



NEW YORK
CITY BAR

June 11, 2024

By Email

Hon. Joseph A. Zayas
Chief Administrative Judge
Unified Court System
25 Beaver Street
New York, NY 10004

Hon. Norman St. George
First Deputy Chief Administrative Judge
Unified Court System
25 Beaver Street
New York, NY 10004

Re: Application of the 2022 Fair Consumer Judgment Interest Act

Dear Judge Zayas and Judge St. George:

Thank you for issuing the attached April 22, 2024 memorandum clarifying that: (1) pursuant to the 2022 Fair Consumer Judgment Interest Act (FCJIA), courts should presume a 2% per year post-judgment interest rate on money judgments in consumer debt cases, and (2) courts in New York have found that “consumer debt” includes rental arrears. While we look forward to seeing the directive implemented in New York’s housing and civil courts, we remain concerned that judgments issued between April 30, 2022 (when the FCJIA took effect) and April 22, 2024, using an erroneous 9% interest rate remain outstanding.

While we appreciate that litigation and possibly settlement measures can be undertaken to address this error, we urge the Court to consider issuing a supplemental memorandum encouraging justices to grant, on submission and on an expedited basis, Orders to Show Cause and other motions seeking this relief where (1) the OSC or motion seeks to amend Housing Court judgment interest from 9% to 2%, (2) such a judgment was entered on or after April 20, 2022, and (3) the respondent fails to clearly rebut the presumption that a 2% interest rate should have been applied. We believe this approach would facilitate, in a fair and expeditious manner, the process of correcting erroneous judgments.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

In our view, whether considering prior or upcoming judgments affected by FCJIA, the administration of justice will be best served if the greatest number of justices, litigants, and lawyers are aware of the issuance of the April 22, 2024 memorandum. To that end, the City Bar intends to use its best efforts to widely publicize the issuance of the memorandum to members of the bench and bar. Thank you for your assistance and our separate thanks to Justice Stoller, copied here, for taking the time to speak with us about these issues. If there is anything else we can do to be helpful in ensuring that the intent of the memorandum is carried out, please do not hesitate to let us know.

Respectfully,

Charles Giudice

Charles Giudice, Co-Chair
Civil Court Committee

Tedmund Wan

Tedmund Wan, Co-Chair
Civil Court Committee

Jennifer E. Hudson

Jennifer E. Hudson, Co-Chair
Housing Court Committee

Ronald S. Languedoc

Ronald S. Languedoc, Co-Chair
Housing Court Committee

Cc: Hon. Jack Stoller, Citywide Supervising Judge
Housing Part of the Civil Court of the City of New York

Justin A. Barry, Executive Director
Office of Court Administration

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Encloser: April 22, 2024 Memorandum



New York State
Unified Court System

Office of Court Administration

Hon. Joseph A. Zayas
Chief Administrative Judge

Hon. Norman St. George
First Deputy Chief Administrative Judge

Justin A. Barry, Esq.
Executive Director

MEMORANDUM

April 22, 2024

TO: Chief Clerks

FROM: Justin Barry, OCA Executive Director *JB*

SUBJECT: Fair Consumer Judgment Interest Act Update – Presumed 2% Interest Rate in Consumer Debt Default Judgments

This is a reminder that effective April 30, 2022, the Fair Consumer Judgment Interest Act (FCJIA) reduced the statutory rates of interest on money judgments from 9% to 2% per year in actions, where the defendant is a natural person, involving “consumer debts.” See CPLR § 5004(b). “Consumer debt” is defined as “any obligation ... of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes....” *Id.*¹ In addition to credit card debt, “consumer debt” has been found to include medical debt, student loan and educational debt, and rental arrears.²

Where (i) a default judgment is sought from the clerk pursuant to CPLR § 3215(a) or 3215(i), (ii) a defendant is a natural person, and (iii) the judgment appears to be for a consumer debt, including actions for medical debt, student loan and educational debt, rental arrears, or credit card debt; there shall be a presumption that the 2% per year post-judgment interest rate under the FCJIA applies. Accordingly, where a party seeking such a default judgment as set forth above demands imposition of the otherwise applicable statutory rate of 9% per year or some other interest

¹ The FCJIA’s definition of “consumer debt” tracks that term’s meaning under the federal Fair Debt Collection Practices Act (FDCPA). See 15 U.S.C. § 1692a(3), (5); N.Y. State Assembly Debate on Assembly Bill A6474-A, 244th Sess., at 369 (June 10, 2021) (statement of Ways and Means Chair Weinstein).

² See, e.g., *McCallister v. Lawson*, No. CV-044252-11/KI (N.Y. City Civ. Ct., Oct. 12, 2023) (“Residential arrears are a ‘consumer debt’ within the meaning of the statute, therefore, any judgment stemming from residential rent arrears is limited to post-judgment interest of 2%.”); cf. *Easterling v. Collecto, Inc.*, 692 F.3d 229, 234-35 (2d Cir. 2012) (finding student loan debt was covered by FDCPA); *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 114-15 (2d Cir. 1998) (affirming back rent qualified as a consumer debt under FDCPA); *Savino v. Computer Credit, Inc.*, 164 F.3d 81, 85-86 (2d Cir. 1998) (finding medical debt was a consumer debt covered by FDCPA).

rate above 2%, the matter should be referred to the Court for a determination as to whether FCJIA controls and the 2% rate should be set.³

In any residential summary proceedings pursuant to RPAPL §§ 711, 713 or RPL § 228, the clerk shall presume a post-judgment interest rate of 2% per year on any draft money judgment submitted to the Court for review and signature, unless the Court has specifically ordered otherwise. Where a petitioner-landlord demands a rate of post-judgment interest above 2% per year, the clerk shall note such a demand to allow the Court to efficiently determine whether the 2% per year post-judgment interest rate under the FCJIA controls.

³ If the judgment sought under CPLR 3215(a) is for an amount which cannot be made certain, a default judgment is only as to liability. *See Rokina Optical Co., Inc. v Camera King, Inc.*, 63 N.Y.2d 728, 730 (1984). The assessment as to any amount requiring further determination should be referred to the Court for calculation. *Cf. Tchrs. Fed. Credit Union v. Leal*, 43 Misc. 3d 1217(A) at *1 (Dist. Ct. Nassau Cnty 2014) (finding that clerk's default judgment submitted under CPLR 3215(a), properly referred to court where claim included for attorney's fees).