtor or obligor and the debts due to him or her. **Provided, however, if the applicable interest rate changes pursuant to section five thousand four of this chapter while an execution is ongoing, the clerk of the court of the supreme court, county court or a family court, in the county in which the judgment was first docketed, or the attorney for the judgment creditor as officer of the court, shall be authorized to issue an amended execution to the sheriffs of one or more counties of the state and shall issue an amended execution within sixty days of the effective date of the chapter of the laws of two thousand twenty-one which amended this subdivision, effective as of the date of the rate change.** Where the judgment or order is for support and is payable to the support collection unit designated by the appropriate social services district, such unit shall be authorized to issue the execution and to satisfy the judgment or order out of the real and personal property of the judgment debtor or obligor and the debts due to him or her.

§ 5. Subdivisions (a), (d), (j) and (k) of section 5231 of the civil practice law and rules, subdivisions (a), (d) and (j) as amended by chapter 550 of the laws of 2015, subdivision (k) as amended by chapter 241 of the laws of 1986 and as relettered by chapter 829 of the laws of 1987, are amended to read as follows:

(a) Form. An income execution shall specify, in addition to the requirements of subdivision (a) of section 5230[~~,~~]**: (i)** the name and address of the person or entity from whom the judgment debtor is receiving or will receive money; **(ii)** the amount of money, the frequency of its payment and the amount of the installments to be collected therefrom; and **(iii)** shall contain a notice to the judgment debtor that he or she shall commence payment of the installments specified to the sheriff

forthwith and that, upon his or her default, the execution will be served upon the person or entity from whom he or she is receiving or will receive money. **Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, the income execution need only specify paragraphs (i) and (ii) of this subdivision.**

(d) Service upon debtor; first service by sheriff. Within twenty days after an income execution is delivered to the sheriff, the sheriff shall serve a copy of it upon the judgment debtor, in the same manner as a summons or, in lieu thereof, by certified mail return receipt requested provided an additional copy is sent by regular mail to the debtor. If service is by mail as herein provided, the person effecting service shall retain the receipt together with a post office certificate of mailing as proof of such service. **Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, the sheriff shall serve a copy of the income execution within forty-five days after an income execution is delivered to the sheriff.**

(j) Priority; delivery to another sheriff. Two or more income executions issued against the same judgment debtor, specifying the same person or entity from whom the money is received and delivered to the same or different enforcement officers shall be satisfied out of that money in the order in which the executions are delivered to an officer authorized to levy in the county, town or city in which the debtor resides or, in any county in which the person or entity from whom the judgment debtor is receiving or will receive money has an office or place of business, or where the judgment debtor is a non-resident, the county, town or city in which he or she is employed. **If the applicable interest rate changes pursuant to section five thousand four of this chapter while an execution is ongoing, the issuance of the amended execution pursuant to section five thousand two hundred thirty of this article shall retain the priority of the ongoing execution.** If an income execution delivered to a sheriff is returned unsatisfied in whole or in part because the sheriff to whom it was delivered is unable to find within the county the person or entity from whom the judgment debtor is receiving or will receive money, the execution may be delivered to the sheriff of any county in which such person or entity has an office or place of business. The priority of an income execution delivered to a sheriff within twenty days after its return by each previous sheriff shall be determined by the time of delivery to the first sheriff.

(k) Accounting by sheriff. It shall be the duty of the sheriff to whom such income execution shall be delivered, from time to time and at least once every ninety days from the time a levy shall be made thereunder, to account for and pay over to the person entitled thereto all monies collected thereon, less his lawful fees and expenses for collecting the same. **Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, any money collected in excess of the judgment amount shall be promptly returned to the debtor.**

§ 6. Subdivisions (a) and (c) of section 5222 of the civil practice law and rules, subdivision (a) as amended by chapter 409 of the laws of

2000 and subdivision (c) as amended by chapter 575 of the laws of 2008, are amended to read as follows:

(a) Issuance; on whom served; form; service. A restraining notice may be issued by the clerk of the court or the attorney for the judgment creditor as officer of the court, or by the support collection unit designated by the appropriate social services district. It may be served upon any person, except the employer of a judgment debtor or obligor where the property sought to be restrained consists of wages or salary due or to become due to the judgment debtor or obligor. It shall be served personally in the same manner as a summons or by registered or certified mail, return receipt requested or if issued by the support collection unit, by regular mail, or by electronic means as set forth in subdivision (g) of this section. It shall specify all of the parties to the action, the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order and the amount then due thereon, the names of all parties in whose favor and against whom the judgment or order was entered, it shall set forth subdivision (b) and shall state that disobedience is punishable as a contempt of court, and it shall contain an original signature or copy of the original signature of the clerk of the court or attorney or the name of the support collection unit which issued it. **If the applicable interest rate changes pursuant to section five thousand four of this chapter while a restraint is in effect, the judgment creditor shall issue an amended restraining notice, and include the date as of which the new interest rate applies, without leave of court as required under subdivision (c) of this section.** Service of a restraining notice upon a department or agency of the state or upon an institution under its direction shall be made by serving a copy upon the head of the department, or the person designated by him or her and upon the state department of audit and control at its office in Albany; a restraining notice served upon a state board, commission, body or agency which is not within any department of the state shall be made by serving the restraining notice upon the state department of audit and control at its office in Albany. Service at the office of a department of the state in Albany may be made by the sheriff of any county by registered or certified mail, return receipt requested, or if issued by the support collection unit, by regular mail.

(c) Subsequent notice. Leave of court is required to serve more than one restraining notice upon the same person with respect to the same judgment or order. A judgment creditor shall not serve more than two restraining notices per year upon a natural person's banking institution account. **If the applicable interest rate changes pursuant to section five thousand four of this chapter while a restraint is in effect, the judgment creditor shall issue an amended restraining notice without leave of court.**

§ 7. This act shall take effect on the one hundred twentieth day after it shall have become a law.