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**Advocates, Joined by NYS Attorney General, Call on Appellate Court to Reverse Decision Upholding Blatant Due Process Violation in Abusive Debt Collection Lawsuit**

**Appeal Addresses Massive Harm to New Yorkers Caused by Pervasive Debt Collection Fraud**

**NEW YORK** – Advocates, joined by [amicus NYS Attorney General Letitia James](#), have [appealed](#) to the Appellate Division, First Department, to reverse one of the latest in a disturbing, yearslong line of state court decisions upholding debt collectors’ blatant violations of New Yorkers’ basic due process rights.

Filed by [New Economy Project](#), [The Legal Aid Society](#), and [Quinn Emanuel Urquhart & Sullivan, LLP](#), the appeal seeks to reverse a lower court’s [ruling](#), in *Esgro Capital Management, LLC v. Sharae Banks*, barring a low-income New Yorker from challenging the default judgment that a debt collector had obtained against her through fraud, by falsely claiming that it had properly notified her when it sued her years earlier.

“Debt collectors routinely engage in ‘sewer service’—where they lie to the court about serving people with notice of lawsuits—and then obtain hundreds of millions of dollars’ worth of default judgments,” said **Susan Shin, Legal Director at New Economy Project**, which has published [research](#) showing that debt collectors disproportionately obtain default judgments against New Yorkers living in predominantly Black and brown neighborhoods. “New York courts must recognize the paramount importance of people’s basic due process rights and stop allowing debt collectors to get away with such rampant fraud.”

In 2016, Sharae Banks, a single mother, received a letter threatening garnishment of her wages. That was when she learned that a debt collector had sued her years earlier for tuition allegedly owed to a trade school that the state [ordered shut down](#) in 2006. She informed the debt collector that she had never received notice of the lawsuit and that she did not owe the debt, but the debt collector proceeded to garnish her wages anyway. Only a few years later did she learn

she could challenge the garnishment in court. She then discovered that the debt collector had filed court papers falsely claiming that it had properly served her with notice of the lawsuit at an address in Manhattan—though she lived in Staten Island at the time and had a New York City Housing Authority lease to prove it.

Under New York law, such clear proof of improper service should normally be enough to get a default judgment vacated and the lawsuit dismissed. The lower court nevertheless disregarded Ms. Banks's proof, citing a 2007 First Department case, *Calderock Joint Ventures, L.P. v. Mitiku*, for the idea that individuals waive their right to challenge a default judgment based on improper service once they have been subject to involuntary wage garnishment for more than one year—though *Mitiku* concerned an individual who, unlike Ms. Banks, actively participated in the lawsuit against him before a default judgment was entered and then waited more than a decade to challenge the judgment.

“In our experience, people who don't challenge a wage garnishment within a year usually don't know their legal rights and can't afford an attorney,” said **Tashi Lhewa, Director of The Legal Aid Society's Economic Equities Project**. “The courts applying this incorrect one-year rule are effectively punishing people for being poor or lacking legal representation.”

Other New York courts have cited *Mitiku* for this supposed one-year rule, allowing debt collectors to continue to enforce ill-gotten default judgments against low-income New Yorkers who were denied their due process right to notice and an opportunity to be heard.

The pervasive fraud and egregious lack of due process in debt collection lawsuits filed against New Yorkers are well-documented. In 2010, the Attorney General [announced](#) that the owner of a process serving agency had admitted to filing false claims of proper service in thousands of debt collection lawsuits. In 2015, New Economy Project, with co-counsel, reached a [\\$59 million settlement](#) in *Sykes v. Mel Harris & Assocs., LLC*, a federal class action alleging that a ring of debt collectors had routinely filed false claims of proper service to obtain default judgments against New Yorkers. In 2017, these fraudulently obtained default judgments were eliminated in a mass *vacatur* proceeding led by the Attorney General's office.

“This appeal presents the Appellate Division with an opportunity to resolve a longstanding misstatement of the law that, left unchecked, will continue to deny low-income New Yorkers relief from judgments that should never have been entered against them in the first place,” said **Owen Roberts, partner at Quinn Emanuel Urquhart & Sullivan, LLP**.

In addition to the Attorney General, the following legal advocacy organizations are expected to file an amicus brief on the appeal: St. Vincent de Paul Legal Program, CAMBA Legal Services, Fordham Law School Feerick Center for Social Justice, Legal Services NYC, Legal Services of the Hudson Valley, Mobilization for Justice, and New York Legal Assistance Group.

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