



**New Economy Project's Year-End Report
To The Barbara McDowell and Gerald S. Hartman
Foundation
Submitted October 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 and Progress of the Case

During the third quarter we filed our reply brief and prepared for oral argument on June 7th before the New York Appellate Term, First Department. Unfortunately, on June 17 the Appellate

Term affirmed the trial court's denial of Ms. Banks's motion to vacate the default judgment against her for lack of personal jurisdiction. In a cursory, three-sentence decision, the Appellate Term followed the reasoning of a 2007 Appellate Division case, which found that the defendant had waived their personal jurisdiction objection to a default judgment simply by waiting more than one year after learning of the judgment before moving to vacate it. The Appellate Term ignored key facts, including that the debt buyer plaintiff had obtained the default judgment fraudulently, through faulty service; that Ms. Banks has multiple meritorious defenses supported by the debt buyer's own documents; and that she had not previously known that she had the right to challenge the default judgment in court. The Appellate Term's decision also flies in the face of New York Court of Appeals jurisprudence establishing that waiver requires a fact-specific inquiry and a finding that one has intentionally abandoned a known right.

At the start of the Fourth Quarter, New Economy Project and co-counsel The Legal Aid Society were able to secure additional pro bono counsel, Quinn Emanuel Urquhart & Sullivan, LLP, to help Ms. Banks pursue an appeal to the New York Appellate Division, First Department, of the Appellate Term's June 17 decision. On August 19, New Economy Project and co-counsel filed a motion with the Appellate Term for leave to appeal to the Appellate Division. We are currently awaiting a decision on the motion. Fortunately, we succeeded in obtaining an agreement from Esgro's counsel to abstain from any garnishment of Ms. Banks's wages pending the outcome of the motion. During the Fourth Quarter we also conducted preliminary outreach about the appeal to potential amici curiae who may be willing to support our anticipated appeal to the Appellate Division.

Progress Anticipated in the Next Six Months to One Year

We hope and expect that the Appellate Term will issue its decision shortly on our motion for leave to appeal to the Appellate Division. Our next steps depend on that decision: If the Appellate Term denies our motion, we will then appeal that denial to the Appellate Division, and if the Appellate Term grants our motion, we will proceed with preparing our appeal to the Appellate Division.

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