S T A T E O F N E W Y O R K

7972

I N S E N A T E

May 27, 2010

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to clarifying the geographic scope of restraining notices, turnover orders or judgments, and levies on property by service of execution or similar legal process

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (b) of section 5222 of the civil practice law and rules, as amended by chapter 575 of the laws of 2008, is amended to read as follows:

(b) Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A RESTRAINING NOTICE SERVED UPON A FINANCIAL INSTITUTION OR OTHER PERSON OTHER THAN THE JUDGMENT DEBTOR OR OBLIGOR SHALL HAVE NO EFFECT WITH RESPECT TO PROPERTY LOCATED OUTSIDE THE STATE. A RESTRAINING NOTICE SERVED ON A FINANCIAL INSTITUTION SHALL HAVE NO EFFECT WITH RESPECT TO DEBTS OR ACCOUNTS HELD BY OR AT A BRANCH OR OFFICE OF THE FINANCIAL INSTITUTION OUTSIDE THE STATE. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

S 2. Subdivisions (b) and (c) of section 5225 of the civil practice law and rules, subdivision (b) as amended by chapter 388 of the laws of 1964 and subdivision (c) as renumbered by chapter 315 of the laws of 1962, are amended to read as follows:

(b) Property not in the possession of judgment debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. THE COURT MAY NOT, PURSUANT TO THIS SUBDIVISION, REQUIRE A PERSON TO PAY MONEY THAT IS LOCATED OUTSIDE THE STATE OR TO DELIVER, SELL, OR DISPOSE OF OTHER PROPERTY THAT IS LOCATED OUTSIDE THE STATE TO SATISFY A JUDGMENT, AND IF SUCH PERSON IS A FINANCIAL INSTITUTION, ANY ORDER PURSUANT TO THIS SUBDIVISION MAY BE MADE ONLY WITH RESPECT TO A DEBT OR ACCOUNT HELD BY OR AT A BRANCH OR OFFICE OF THE FINANCIAL INSTITUTION THAT IS LOCATED WITHIN THE STATE. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239 OF THIS ARTICLE.

(c) Documents to effect payment or delivery. The court may order any person to execute and deliver any document necessary to effect payment or delivery AS PERMITTED BY SUBDIVISION (A) OR (B) OF THIS SECTION.

S 3. Section 5227 of the civil practice law and rules, as amended by chapter 532 of the laws of 1963, is amended to read as follows:

S 5227. Payment of debts owed to judgment debtor. Upon a special proceeding commenced by the judgment creditor, against any person who it is shown is or will become indebted to the judgment debtor, the court may require such person to pay to the judgment creditor the debt upon maturity, or so much of it as is sufficient to satisfy the judgment, and to execute and deliver any document necessary to effect payment; or it may direct that a judgment be entered against such person in favor of the judgment creditor. THE COURT MAY NOT ENTER ANY ORDER OR JUDGMENT PURSUANT TO THIS SECTION REQUIRING A FINANCIAL INSTITUTION TO PAY TO THE JUDGMENT CREDITOR DEBTS OR ACCOUNTS THAT ARE HELD BY OR AT A BRANCH OR OFFICE OF THE FINANCIAL INSTITUTION OUTSIDE THE STATE. Costs of the proceeding shall not be awarded against a person who did not dispute the indebtedness. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239 OF THIS ARTICLE.

S 4. Subdivision (a) of section 5232 of the civil practice law and rules, as amended by chapter 59 of the laws of 1993, is amended to read as follows:

(a) Levy by service of execution. The sheriff or support collection unit designated by the appropriate social services district shall levy upon any interest of the judgment debtor or obligor in personal property not capable of delivery, or upon any debt owed to the judgment debtor or obligor, by serving a copy of the execution upon the garnishee, in the same manner as a summons, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318. In the event the garnishee is the state of New York, such levy shall be made in the same manner as an income execution pursuant to section 5231 of this article. A levy by service of the execution is effective only if, at the time of service, the person served owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property not capable of delivery in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in a notice which shall be served with the execution that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property not capable of delivery in the possession or custody of the person served. All property not capable of delivery in which the judgment debtor or obligor is known or believed to have an interest then in or thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due or thereafter coming due to the judgment debtor or obligor, shall be subject to the levy. The person served with the execution shall forthwith transfer all such property, and pay all such debts upon maturity, to the sheriff or to the support collection unit and execute any document necessary to effect the transfer or payment. After such transfer or payment, property coming into the possession or custody of the garnishee, or debt incurred by him, or her shall not be subject to the levy. Until such transfer or payment is made, or until the expiration of ninety days after the service of the execution upon

him or her, or of such further time as is provided by any order of the court served upon him or her, whichever event first occurs, the garnishee is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except upon direction of the sheriff or the support collection unit or pursuant to an order of the court. A LEVY BY SERVICE OF EXECUTION UPON A GARNISHEE SHALL HAVE NO EFFECT WITH RESPECT TO PROPERTY LOCATED OUTSIDE THE STATE AND, IF SUCH GARNISHEE IS A FINANCIAL INSTITUTION, SHALL HAVE NO EFFECT WITH RESPECT TO PROPERTY HELD BY OR AT ANY BRANCH OR OFFICE LOCATED OUTSIDE THE STATE. A LEVY BY SERVICE OF EXECUTION UPON A FINANCIAL INSTITUTION SHALL HAVE NO EFFECT WITH RESPECT TO DEBTS OR ACCOUNTS HELD OUTSIDE THE STATE. At the expiration of ninety days after a levy is made by service of the execution, or of such further time as the court, upon motion of the judgment creditor or support collection unit has provided, the levy shall be void except as to property or debts which have been transferred or paid to the sheriff or to the support collection unit or as to which a proceeding under [sections] SECTION 5225 or 5227 OF THIS ARTICLE has been brought. A judgment creditor who, or support collection unit which, has specified personal property or debt to be levied upon in a notice served with an execution shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the levy.

S 5. This act shall take effect immediately.