

# A Preliminary Injunction Blocking Enforcement of the New York Fair Consumer Judgment Interest Act Has Been Issued

May 5, 2022

We previously issued [an alert regarding the New York Fair Consumer Judgment Interest Act \(FCJIA\)](#), which went into effect on April 30, 2022.

As discussed, the FCJIA amends Section 5004 of New York Civil Practice Law and Rules and reduces the statutory post-judgment interest rate on all judgments arising out of consumer debts from 9.00% to 2.00%. Notably, the FCJIA applies retroactively to any portion of a qualifying judgment which was entered prior to the April 30, 2022 effective date. As anticipated, the Act has not been well-received by financial institutions.

Specifically, on April 4, 2022, three credit unions filed a class action lawsuit in the Southern District of New York seeking to halt the enforcement of the Act (*i.e.* - *Greater Chautauqua Federal Credit Union, et al. v. Hon. Lawrence K. Marks, et al.*, Case No. 1:22-cv-02753 (MKV)). The credit unions allege that the change in rates violates the United States Constitution's due process and property protections and should be struck down in its entirety.

The class action plaintiffs have taken the position that the retroactive application of the law, which requires judgment holders to file amended executions of judgment showing the recalculated rate with local sheriffs' offices, would eradicate millions of dollars currently owed by judgment debtors and raises substantial compliance uncertainty. In furtherance of their argument, the credit unions highlight the law's silence on how to perform the recalculations, which is unclear in situations where a portion of the judgment has already been collected. The unknown effect of a creditor's failure to file an amended execution of judgment is also raised by the credit unions in support of their argument.

The named defendants include the sheriffs of the counties where the credit union plaintiffs are located as well as the chief administrative judge for New York state courts whose office is tasked with creating the policies and procedures necessary to implement the rate reduction law.

Along with the Complaint, the credit unions filed a motion for a preliminary injunction to prevent the law from taking effect, which was recently granted.

On April 28, 2022, the Court issued an Order granting the preliminary injunction after determining that the credit unions had successfully established a likelihood of success on their claims that the retroactive application of the

new law constitutes a regulatory taking in violation of the United States Constitution. The injunction acts to preliminarily enjoin New York state sheriffs' offices from enforcing the law. Accordingly, and until further judicial action is taken, creditors seeking to enforce and collect judgments arising out of consumer credit transactions may continue to calculate post-judgment interest at the rate of 9.00% and no retroactive action is necessary.

While three of the defendant sheriff's offices initially opposed the preliminary injunction, they reversed their position during a hearing on the motion, noting that they too would benefit should the court issue an injunction as their obligations under the new law remain unclear.

The court declined to extend the injunction to the additional defendant - the chief administrative judge - as it determined that the credit unions had failed to show that the chief administrative judge had either the authority or "willingness to exercise [his] duty" to enforce the rate reduction law, and therefore failed to demonstrate a likelihood of success as to that defendant.

In determining that the preliminary injunction should be granted as to the sheriffs, the court relied on the credit unions' arguments that retroactive application of the law would violate their property interests by eradicating millions of dollars currently owed by judgment debtors; a regulatory taking the court deemed "so onerous that its effect is tantamount to a direct appropriation...". Issues about due process violations arising from the law's silence on how to perform mandated rate recalculations was also raised by the credit unions as a concern as the law's silence on this issue creates significant compliance uncertainty on the part of the credit unions.

The injunction will remain in place during the pendency of the litigation unless it is determined that it is no longer necessary.

We will continue to follow developments in this area and issue alerts as appropriate.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding this new law, or any other aspect of debt collection, please contact Jocelyn E. Lupetin at 516.296.9109.

## Practices

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