

Analyzing Confessions of Judgment

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Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP ("Platzer") has built one of the leading Merchant Cash Advance practices in New York City. With years of experience handling traditional lending transactions, Platzer has expanded its representation to Merchant Cash Advance Companies ("MCA") in all aspects of their business cycles, including Participation Agreements, Assets Utilization, Transactional related matters and litigation.

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In the course of representing some of its MCA clients within the State of New York, Platzer has identified a potential issue in certain counties within New York State that are denying entry of Confessions of Judgment ("COJs"), notwithstanding language that has been contractually agreed upon and explicitly sets forth that the Confession of Judgment "may be entered in any and all counties within the State of New York", when the defendant is a non-resident.

The following is not a legal opinion but is our preliminary analysis:

It is Platzer's position that New York Civil Practice Law and Rules ("CPLR") 3218(a)(1) provides that when the defendant is a "non-resident" that judgment by confession may be entered in "the county in which entry is authorized." Further, CPLR 3218(b) allows entry of judgment by confession as to a non-resident with the clerk of the county designated in the affidavit." Platzer respectfully argued to the subject county that its jurisdiction is within the scope of authorization of "all counties" in the State of New York, and that the defendant "authorized" entry of judgment in the subject County, as contemplated by CPLR 3218(a)(1), and was also designated, as one of "all counties" in the State of New York, satisfying CPLR 3218(b), yet the Confession was denied entry.

As Platzer then noted, there is case authority for the proposition that non-resident defendants may subject themselves under CPLR § 3218 to the entry of judgment by confession in multiple counties. To Platzer's knowledge, no Court has passed on the precise language of "all counties" or similar language. In the analogous situation where the confession of judgment executed by the non-resident defendant allowed entry in multiple but not "all" counties, Courts have routinely upheld entry of the judgment, while noting that there is no authority that would prohibit such entry under CPLR § 3218. Platzer has contended that this case law supports the notion that entry of confessions of judgment with "all counties" language is proper under CPLR § 3218.

As of March 4, 2019, Platzer is actively discussing these issues with the subject counties within the State of New York and hopes that its arguments will be persuasive based upon current New York law. Platzer is aware, however, of the state and national legislative efforts to curtail the entry of confessions of judgment and, specifically, the recent legislative proposal by Governor Andrew Cuomo to restrict entry of confessions of judgment to defendants doing business in New York and in amounts over \$250,000.00. Platzer expresses no opinion as to these efforts.

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