

4542

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sen. GRIFFO -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to making service upon a financial institution of orders of attachment and notices and orders in aid of enforcement of judgments effective upon any account as to which the institution is a garnishee

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

1 Section 1. Subdivision (a) of section 5222 of the civil practice law
2 and rules, as amended by chapter 409 of the laws of 2000, is amended to
3 read as follows:
4 (a) Issuance; on whom served; form; service. A restraining notice may
5 be issued by the clerk of the court or the attorney for the judgment
6 creditor as officer of the court, or by the support collection unit
7 designated by the appropriate social services district. It may be served
8 upon any person, except the employer of a judgment debtor or obligor
9 where the property sought to be restrained consists of wages or salary
10 due or to become due to the judgment debtor or obligor. It shall be
11 served personally in the same manner as a summons or by registered or
12 certified mail, return receipt requested or if issued by the support
13 collection unit, by regular mail, or by electronic means as set forth in
14 subdivision (g) of this section. It shall specify all of the parties to
15 the action, the date that the judgment or order was entered, the court
16 in which it was entered, the amount of the judgment or order and the
17 amount then due thereon, the names of all parties in whose favor and
18 against whom the judgment or order was entered, it shall set forth
19 subdivision (b) OF THIS SECTION and shall state that disobedience is
20 punishable as a contempt of court, and it shall contain an original
21 signature or copy of the original signature of the clerk of the court or
22 attorney or the name of the support collection unit which issued it.

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

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1 Service of a restraining notice upon a department or agency of the state
2 or upon an institution under its direction shall be made by serving a
3 copy upon the head of the department, or the person designated by him or
4 her and upon the state department of audit and control at its office in
5 Albany; a restraining notice served upon a state board, commission, body
6 or agency which is not within any department of the state shall be made
7 by serving the restraining notice upon the state department of audit and
8 control at its office in Albany. Service at the office of a department
9 of the state in Albany may be made by the sheriff of any county by
10 registered or certified mail, return receipt requested, or if issued by
11 the support collection unit, by regular mail. SERVICE OF A RESTRAINING
12 NOTICE UPON A FINANCIAL INSTITUTION SHALL BE MADE BY SERVING THE INSTI-
13 TUTION'S MAIN OFFICE, THE BRANCH OFFICE AT WHICH JUDGMENT DEBTOR'S
14 ACCOUNT WAS MAINTAINED, OR ANY BRANCH OFFICE OF THE FINANCIAL INSTITU-
15 TION.

16 S 2. Subdivision (b) of section 5225 of the civil practice law and
17 rules, as amended by chapter 388 of the laws of 1964, is amended to read
18 as follows:

19 (b) Property not in the possession of judgment debtor. Upon a special
20 proceeding commenced by the judgment creditor, against a person in
21 possession or custody of money or other personal property in which the
22 judgment debtor has an interest, or against a person who is a transferee
23 of money or other personal property from the judgment debtor, where it
24 is shown that the judgment debtor is entitled to the possession of such
25 property or that the judgment creditor's rights to the property are
26 superior to those of the transferee, the court shall require such person
27 to pay the money, or so much of it as is sufficient to satisfy the judg-
28 ment, to the judgment creditor and, if the amount to be so paid is
29 insufficient to satisfy the judgment, to deliver any other personal
30 property, or so much of it as is of sufficient value to satisfy the
31 judgment, to a designated sheriff. Costs of the proceeding shall not be
32 awarded against a person who did not dispute the judgment debtor's
33 interest or right to possession. Notice of the proceeding shall also be
34 served upon the judgment debtor in the same manner as a summons or by
35 registered or certified mail, return receipt requested. The court may
36 permit the judgment debtor to intervene in the proceeding. The court may
37 permit any adverse claimant to intervene in the proceeding and may
38 determine his OR HER rights in accordance with section 5239 OF THIS
39 ARTICLE. SERVICE OF AN ORDER TO SHOW CAUSE AND PETITION OR NOTICE OF
40 PETITION AND PETITION COMMENCING A SPECIAL PROCEEDING PURSUANT TO THIS
41 SUBDIVISION UPON A FINANCIAL INSTITUTION SHALL BE MADE BY SERVING THE
42 INSTITUTION'S MAIN OFFICE, THE BRANCH OFFICE AT WHICH JUDGMENT DEBTOR'S
43 ACCOUNT WAS MAINTAINED, OR ANY BRANCH OFFICE OF THE FINANCIAL INSTITU-
44 TION.

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

47 S 5227. Payment of debts owed to judgment debtor. Upon a special
48 proceeding commenced by the judgment creditor, against any person who it
49 is shown is or will become indebted to the judgment debtor, the court
50 may require such person to pay to the judgment creditor the debt upon
51 maturity, or so much of it as is sufficient to satisfy the judgment, and
52 to execute and deliver any document necessary to effect payment; or it
53 may direct that a judgment be entered against such person in favor of
54 the judgment creditor. Costs of the proceeding shall not be awarded
55 against a person who did not dispute the indebtedness. Notice of the
56 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 OR HER rights in accordance with section 5239 OF THIS ARTICLE. SERVICE OF AN ORDER TO SHOW CAUSE AND PETITION OR NOTICE OF PETITION AND PETITION COMMENCING A SPECIAL PROCEEDING PURSUANT TO THIS SUBDIVISION UPON A FINANCIAL INSTITUTION SHALL BE MADE BY SERVING THE INSTITUTION'S MAIN OFFICE, THE BRANCH OFFICE AT WHICH JUDGMENT DEBTOR'S ACCOUNT WAS MAINTAINED, OR ANY BRANCH OFFICE OF THE FINANCIAL INSTITUTION.

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 OF THIS CHAPTER. SERVICE UPON A FINANCIAL INSTITUTION SHALL BE MADE BY SERVING THE INSTITUTION'S MAIN OFFICE, THE BRANCH OFFICE AT WHICH JUDGMENT DEBTOR'S ACCOUNT WAS MAINTAINED, OR ANY BRANCH OFFICE OF THE FINANCIAL INSTITUTION. 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. At the

1 expiration of ninety days after a levy is made by service of the
2 execution, or of such further time as the court, upon motion of the
3 judgment creditor or support collection unit has provided, the levy
4 shall be void except as to property or debts which have been transferred
5 or paid to the sheriff or to the support collection unit or as to which
6 a proceeding under sections 5225 or 5227 OF THIS ARTICLE has been
7 brought. A judgment creditor who, or support collection unit which, has
8 specified personal property or debt to be levied upon in a notice served
9 with an execution shall be liable to the owner of the property or the
10 person to whom the debt is owed, if other than the judgment debtor or
11 obligor, for any damages sustained by reason of the levy.

12 S 5. Subdivision (a) of section 6214 of the civil practice law and
13 rules, as amended by chapter 860 of the laws of 1977, is amended to read
14 as follows:

15 (a) Method of levy. The sheriff shall levy upon any interest of the
16 defendant in personal property, or upon any debt owed to the defendant,
17 by serving a copy of the order of attachment upon the garnishee, or upon
18 the defendant if property to be levied upon is in the defendant's
19 possession or custody, in the same manner as a summons except that such
20 service shall not be made by delivery of a copy to a person authorized
21 to receive service of summons solely by a designation filed pursuant to
22 a provision of law other than rule 318 OF THIS CHAPTER. SERVICE UPON A
23 FINANCIAL INSTITUTION SHALL BE MADE BY SERVING THE INSTITUTION'S MAIN
24 OFFICE, THE BRANCH OFFICE AT WHICH DEFENDANT'S ACCOUNT WAS MAINTAINED,
25 OR ANY BRANCH OFFICE OF THE FINANCIAL INSTITUTION.

26 S 6. This act shall take effect on the first of January next succeed-
27 ing the date on which it shall have become a law.