

# LAW CURRENTS An informational newsletter from Richard A. Klass, Esq.

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**“Slow Down,**

**You Move Too Fast”**

**—Simon & Garfunkel,  
The 59th Street Bridge Song (Feelin’ Groovy)**

**A** foreign company sued a New York State resident, seeking to force the sale of his house in order to satisfy its judgment. The company existed under New Jersey law with a New Jersey corporate address. The house was located in Nassau County.

### ***Petition to Sell House***

The judgment creditor’s petition to sell real property alleged that there was sufficient equity in the house exceeding the homestead exemption and existing mortgage lien. The petition further alleged that attempts to execute on the judgment debtor’s personal property failed and the creditor had otherwise been unable to satisfy its judgment. Combined, these allegations would normally be enough to

satisfy the pleading requirements under CPLR 5203, 5206 and 5238.

In response to the petition, the debtor/homeowner retained **Richard A. Klass**, *Your Court Street Lawyer*, to defend the proceeding in order to retain his house. The defenses put up included the fact that the mortgage lender had already begun foreclosure proceedings and there was a question as to the validity of the claim that there was any net equity in the property. Further, since the house was owned by the debtor with his wife as a “tenancy by the entirety,” the house could not be sold without consideration of her property rights.

## Stopping the Creditor in its tracks

Sometimes, a debtor needs a respite from the continual attacks by creditors. One way to accomplish this is by a bankruptcy filing, in which the automatic stay imposed upon filing stops the pecking at a debtor's assets by creditors. Another way to slow down a creditor is to temporarily stay the lawsuit while the debtor and his family "circle the wagons" to either gather up strong defenses or develop an orderly plan in which debts will be repaid or settled. An effective method of getting this pause is by requesting that the judge stay the lawsuit of a non-New York State creditor until the plaintiff/creditor posts security for the costs of the action.

## Security for Costs

New York court rules require nonresident plaintiffs maintaining lawsuits in New York courts to post security for the costs for which they would be liable if their lawsuits were unsuccessful. CPLR 8501(a) provides that, "except where the plaintiff has been granted permission to proceed as a poor person or is the petitioner in a habeas corpus proceeding, upon motion by the defendant without notice, the court or judge thereof shall order security for costs to be given by the plaintiffs where none of them is a domestic corporation, a foreign corporation licensed to do business in the state or a resident of the state when the motion is made." CPLR 8502 provides that until security for costs is given pursuant to court order, all proceedings other than to review or vacate such order shall be stayed, and that if the plaintiff shall not have given security for costs at the expiration of 30 days from the date of the order, the court may dismiss the complaint upon motion by the defendant.

Security for costs is a device ordinarily used against a nonresident plaintiff to make sure if he loses the case, he will not return home and leave the defendant with a costs judgment that can be enforced only in the plaintiff's home state. By directing a nonresident to post a bond, the defendant is protected from frivolous lawsuits and is assured that, if successful, he will be able to recover costs from the plaintiff.

In rebuffing a challenge to the constitutionality of the requirement of security for costs imposed upon a nonresident plaintiff, the court in *Clement v. Durban*, 147 AD3d 39 [2016] aff'd 32 NY3d 337 [2018] cert denied 139 S.Ct. 2649 [2019] held that the court rules do not deprive nonresident plaintiffs of reasonable and adequate access to New York courts and, thus, are constitutional. Where nonresidents are subject to different treatment than New York residents, there must be reasonable grounds for diversity of treatment (so as to prevent discrimination against citizens of other states). Disparity of treatment of nonresidents is permitted in situations where there are valid, independent reasons for it; in this situation, deterring frivolous or harassing lawsuits and preventing prevailing defendants from having to chase plaintiffs into foreign jurisdictions to collect their judgments are considered valid reasons.

Upon motion by the defendant requesting that the plaintiff post a bond as security for costs, the judge granted the motion and directed the nonresident plaintiff to post security in the amount of \$10,000 for costs. The plaintiff did not do so within the 30 day period after the order and, accordingly, the court dismissed the lawsuit.

— Richard A. Klass, Esq.

*Richard A. Klass, Esq., maintains a law firm engaged in civil litigation at 16 Court St., 28th Fl., Brooklyn, NY. He may be reached at (718) COURT•ST or RichKlass@courtstreetlaw.com with questions. Prior results do not guarantee a similar outcome.*

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## Announcement:

Richard A. Klass is pleased to announce that, on June 12, 2019, he was inducted as the Second Vice President of the Brooklyn Bar Association. He is looking forward to working with the members of the Brooklyn bar and general public on important programs and initiatives.



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