

STATE OF NEW YORK

5290--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. GONZALEZ-ROJAS, DAVILA, SIMONE, BURGOS, WEPRIN, EPSTEIN, FAHY, REYES, SHIMSKY, GALLAGHER, THIELE, SEPTIMO, LUCAS, SHRESTHA, L. ROSENTHAL, RAGA, DE LOS SANTOS, SIMON, MEEKS, BURDICK, MAGNARELLI, DICKENS, KELLES, HYNDMAN, STECK, ROZIC, LEE, MITAYNES -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the judiciary law and the civil practice law and rules, in relation to the purchase of claims by corporations or collection agencies and to certain instruments calling for payment of a monetary obligation by a foreign state

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

1 Section 1. Legislative intent. The intended purpose of this act is to
2 restore the champerty defense in sovereign debt lawsuits for claims
3 greater than \$500,000 with respect to suits brought by litigious holdout
4 investors. The restoration is not intended to apply to conventional and
5 generally cooperative investors who may occasionally choose to sue,
6 where "conventional investors" includes investors that regularly buy and
7 hold sovereign debt purchased in the primary market and "cooperative
8 investors" includes distressed debt investors that regularly purchase
9 debt at a discount in the secondary market and have a record of support-
10 ing the consensual resolution of sovereign debt distress through serving
11 as a member of creditor committees or by generally participating in
12 transactions accepted by other creditors following a negotiation.

13 § 2. Subdivision 2 of section 489 of the judiciary law, as added by
14 chapter 394 of the laws of 2004, is amended to read as follows:

15 2. Except as set forth in subdivision three of this section, the
16 provisions of subdivision one of this section shall not apply to any
17 assignment, purchase or transfer hereafter made of one or more bonds,

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

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1 promissory notes, bills of exchange, book debts, or other things in
2 action, or any claims or demands, if such assignment, purchase or trans-
3 fer included bonds, promissory notes, bills of exchange and/or book
4 debts, issued by or enforceable against the same eligible obligor
5 (whether or not also issued by or enforceable against any other eligible
6 obligors), having an aggregate purchase price of at least five hundred
7 thousand dollars, in which event the exemption provided by this subdivi-
8 sion shall apply as well to all other items, including other things in
9 action, claims and demands, included in such assignment, purchase or
10 transfer (but only if such other items are issued by or enforceable
11 against the same eligible obligor, or relate to or arise in connection
12 with such bonds, promissory notes, bills of exchange and/or book debts
13 or the issuance thereof). For the purposes of this subdivision, the
14 term "eligible obligor" means an obligor other than (i) the government
15 of any foreign country or of any political subdivision of a foreign
16 country, or (ii) an issuer of a bond, loan, or debt instrument guaran-
17 teed by the government of any foreign country or of any political subdivi-
18 vision of a foreign country.

19 § 3. Section 489 of the judiciary law is amended by adding a new
20 subdivision 4 to read as follows:

21 4. For purposes of subdivision one of this section, an assignee's
22 intent and purpose in taking an assignment of a claim against an obligor
23 that is not an eligible obligor may be inferred from the history of the
24 assignee's (and its affiliates') behavior in transactions involving the
25 debts of other obligors including, but not limited to, whether that
26 history indicates a pattern of either (a) participating in good faith
27 alongside other creditors in consensual resolutions of such situations
28 or (b) acquiring claims against such obligors at a significant discount
29 from face value, refusing to participate in consensual workouts and
30 instead resorting to legal enforcement of the acquired claims. A court
31 shall consider such other facts and circumstances related to the acqui-
32 sition of the claims or the assignee's overall business activities in
33 the debt of any government or political subdivision of a foreign country
34 as it may find relevant in assessing the assignee's intent and purpose.

35 § 4. Section 5004 of the civil practice law and rules, as amended by
36 chapter 831 of the laws of 2021, is amended to read as follows:

37 § 5004. Rate of interest. (a) Interest shall be at the rate of nine
38 per centum per annum, except where otherwise provided by statute;
39 provided the annual rate of interest to be paid in an action arising out
40 of a consumer debt where a natural person is a defendant shall be two
41 per centum per annum (i) on a judgment or accrued claim for judgments
42 entered on or after the effective date of [~~the~~] chapter 831 of the laws
43 of two thousand twenty-one [~~which amended this section~~], and (ii) for
44 interest upon a judgment pursuant to section five thousand three of this
45 article from the date of the entry of judgment on any part of a judgment
46 entered before the effective date of [~~the~~] chapter 831 of the laws of
47 two thousand twenty-one [~~which amended this section~~] that is unpaid as
48 of such effective date.

49 (b) For actions or proceedings commenced after May fifteenth, two
50 thousand twenty-four, excluding actions or proceedings with respect to
51 payment defaults that occurred before May fifteenth, two thousand twen-
52 ty-four, the annual rate of interest to be paid in an action arising out
53 of a claim against (i) a government of any foreign country or of any
54 political subdivision of a foreign country, or (ii) an issuer of a bond,
55 loan, or debt instrument guaranteed by the government of any foreign
56 country or of any political subdivision of a foreign country as a

1 defendant shall be equal to the weekly average one-year constant maturi-
2 ty treasury yield, as published by the Board of Governors of the Federal
3 Reserve System, for the calendar week proceeding the date of entry of
4 the judgment awarding damages (28 U.S.C. §1961(a)). For the purpose of
5 this subdivision, a "claim against a foreign state" means a payment
6 claim against a foreign state for monies borrowed or for the foreign
7 state's guarantee of, or other contingent obligation on, monies
8 borrowed; the term "monies borrowed" shall include the following, wheth-
9 er or not it represents the borrowing of money: monies owing
10 under bonds; debentures; notes, or similar instruments of original matu-
11 rity of at least one year; monies owing for the deferred purchase
12 price of property or services, other than trade accounts payable arising
13 in the ordinary course of government operations; monies owing on
14 capitalized lease obligations; monies owing on or with respect to
15 letters of credit, bankers' acceptances, or other extensions of credit
16 of original maturity of at least one year.

17 (c) For the purpose of this section "consumer debt" means any obli-
18 gation or alleged obligation of any natural person to pay money arising
19 out of a transaction in which the money, property, insurance or services
20 which are the subject of the transaction are primarily for personal,
21 family or household purposes, whether or not such obligation has been
22 reduced to judgment, including, but not limited to, a consumer credit
23 transaction, as defined in subdivision (f) of section one hundred five
24 of this chapter.

25 [~~(e)~~] (d) This section does not affect or create any rights or reme-
26 dies related to any amounts paid prior to the effective date of this
27 subdivision, including amounts paid to satisfy judgments or to accrued
28 interest or fees paid, or with respect to judgments satisfied prior to
29 the effective date of this subdivision. For amounts paid prior to the
30 effective date of this subdivision and lawfully applied in satisfaction
31 or partial satisfaction of interest or fees accrued prior to the effec-
32 tive date of this subdivision, this section shall not be construed to
33 require a judgment creditor or sheriff to (i) return or refund such
34 amounts to judgment debtors; or (ii) apply such payments to satisfy any
35 part of a money judgment other than fees or interest upon judgment
36 pursuant to section five thousand three of this article.

37 [~~(d)~~] (e) If any word, phrase, clause, sentence, paragraph, subdivi-
38 sion, or part of this section or its application to any person or
39 circumstance is held invalid by any court of competent jurisdiction
40 after exhaustion of all further judicial review, the invalidity shall
41 not affect, impair, or invalidate the remainder of this section or
42 applications of this article which can be given effect without the
43 invalid provision or application, and to this end the provisions of this
44 section are severable.

45 § 5. This act shall take effect immediately.