

Insights

NEW SDNY ORDER & LEGISLATIVE DEVELOPMENTS POTENTIALLY IMPACTING NEW YORK FORECLOSURE & DEBT COLLECTION PROCEEDINGS AND JUDGMENTS

MORE TO FOLLOW REGARDING POST-MONEY JUDGMENT INTEREST AND OTHER ISSUES

May 05, 2022

The Southern District of New York has granted a preliminary injunction prohibiting state officials from implementing or enforcing retroactive applicability of recently passed legislation ([S.B. 5724A, 244th Leg. Sess., c. 831 \(N.Y. 2021\)](#)) lowering the statutory annual interest rate on New York consumer debt judgments.

On April 4, 2022, Plaintiffs filed a Complaint and contemporaneous Order to Show Cause seeking a preliminary injunction in *Greater Chautauqua Federal Credit Union et al v. Marks et al*, 22-cv-02753. The Complaint seeks certification of a class of “all holders of unsatisfied judgments based on consumer debt (as defined in the statute), entered in New York State courts prior to April 30, 2022,” alleging that the retroactive reduction in interest constitutes an unconstitutional taking of property without compensation or due process. The [Opinion and Order](#), issued April 28, 2022, two days before the legislation’s effective date, appears to agree, stating, “Plaintiffs have demonstrated a likelihood of success on the merits of their Takings Clause claim.” Finding that post-judgment interest is a protected property interest for purposes of the Fifth Amendment, the Court granted the injunction and directed Plaintiffs immediately to provide notice of the Order to sheriffs of the sixty-two counties in New York.

Under a New York law extant for more than 40 years, a statutory annual rate of interest of 9% accrues on state court judgments. S.5724A, reduces the annual rate of interest on judgments arising out of consumer debts to 2%. Under the new law, the 2% rate would apply to unpaid judgments entered before April 30, 2022 as well as to judgments entered on or after the new law’s effective date. S.5724A defines “consumer debt” as “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 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.” Section 105(f) defines “consumer credit transaction” in Section 105(f) is “a transaction

wherein credit is extended to an individual and the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.”

Sponsors of the legislation articulated their position that a 9% rate is outdated and contributes to unpaid judgments from debt collection lawsuits. Lawmakers assert that the lowered judgment rate will assist consumers in the wake of the COVID-19 pandemic. The legislation’s Justification states “[t]his legislation intends to remedy the hardship placed on a significant number of New Yorkers by a statutory judgment interest rate that has long been incommensurate with market interest rates, and which has been intensified by the COVID-10[sic] pandemic.”

It is unclear whether money judgments resulting from foreclosures are “consumer credit transactions” under CPLR 105(f). While the preamble to the bill fails to reference foreclosure judgments specifically, in an article for the New York Law Journal, Bruce Bergman reports that an official in the Office of the Court Administration sent the text of the new law to foreclosure firms. In [the article](#), Mr. Bergman argues, “the judgment emerging from the equitable action of mortgage foreclosures is as a matter of law not a money judgment.”

The Plaintiffs in *Greater Chautauqua Federal Credit Union et al v. Marks et al.* are three credit unions from western New York. Plaintiffs filed an amended complaint on April 21, 2022, adding the New York State Attorney General as a Defendant. The Amended Complaint alleges Plaintiffs are owed millions of dollars on hundreds of outstanding consumer judgments, including interest. Ultimately, Plaintiffs seek a ruling declaring S.5724A unconstitutional and permanently barring its enforcement, as well as an award of attorney fees and other costs on behalf of themselves and a proposed class of creditors holding unpaid consumer debt judgments from before the effective date of the legislation.

You may wish to consider whether your institution may be a putative class plaintiff with the definition pleaded in the *Greater Cahutauqua* matter. You also may want to follow this matter to assess any impact in defining money judgments and foreclosure judgments as potentially encompassed under any new legislation. Our BCLP team has substantial experience in the Banking sector including all aspects of financial services litigation in the New York state and federal courts. Please feel free to contact any of the below listed team if you have questions or would like to assess these issues.

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