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As of: February 2, 2023 9:12 PM Z

## *Spota v. Astra Motors*

Supreme Court of New York, Appellate Division, Second Department

April 4, 2006, Decided

2004-10313, (Index No. 13208/03)

### Reporter

28 A.D.3d 471 \*; 813 N.Y.S.2d 194 \*\*; 2006 N.Y. App. Div. LEXIS 4022 \*\*\*; 2006 NY Slip Op 2529 \*\*\*\*

[\*\*\*\*1] Thomas J. Spota, Appellant, v Astra Motors, Also Known as Astra Motors Cars, et al., Respondents.

**Subsequent History:** [\*\*\*1] Appeal denied by *Spota v. Astra Motors*, 7 NY3d 716, 859 NE2d 922, 2006 N.Y. LEXIS 3626, 826 NYS2d 182 (N.Y., Nov. 20, 2006)

### Core Terms

funds, attachment, statutory interest, preponderance of evidence, inconsistent provisions, civil forfeiture, reasonable cause, good faith, predecision, calculated, provisions, damages, seizure, seized

### Case Summary

#### Procedural Posture

Plaintiff creditor appealed a judgment by the Suffolk County Supreme Court (New York) that dismissed its civil forfeiture action and awarded defendant debtor statutory interest on all funds seized by the creditor; the creditor claimed that the trial court erred in granting pre-decision interest to the debtor.

#### Overview

The creditor did not dispute that the debtor was properly entitled to the interest accrued during the period of the attachment. The appellate court held that when the trial court dismissed the creditor's forfeiture action and directed the return of all attached property to the debtor, it had discretion to award pre-decision interest pursuant to *N.Y. C.P.L.R. § 5001*. However, the trial court's additional award of statutory interest on the funds could only be seen as an award of damages under *N.Y. C.P.L.R. § 1318(4)*. Because the debtor did not demonstrate that, in obtaining the order of attachment, the creditor acted without reasonable cause and not in good faith, the award of pre-decision interest pursuant to *N.Y. C.P.L.R. § 5001(a)* was improper.

### Outcome

The judgment was reversed, and the award of pre-decision interest was vacated.

### LexisNexis® Headnotes

Civil Procedure > Remedies > Forfeitures > General Overview

#### *HNI*[] Remedies, Forfeitures

The general provisions of the *N.Y. C.P.L.R. § 1350* govern all procedures in a civil forfeiture action except those regulated by a specific and inconsistent provision contained in N.Y. C.P.L.R. art. 13-A.

Civil Procedure > Remedies > Forfeitures > General Overview

Civil Procedure > Remedies > Judgment Interest > Prejudgment Interest

#### *HN2*[] Remedies, Forfeitures

Where a trial court dismisses a forfeiture action and directs the return of all attached property, the court has the discretionary authority to award pre-decision interest pursuant to *N.Y. C.P.L.R. § 5001*, provided that doing so would not be contrary to an inconsistent provision contained in N.Y. C.P.L.R. art. 13-A.

Civil Procedure > Remedies > Provisional Remedies > Attachment

Civil Procedure > Remedies > Judgment  
Interest > General Overview

### [HN3](#) **Provisional Remedies, Attachment**

Pursuant to [N.Y. C.P.L.R. § 1318\(4\)](#), a defendant is entitled to recover "damages" in the form of award of statutory interest from a plaintiff only if it were finally decided that the plaintiff was not entitled to an attachment of the property and the defendant proved by a preponderance of the evidence that in obtaining the order of attachment the plaintiff acted without reasonable cause and not in good faith.

## Headnotes/Summary

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### Headnotes

Interest--Preverdict Interest.--Where Supreme Court dismissed forfeiture action and directed return of attached property, court had discretionary authority to award predecision interest pursuant to [CPLR 5001](#) if it would not be contrary to inconsistent provision contained in [CPLR article 13-A](#)--because defendants did not demonstrate by preponderance of evidence that, in obtaining order of attachment, plaintiff acted without reasonable cause and not in good faith (see [CPLR 1318 \[4\]](#)), award of predecision interest pursuant to [CPLR 5001 \(a\)](#) was improper.

**Counsel:** Thomas J. Spota, District Attorney, Hauppauge, N.Y. (Craig D. Pavlik of counsel), appellant Pro se.

Steven L. Kessler, New York, N.Y. (Eric M. Wagner on the brief), for respondents.

**Judges:** STEPHEN G. CRANE, J.P., ROBERT A. SPOLZINO, STEVEN W. FISHER, MARK C. DILLON, JJ., concur.



## Opinion


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[\*471] [\*\*195] In a civil forfeiture action pursuant to [CPLR article 13-A](#), the plaintiff appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Suffolk County (Underwood, J.), dated November 10, 2004, as, upon dismissing the action, awarded the defendants statutory interest on all funds seized by the plaintiff, calculated from the date of the seizure until the date on which such funds are returned to the defendants.

Ordered that the judgment is reversed insofar as appealed from, on the law, and the decretal paragraph of the judgment

awarding the defendants statutory interest on all funds seized by the plaintiff, calculated from the date of the seizure until the [\*\*\*2] date on which such funds are returned to the defendants, is vacated.

[HNI](#)  The general provisions of the CPLR govern all procedures in a civil forfeiture action except those regulated by a specific and inconsistent provision contained in [CPLR article 13-A](#) (see [CPLR 1350](#)). Thus, [HN2](#)  where, as here, the Supreme Court dismisses a forfeiture action and directs the return of all attached property, the court has the discretionary authority to award predecision interest pursuant to [CPLR 5001](#), provided that doing so would not be contrary to an inconsistent provision contained in [CPLR article 13-A](#) (cf. [Hynes v Iadarola](#), 221 AD2d 131, 645 NYS2d 69 [1996]).

As required by law, the funds attached here were held in interest-bearing accounts [\*\*\*\*2] (see [CPLR 1324 \[1\]](#)), and the plaintiff does not dispute that the defendants are properly entitled to the interest accrued during the period of the attachment. The Supreme Court's additional award of statutory interest on those funds, however, can only be seen, in this context, as an award of "damages . . . sustained by reason of the attachment" ([CPLR 1318 \[4\]](#) [\*472] [\*\*\*3] ). [HN3](#)  Pursuant to [CPLR 1318 \(4\)](#), the defendants would be entitled to recover such "damages" from the plaintiff only if it were "finally decided that the [plaintiff] was not entitled to an attachment of the . . . property [and] . . . the defendant . . . prove[d] by a preponderance of the evidence that in obtaining the order of attachment the [plaintiff] acted without reasonable cause and not in good faith."

[\*\*196] [CPLR 1318 \(4\)](#) governs here because it is inconsistent with other relevant CPLR provisions which do not require any such showing. Because the defendants did not demonstrate in the Supreme Court by a preponderance of the evidence that, in obtaining the order of attachment, the plaintiff acted without reasonable cause and not in good faith, the award of predecision interest pursuant to [CPLR 5001 \(a\)](#) was improper. Crane, J.P., Spolzino, Fisher and Dillon, JJ., concur.