



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).

²See, 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).