



**New Economy Project's Six-Month Report
To The Barbara McDowell and Gerald S. Hartman
Foundation
Submitted April 15, 2022**

Case summary:

New Economy Project and co-counsel have appealed the New York State court decision in *Esgro Capital Management, LLC v. Sharae Banks*, which exemplifies the systemic deprivation of low-income New Yorkers' due process in debt collection lawsuits. In 2016, Sharae Banks, a single mother, discovered that a debt buyer had obtained a default judgment against her even though she was never served with notice of the lawsuit. She sought information from the debt buyer's counsel, but was offered only an unaffordable payment plan. The debt buyer then began garnishing her wages, causing her severe financial hardship. Only a few years later did she learn that she could challenge the default judgment and wage garnishment by going to court. Despite her undisputed proof that she was never served with notice of the lawsuit, the court denied her motion, citing cases finding that courts should not grant such

“discretionary” relief where the individual “demonstrated a lack of good faith” or was “dilatory” in asserting her rights.

We seek to discredit this disturbing line of cases, which grants state courts unwarranted discretion to refuse to vacate default judgments entered without personal jurisdiction, and equates a sustained period of involuntary payments with waiver of one’s personal jurisdiction objection. By painting individuals unable to raise prompt legal challenges as dilatory or lacking good faith, this line of cases obscures the myriad structural obstacles—including fraudulent conduct by debt buyers—that low-income New Yorkers face to asserting their legal rights, and effectively punishes them for being poor or lacking representation. A favorable ruling on this appeal would benefit thousands of New Yorkers—especially New Yorkers of color, who are disproportionately harmed by debt buyers’ abusive litigation practices.

Summary of the general direction/progress of the case:

During the second quarter of the grant period, we prepared and submitted our opening appellate brief with the Appellate Term, First Judicial Department of New York, arguing that the lower state court was wrong to deny Ms. Banks’s motion to vacate Esagro’s default judgment against her, including because the court improperly concluded that she had waived her personal jurisdiction ground for vacating the default judgment.

In addition to underscoring well-established state due process jurisprudence requiring the vacatur of judgments entered without personal jurisdiction, we argue that waiver requires an intentional relinquishment of a known right and that Ms. Banks's conduct did not demonstrate that she knew of her right to challenge the judgment or intended to relinquish that right (in fact, she began preparing her legal challenge the very day she learned of her right to do so).

During the second quarter of the grant period, we also began preparing a motion to reargue the lower state court's January 2022 denial of Ms. Banks's motion to stay enforcement of the default judgment pending the appeal. (The court stated that we had failed to provide any documentary evidence, factual circumstances, or law to support our request for a stay, despite the extensive facts and legal arguments set forth in our motion brief.) Fortunately, we were then able to secure an agreement from Esgro's counsel to pause the garnishment of Ms. Banks's wages pending the outcome of the appeal, thereby avoiding further motion practice.

Significant decisions in the case:

There have not yet been any decisions on the appeal.

Progress anticipated in the next six months:

Oral argument is scheduled for June 7, 2022, with Esgro's brief due May 4 and our Reply Brief due May 12.

Links to media coverage, if any, of the case: N/A

Photos, if any, of the case: N/A

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