

When Is an Appeal Bond 'Enough'?

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Under CPLR 5519(a)(2), a party appealing from a money judgment may obtain an automatic stay of enforcement proceedings with respect to a judgment or order that “directs the payment of a sum of money” where “an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed.”

In practical terms, this means that a bond can be posted by a judgment debtor that has the effect of halting enforcement efforts during the pendency of an appeal. If the judgment on appeal is affirmed, the creditor is entitled to payment directly from the surety that posted the bond, without the necessity of further enforcement efforts. As explained in the Practice Commentaries, the availability of this stay is premised on a simple concern: absent a stay, a prevailing plaintiff could collect during appeal, and if the judgment were later reversed, restitution might be meaningless if the plaintiff dissipated the proceeds or proved insolvent. Richard C. Reilly, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR 5519:1; see also CPLR 5523 (restitution).

On its face, the statute appears straightforward. In practice, however, it raises a question that New York courts have never squarely resolved in a comprehensive way: whether an undertaking equal to the face amount of the judgment is sufficient when statutory interest continues to accrue, as a matter of statutory mandate, during the pendency of the appeal.

This gap between statutory text and practical reality has meaningful consequences for judgment creditors and judgment debtors alike. While an appeal is pending, a money judgment accrues interest at the rate of nine percent per annum.

Appeals in the Appellate Division routinely take many months, and sometimes years, to resolve. When the undertaking is capped at the judgment amount alone, the resulting stay can leave a prevailing party undersecured after entry of judgment but before appellate disposition.

Trial courts addressing this subject have done so by relying on discretionary and equitable considerations that go beyond the text of CPLR 5519(a)(2) to bridge the gap.

The Appellate Division has, moreover, addressed the issue only in limited fashion. Until definitive appellate guidance is provided, litigants and courts are left navigating an area of law where the statutory language does not

fully account for how money judgments actually function on appeal.

The Statutory Framework and a Common Scenario

As noted, CPLR 5519(a)(2) provides that service of a notice of appeal automatically stays enforcement of a judgment or order directing the payment of a sum of money when an “undertaking in that sum is given....” The provision does not mention interest, either accrued or prospective.

CPLR 5003, meanwhile, states that “[e]very money judgment shall bear interest from the date of its entry,” and CPLR 5004 fixes the interest rate at nine percent per annum. As indicated by the statutory text, post-judgment interest pursuant to CPLR 5003 is mandatory. New York courts regularly note that post-judgment interest “accrues as a matter of law” and there is no need for a judgment to expressly “award” it. *RDF Agent, LLC v. Elec. Red Ventures, LLC*, 2024 WL 4125016, at *1 (Sup Ct, NY County Sept. 6, 2024); see also *New York Life Ins. Co. v. John Hancock Life Ins. Co. (U.S.A.)*, 2025 WL 1928693, at *1 (Sup Ct, NY County July 11, 2025) (“[P]ost-judgment interest always continues to accrue as a matter of law.”); see also *Matra Bldg. Corp. v. Kucker*, 19 A.D.3d 496, 496 (2d Dept. 2005).

There is no exception for judgments under appeal. As a result, interest continues to accrue while enforcement is stayed, even though the prevailing party is prevented from collecting on the judgment. The tension between these provisions is obvious.

A judgment creditor is entitled, by statute, to interest during the appeal. But a judgment debtor may obtain a stay by posting an undertaking that does not secure that interest.

This issue arises with some frequency in practice. A judgment is entered. The judgment debtor files a notice of appeal and posts an appeal bond in the exact amount of the judgment. The bond

includes standard language capping the surety’s liability at the penal sum of the bond. Months pass. Interest accrues daily. The appeal remains unperfected or undecided.

From the judgment creditor’s perspective, the stay prevents enforcement while the judgment quietly grows larger. From the judgment debtor’s perspective, the statute appears to permit this result so long as the undertaking equals the judgment amount.

If the judgment is affirmed, the judgment creditor is entitled to payment from the surety up to the penal sum of the bond, which can be insufficient to satisfy the judgment plus accrued interest. The CPLR provides no explicit mechanism to reconcile these competing realities.

Approaches Adopted by Courts

There is a dearth of case law addressing the precise interplay between CPLR 5519(a)(2) and post-judgment interest. The appellate courts have not issued a broad doctrinal roadmap, leaving trial courts to fashion their own approach.

Those courts have, for the most part, recognized that an undertaking equal to the judgment alone may be insufficient to “secure” a prevailing party’s recovery during appeal, particularly where the bond is capped at a sum that does not cover interest.

In *HGCD Retail Services LLC v. 44–45 Broadway Realty Co.*, the Supreme Court, New York County, held that an undertaking posted pursuant to CPLR 5519(a)(2) must take into account post-judgment interest. 12 Misc. 3d 1166(A) (Sup Ct, NY County 2006).

The court reasoned that an undertaking “must provide sufficient collateral to pay the judgment,” which “requir[es] taking into consideration the interest on such judgment.” Relying on CPLR 2508 and CPLR 5519(c), the court directed the appellant to amend its bond to provide for statutory interest.

Similarly, in *Curbean v. Kibel*, the court ordered an increase in the undertaking to represent a prospective period of post-judgment interest that would accrue while the appeal was pending. 2007 NY Slip Op 32314(U) (Sup Ct, NY County 2007).

Other courts have adopted similar reasoning, emphasizing that the purpose of an undertaking is to ensure that a prevailing party's "victory [is] secured" so that, if the stay of enforcement resulting from the appeal is vacated by affirmance, a ready fund with which to satisfy the judgment shall be available. *Robert Stigwood Org., Inc. v. Devon Co.*, 91 Misc. 2d 723, 398 N.Y.S.2d 756 (Sup Ct, NY County 1977); see also *Dwyer v. Nicholson*, 154 Misc. 2d 123, 583 N.Y.S.2d 738 (Sup Ct, Kings County 1991).

The most significant appellate authority on this issue is *Coffey v. CRP/Extell Parcel I, L.P.*, in which the First Department affirmed an order directing the judgment debtor to supplement its undertaking to account for "the amount of interest that has accrued on the judgment... up through the time the judgment is (or has been) satisfied." 122 A.D.3d 504, 504-05 (1st Dept. 2014).

Although *Coffey* did not contain an extended statutory analysis, its holding is difficult to reconcile with the notion that an undertaking equal only to the face amount of the judgment suffices under CPLR 5519(a)(2).

Trial courts in New York County have relied on *Coffey* in holding that a bond satisfying CPLR 5519(a)(2) must include accrued post-judgment interest, and that an undertaking is insufficient where its monetary cap is less than the amount necessary to cover some amount of interest. See, e.g., *Bank of Am., N.A. v. ASD Gem Realty LLC*, 2021 WL 4164379, at *1 (Sup Ct, NY County Sept. 9, 2021).

These decisions rely on discretionary authority under CPLR 5519(c) and CPLR 2508 rather than on a strict reading of CPLR 5519(a)(2). As

a result, outcomes can vary depending on the court, the posture of the case, and whether the judgment creditor affirmatively seeks relief.

On the other hand, at least one court outside the First Department has strictly adhered to the statutory text of CPLR 5519(a)(2) and declined to require security for future interest. *Motta v. Ventura*, 2020 WL 13137645 (Sup Ct, Westchester County Sept. 29, 2020).

That approach, however, sits uneasily with the mandatory nature of post-judgment interest under CPLR 5003 and with *Coffey's* guidance in the First Department. And even there, the court left open the possibility that it might later order supplementation of the appellate undertaking, noting that "[i]f, as plaintiff speculates, the delay in the resolution of the appeal proves unduly lengthy and/or the costs of the appeal prove burdensome the Court may re-visit the issue...."

The Practical Consequences

The lack of clarity in this area creates strategic and economic consequences for both sides of an appeal.

For judgment creditors, a bond equal only to the judgment amount may be illusory protection. In a prolonged appeal, the unsecured interest can become substantial. Even if the judgment is affirmed, the creditor may be forced to pursue collection of the interest separately, without the benefit of a surety.

For judgment debtors, uncertainty creates risk and motion practice. An appellant who relies on a literal reading of CPLR 5519(a)(2) may later face a motion to increase the undertaking, dissolve the stay, or both. This uncertainty undermines the predictability that the automatic stay provision was designed to provide.

Sureties, too, are affected. Appeal bonds typically include explicit language limiting liability to the penal sum of the bond. When courts require supplemental undertakings or periodic

increases, the administrative and underwriting burdens can multiply.

Is an Undertaking in the Amount of the Judgment Enough?

At bottom, the question is whether “an undertaking in that sum” in CPLR 5519(a)(2) should be read as a static number fixed at entry, or as a dynamic obligation that includes interest as it accrues.

A purely textual reading favors the former. The statute says what it says, and interest is addressed elsewhere in the CPLR. But that reading ignores the functional purpose of an undertaking, which is to preserve the status quo and ensure that the prevailing party is not worse off because an appeal was taken.

Courts applying CPLR 5519(c) and CPLR 2508 have implicitly adopted the latter view, even if they stop short of saying so explicitly. By requiring undertakings to account for accrued and, in some cases, prospective interest, those courts have treated interest as part of what must be “secured” to justify a stay.

What remains unsettled is whether this approach should be the exception or the rule, and how courts should address the inevitable uncertainty as to the duration of an appeal.

A Sensible Framework

Until appellate guidance is provided, trial courts confronting this issue could adopt a more uniform and predictable framework.

One approach would be to require that an undertaking under CPLR 5519(a)(2) include, at a minimum, the amount of the judgment plus interest projected through a reasonable appellate period, such as twelve or eighteen months.

Courts could further require periodic supplementation if the appeal remains pending beyond that window so that interest remains secured through full satisfaction of the judgment.

This approach aligns with the purpose of an undertaking and recognizes the reality of appellate timelines. It also avoids the need for repeated motion practice. It also preserves the automatic stay while ensuring that the judgment creditor’s statutory right to interest is meaningfully protected.

Alternatively, the Legislature could amend CPLR 5519(a)(2) to expressly address interest, bringing the provision into harmony with CPLR 5003 and CPLR 5004. Until then, courts will continue to rely on discretionary authority to fill the gap.

Conclusion

The interplay between CPLR 5519(a)(2) and post-judgment interest presents a classic example of statutory silence colliding with practical reality. While the CPLR clearly entitles prevailing parties to interest during an appeal, it does not clearly require that such interest be secured as a condition of a stay.

As trial courts increasingly confront this issue, a more consistent approach is emerging, particularly in the First Department, one that recognizes that an appeal bond equal only to the face amount of the judgment may not be sufficient.

Until appellate courts or the Legislature provide clarity, practitioners should be mindful that a bond in the amount of the judgment may not be the end of the inquiry which, at present, is left to be resolved through motion practice before the trial court.

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