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**\*\*\*FOR IMMEDIATE RELEASE\*\*\***

## ***Advocates Secure Far-Reaching Appellate Court Victory in “Sewer Service” Lawsuit Challenging Abusive Debt Collection***

### ***Harlem Resident’s Appeal Will Curb Systemic Wealth Extraction from Low-Income New Yorkers and Communities of Color***

**NEW YORK, NY** – Advocates won a unanimous [decision](#) in the Appellate Division, First Department, upending over a decade of bad case law that enabled unscrupulous debt collectors to extract massive amounts of wealth from low-income neighborhoods. The decision will rein in widespread debt collection schemes to fraudulently garnish wages and freeze bank accounts in violation of New Yorkers’ constitutional due process rights.

Sharae Banks, a Harlem resident and single mother of three, brought the appeal after a debt buyer fraudulently garnished \$16,000 of her wages over three years for tuition allegedly owed to a trade school that the state [ordered shut down](#) in 2006. A lower court relied on case law to rule that Ms. Banks had waited too long to challenge the garnishment, despite the fact that she had never received notice of the lawsuit. This week’s ruling corrects that flawed precedent.

**New Economy Project, The Legal Aid Society, and Quinn Emanuel Urquhart & Sullivan, LLP** represented Ms. Banks in the appeal, *Esgro Capital Management, LLC v. Sharae Banks*. The decision will empower New Yorkers to challenge “sewer service”—a rampant practice in which debt collectors falsely claim to courts that they served people with notice of a lawsuit so that they can obtain a default judgment.

Courts have routinely cited a 2007 First Department decision to hold that people waive their right to challenge a default judgment once they have been subject to involuntary wage garnishment for more than one year, even if they were never notified of the underlying lawsuit. In its decision this week, the Appellate Division rejected that reasoning, holding: “The mere fact that a defendant [is] subject to payments pursuant to a wage garnishment order for more than one year without taking some action is not, without more, a proper basis for finding waiver of” their constitutional due process rights.

“For years, New York courts allowed debt collectors to get away with rampant fraud that enabled them to secure hundreds of millions of dollars’ worth of default judgments against low-income New Yorkers—draining massive amounts of wealth from Black and brown communities in particular,” said **Susan Shin, Legal Director at New Economy Project**. “The monumental decision on our appeal reverses this yearslong erosion of New Yorkers’ basic due process rights.”

“This decision sends a clear message that debt collectors will no longer get away with the abusive practice known as ‘sewer service,’ and that our clients and all New Yorkers’ due process rights will be protected,” said **Tashi Lhewa, director of the Economic Equities Project at The Legal Aid Society**. “We will continue to fight on behalf of our clients and remain vigilant against abusive consumer debt practices that effectively punish people for being poor or lacking legal representation.”

“We are relieved to see the First Department clarify that debt collectors cannot make an improperly-obtained default judgment permanent just by garnishing a working mom’s wages,” said **Owen Roberts, partner at Quinn Emanuel Urquhart & Sullivan, LLP**. “It was an honor to work to get Ms. Banks the relief she is owed, and to help clean up the law to protect other New Yorkers like her.”

## BACKGROUND:

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.

Other New York courts have up until now 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.

In addition to the Attorney General, the following legal advocacy organizations filed 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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*The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 145 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. [www.legalaidnyc.org](http://www.legalaidnyc.org)*