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

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:

Section 1. Subdivision (a) of section 5222 of the civil practice law and rules, as amended by chapter 409 of the laws of 2000, is amended to read as follows:

(a) Issuance; on whom served; form; service. A restraining notice may be issued by the clerk of the court or the attorney for the judgment creditor as officer of the court, or by the support collection unit designated by the appropriate social services district. It may be served upon any person, except the employer of a judgment debtor or obligor where the property sought to be restrained consists of wages or salary due or to become due to the judgment debtor or obligor. It shall be served personally in the same manner as a summons or by registered or certified mail, return receipt requested or if issued by the support collection unit, by regular mail, or by electronic means as set forth in subdivision (g) of this section. It shall specify all of the parties to the action, the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order and the amount then due thereon, the names of all parties in whose favor and against whom the judgment or order was entered, it shall set forth subdivision (b) OF THIS SECTION and shall state that disobedience is punishable as a contempt of court, and it shall contain an original signature or copy of the original signature of the clerk of the court or 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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Service of a restraining notice upon a department or agency of the state or upon an institution under its direction shall be made by serving a copy upon the head of the department, or the person designated by him or her and upon the state department of audit and control at its office in Albany; a restraining notice served upon a state board, commission, body or agency which is not within any department of the state shall be made by serving the restraining notice upon the state department of audit and control at its office in Albany. Service at the office of a department of the state in Albany may be made by the sheriff of any county by registered or certified mail, return receipt requested, or if issued by the support collection unit, by regular mail. SERVICE OF A RESTRAINING NOTICE 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 2. Subdivision (b) of section 5225 of the civil practice law and rules, as amended by chapter 388 of the laws of 1964, is 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. 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 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 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. 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 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

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

(a) Method of levy. The sheriff shall levy upon any interest of the defendant in personal property, or upon any debt owed to the defendant, by serving a copy of the order of attachment upon the garnishee, or upon the defendant if property to be levied upon is in the defendant's possession or custody, in the same manner as a summons except that such service shall not be made by delivery of a copy 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 DEFENDANT'S ACCOUNT WAS MAINTAINED, OR ANY BRANCH OFFICE OF THE FINANCIAL INSTITUTION.

S 6. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.