



NEW YORK
CITY BAR

ROGER JUAN MALDONADO
PRESIDENT
rmaldonado@sgrlaw.com

SHANNA TALLARICO
CHAIR
CIVIL COURT COMMITTEE
stallarico@nylag.org

April 24, 2020

Via Email

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Request for urgently-needed actions to protect New Yorkers from judgment enforcement and to protect CARES Act stimulus payments from debt collection during the COVID-19 pandemic

Dear Governor Cuomo,

Thank you for all that you are doing to keep New Yorkers safe and healthy during this challenging time. The task is extraordinary, and we are grateful for your leadership.

As you are aware, the COVID-19 pandemic is causing devastating and lasting economic hardship in New York that disproportionately impacts low- and moderate-income New Yorkers and New York's communities of color. These communities, home to so many frontline workers, are the same ones that have been hardest-hit by debt collection. In a time of unprecedented job loss and lost wages, continued debt collection and judgment enforcement threaten the limited income and savings that New Yorkers are relying on to keep their families safe during this global pandemic and to pay for basic necessities, such as food, rent, utilities, and healthcare.

We therefore urge you to use the authority accorded to you under Section 29-a of Article 2-B of the Executive Law to take two critically-needed actions to protect already-vulnerable New Yorkers' limited income and savings from debt collection.

1. Moratorium On Enforcement Of Money Judgments For Consumer Debt

We urge you to place a moratorium on all enforcement of money judgments for consumer debt during this crisis.¹ This moratorium should include a stay of current and already-ongoing

¹ By consumer debt, we mean any debts or alleged debts covered by the federal Fair Debt Collection Practices Act, *i.e.*, those debts arising from transactions for personal, family, and household purposes.

wage garnishment, bank account restraints, liens, and any other means of judgment enforcement by any judgment creditor or its agents.² Specifically, we request that you issue an Executive Order suspending §§ 5222(a), 5230(b), 5231, 5232, and 5233 of Article 52 of the Civil Practice Law and Rules to the extent necessary to prohibit enforcement of money judgments on consumer debt against natural persons.³ Similarly, we request that you modify N.Y. C.P.L.R. § 5004 by tolling post-judgment interest on judgments on consumer debt.

2. Protect CARES Act Stimulus Payments from Debt Collectors

We urge you to ensure that CARES Act stimulus payments remain available to New Yorkers to pay for basic necessities and are not seized by debt collectors to satisfy putative consumer debt.⁴ Specifically, we request that you (1) modify N.Y. C.P.L.R. §§ 5205(a) and 5205(l) to the extent necessary to exempt CARES Act stimulus payments from application to the satisfaction of a money judgment for consumer debt, and (2) modify N.Y. C.P.L.R. §§ 5205(l) and 5222(h) to temporarily raise the automatically protected amount that applies to personal bank accounts receiving directly-deposited government benefits, from \$2,850 to \$3,400, to conform it to the automatically protected amount of \$3,400 that applies to all other personal bank accounts, pursuant to N.Y. C.P.L.R. § 5222(i).⁵

² Many states and counties have already issued orders protecting bank accounts from levy and wages from garnishment in response to the COVID-19 pandemic. *See* District of Columbia Act 23-286; Illinois Governor’s Executive Order 2020-25 (April 14, 2020); Massachusetts Emergency Regulation 940 C.M.R. 35.00; Nebraska Attorney General Warning (April 15, 2020); Texas Supreme Court Tenth Emergency Order Regarding the COVID-19 State of Disaster (April 9, 2020); Virginia Supreme Court Order Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency (March 27, 2020); Washington State Governor’s Proclamation 20-49 Garnishments and Accrual of Interest (April 14, 2020); Fulton County, Georgia Magistrate Court Third Amended Guidance During Judicial Emergency (April 7, 2020); Jackson County, Missouri Court Order, Administrative Order No. 2020-072 (April 16, 2020); and Las Vegas, Nevada Order of Justice Court, effective March 17, 2020.

³ Members of the New York City Bar have received reports, from unrepresented individuals and lawyers, that New Yorkers subject to new or already-ongoing judgment enforcement are not being permitted by some New York State courts to file requests to stay enforcement. More specifically, outside of New York City, courts currently do not automatically classify requests to stay judgment enforcement as “emergency applications.” The state courts’ disparate COVID-19 policies notwithstanding, New Yorkers should not be forced during this crisis to go to court to attempt to stop judgment enforcement, and thereby endanger their health and the health of others. Enforcing or continuing to enforce judgments during this crisis deprives New Yorkers of their property without a meaningful opportunity to challenge such deprivation, and is therefore not only exploitative of this crisis, but a violation of people’s basic due process.

⁴ The federal government has failed to act on calls, including your request to Treasury Secretary Mnuchin, to protect stimulus checks from debt collection. Attorney General Letitia James recently announced guidance to banks and debt collectors that they should treat CARES Act stimulus payments as exempt from debt collection; however, executive action is still direly needed to clearly protect such stimulus payments from debt collection. *See* Office of New York Attorney General’s Guidance on CARES Act Payments *available at* https://ag.ny.gov/sites/default/files/cares_act_guidance.pdf. *See also*, Letter from 25 State Attorneys General, including New York Attorney General Letitia James, requesting that Treasury Action to Prevent Garnishment of CARES Act Emergency Monetary Relief *available at* https://ag.ny.gov/sites/default/files/04.13.20_multistate_letter_to_treasury_re_garnishment_and_cares_act_final.pdf (last visited April 23, 2020).

⁵ This \$3,400 amount would protect the amount of stimulus money that an eligible family of four will receive pursuant to the CARES Act.

Duration

We respectfully request that the modifications above remain in place during the pendency of the pandemic and for at least 90 days following the lifting of the state of emergency in New York.

These discrete actions will work to protect New Yorkers' limited income and savings, help reduce the economic hardship inflicted on New Yorkers due to the COVID-19 pandemic, and ensure that stimulus funds are available to people who critically need this money right now to meet their basic needs.

Thank you for your consideration and your leadership.

Respectfully,



Roger Juan Maldonado
President



Shanna Tallarico
Chair, Civil Court Committee