

NY CLS CPLR R 2222

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New York

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Civil Practice Law And Rules (Arts. 1 — 100) >

Article 22 Stay, Motions, Orders and Mandates (§§ 2201 — 2223)

R 2222. Docketing order as judgment

At the request of any party the clerk shall docket as a judgment an order directing the payment of money, including motion costs, or affecting the title to, or the possession, use or enjoyment of, real property, provided, however, that where the clerk maintains a section and block index, an order affecting the title to, or the possession, use or enjoyment of, real property may be entered in such index in lieu thereof.

History

Add, L 1962, ch 308, § 1; amd, L 1970, ch 661, eff May 8, 1970.

Annotations

Notes

Prior Law:

Earlier statutes: RCP 74; Gen Rules Pr 27, in part.

Advisory Committee Notes:

This provision is derived from RCP 74, with a number of alterations.

The first sentence of rule 74 in terms allows docketing of any order directing the payment of money, other than motion costs. The second sentence provides that an order affecting the title to real property, “if founded on petition, where no complaint is filed”—i.e., in a special proceeding—may be enrolled and docketed as a judgment and indexed with notices of pendency of action. Both sentences require a court direction for such docketing or indexing.

General Rule of Practice 27, from which rule 74 was derived, allowed the enrollment and docketing of orders and judgments directing the payment of money or affecting the title to property, but was limited in both respects to those “founded on petition, where no complaint is filed”; it also differed from the RCP rule in containing no provision for indexing with notices of pendency and requiring only a request of a party rather than a court order.

The new CPLR rule has been drafted to conform with the general plan of the new rules for enforcement of orders and judgments. Orders directing the payment of money, including motion costs, are enforceable in the same way as money judgments under new CPLR § 5101. Consequently, the rule provides that all such orders may be docketed as judgments. While it is unlikely that the docketing procedure will often be utilized or necessary to enforce payment of motion costs, it is best to have the procedure available to discourage recalcitrancy in this respect. The former final order in a special proceeding is termed a judgment in new CPLR rule 2411, and consequently any such determination directing the payment of money will be docketable and enforceable in the same manner as other judgments.

The alternative of indexing orders affecting title to real property with notices of pendency has been dropped. Docketing is a much more efficient method of apprising interested persons of a change in the title to real property than a notice of pendency. Such a notice only indicates that the title is subject to litigation and, under recently enacted § 121-a of the CPA, is only effective for three years unless extended upon motion. See 2 NY Jud Conference Rep 114–16 (1957). Yet, under former law, there was no provision for docketing a judgment affecting real property and a notice of pendency apparently must serve the notice function even after a judgment has determined the status of the property. The second sentence of RCP 74 probably originated

because a notice of pendency was not available in a special proceeding, where no complaint is filed, unless specifically authorized.

The new rules instead allow the docketing of all judgments and orders affecting the title to real property. New CPLR § 5018(a) does this for judgments, which, because of new rule 411 also includes the former final order in a special proceeding, and the instant rule makes the same provision for orders.

The requirement of a court order for docketing under RCP rule 74 seems useless. The practice in New York county, for example, is to insert such a direction automatically in orders directing the payment of money. The new rule allows docketing at the option of the parties.

The former provision for enrollment—i.e., making and filing a judgment-roll—is unnecessary, since under new rule 2220(a) all papers used on the motion and any opinion or memorandum in writing must in any event be filed with the order.

Rule amended to include orders affecting the possession, use or enjoyment of real property, since persons whose possession, use or enjoyment of such property is affected should be entitled to the notice that docketing affords.

Notes to Decisions

1. Generally

2. Under former Civil Practice Laws

1. Generally

The general provisions of CPLR 2222 did not authorize an ex parte entry of judgment against the defaulting husband, without leave of the court granted on due notice pursuant to § 244 of the Domestic Relations Law. *St. Germain v St. Germain*, 25 A.D.2d 568, 267 N.Y.S.2d 789, 1966 N.Y. App. Div. LEXIS 4851 (N.Y. App. Div. 2d Dep't 1966).

Money judgments were not subject to vacatur on ground that defendant was not served with copies of them or otherwise notified of their entry, despite assertion that order affecting rights of party lacks force unless and until it is served on that party, since it was court's prior order, incorporated into divorce judgment, which obligated defendant to pay sums recited in money judgments, and recasting defendant's obligation in that form did not change it in any substantive way, for plaintiff could have simply requested clerk to docket underlying order as judgment under CLS CPLR § 2222, and then proceed to enforce resulting judgment in accordance with provisions of CLS CPLR Art 52. *Donaghy v Donaghy*, 203 A.D.2d 803, 611 N.Y.S.2d 55, 1994 N.Y. App. Div. LEXIS 4083 (N.Y. App. Div. 3d Dep't 1994).

Receiver in mortgage foreclosure action was properly permitted to enter as judgment, under CLS CPLR § 2222, attornment order directing net lessees to pay him rent and covering certain rent arrears. *Bank of Tokyo Trust Co. v Urban Food Malls*, 229 A.D.2d 14, 650 N.Y.S.2d 654, 1996 N.Y. App. Div. LEXIS 12253 (N.Y. App. Div. 1st Dep't 1996).

In a mortgage foreclosure action in which the mortgagor's wife contested a motion for summary judgment on the grounds that a temporary alimony and child support order, entered prior to the recording of the mortgage, constituted a prior lien, even if the support order had been converted to a judgment under CPLR 2222, there would have been no debt that could have been enforced by way of execution or otherwise unless an amount unpaid under the order had been reduced to judgment pursuant to Dom Rel Law § 244. Consequently, until the amount due under the temporary order had been reduced to judgment it was not final and conclusive and would not constitute a prior lien. *Bank of Lake Placid v Rhino*, 111 Misc. 2d 639, 444 N.Y.S.2d 562, 1981 N.Y. Misc. LEXIS 3329 (N.Y. Sup. Ct. 1981).

Wife in matrimonial action could not docket, pursuant to CLS CPLR § 2222, order directing husband to pay pendente lite support to wife; CLS Dom Rel § 244 is exclusive remedy for aggrieved party in matrimonial case where there are unpaid monetary amounts. *Cardo-Racolin v Racolin*, 163 Misc. 2d 853, 622 N.Y.S.2d 651, 1994 N.Y. Misc. LEXIS 625 (N.Y. Sup. Ct. 1994).

2. Under former Civil Practice Laws

RCP 74 had no application to an order made upon a contested motion adjusting the claims of attorneys for services to a party to an action. It referred only to orders granted on petitions where no complaint was filed, and was intended to cover that class of applications that could be made only on petition. *Myer v Abbett*, 20 A.D. 390, 46 N.Y.S. 822, 1897 N.Y. App. Div. LEXIS 1747 (N.Y. App. Div. 1897).

In final order settling account of committee of property of incompetent, where incompetent restored to competency fails to supply committee with sufficient funds to pay all claims, such committee may not enter judgment for claimants against former incompetent for deficiency. In re *Katz*, 269 A.D. 778, 55 N.Y.S.2d 37, 1945 N.Y. App. Div. LEXIS 3807 (N.Y. App. Div. 1945).

Docketing of a judgment directed against a defaulting receiver in favor of his attorney. *Title Guarantee & Trust Co. v Adlake Corp.*, 290 N.Y.S. 1007, 161 Misc. 27, 1936 N.Y. Misc. LEXIS 1457 (N.Y. Sup. Ct. 1936).

appellate court, such court may direct final order be docketed as judgment, but there is no authority for entry of judgment for costs of appeal where order of appellate division does not provide for docketing as judgment *City Bank Farmers Trust Co. v Medo Photo Supply Corp.*, 102 N.Y.S.2d 722, 198 Misc. 672, 1950 N.Y. Misc. LEXIS 2437 (N.Y. Sup. Ct. 1950).

compensation and reimbursement, and directed nonresident foreclosure plaintiff to pay same, even though court did not direct that the amount fixed be docketed as a judgment, receiver was entitled to maintain action against said nonresident to recover the sum fixed, and was not relegated to contempt proceedings. *Angell v Landefeld*, 32 Misc. 2d 1070, 223 N.Y.S.2d 850, 1961 N.Y. Misc. LEXIS 1875 (N.Y. Sup. Ct. 1961), *aff'd*, 16 A.D.2d 951, 230 N.Y.S.2d 676, 1962 N.Y. App. Div. LEXIS 9129 (N.Y. App. Div. 2d Dep't 1962).

should not have been utilized as the basis for a personal money judgment against the owner of the mortgaged property for part of the principal of the mortgage debt. The only penalty intended by said section for default in payment of a determined surplus, when ordered by the court, was

the relaxation of the moratorium provisions contained in former CPA § 1077-a, thus permitting foreclosure of the mortgage. In re Sterling Bank & Trust Co., 21 N.Y.S.2d 566, 1940 N.Y. Misc. LEXIS 1974 (N.Y. Sup. Ct. 1940).

Research References & Practice Aids

Federal Aspects:

Notice of orders or judgments entered in office of Clerk of Court in United States District Courts, Rule 77(d) of Federal Rules of Civil Procedure, USCS Court Rules.

Jurisprudences:

24 NY Jur 2d Costs in Civil Actions § 251. .

73 NY Jur 2d Judgments §§ 9., 88., 162. .

5B Am Jur Pl & Pr Forms (Rev), Clerks of Court, Form 6.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2222, Docketing Order As Judgment.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 15.01. Motions and orders — in general.

CPLR Manual § 15.06. Conversion of motions and applications.

CPLR Manual § 24.06. Validity of judgment unaffected by non-prejudicial errors.

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Domestic Relations § 11.11.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 11.07. Awarding Interest.

LexisNexis AnswerGuide New York Civil Litigation § 11.18. Docketing and Filing Foreign Judgment.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property § 96.23.

Matthew Bender's New York Checklists:

Checklist for Awarding Interest LexisNexis AnswerGuide New York Civil Litigation § 11.06.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 2222:1.

LexisNexis Forms FORM 75-CPLR 2222:1.—Request to Docket Order as Judgment.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 11:101 et seq .(stays, motions, orders and mandates).

Texts:

1 Bergman on New York Mortgage Foreclosures (Matthew Bender) § 10.13.

Hierarchy Notes:

NY CLS CPLR, Art. 22

