STATE OF NEW YORK

7676

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. LAVINE -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to creating a procedure for serving process and a notice of ex parte attachment following issuance of a pre-summons ex parte order of attachment when the defendant must be served in a foreign country

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 6211 of the civil practice law and rules is amended by adding a new subdivision (c) to read as follows:

(c) Notice of attachment to defendant in a foreign country. Notwithstanding subdivision (b) of this section, if a defendant against whom an order of attachment without notice can be effectively served with the summons only in a foreign country, and such defendant has not yet been served with the summons, the plaintiff may serve such defendant in accordance with the provisions of this subdivision. No later than five days after levy, the plaintiff shall serve upon such defendant a notice of ex parte attachment, by any mode of mail or courier service calculated to be delivered within three business days, if feasible, otherwise as soon thereafter as possible, with any form of return receipt requested provided by the mail or courier service. Such plaintiff shall execute a proof of service of such notice of ex parte attachment and levy, which shall include the return receipt or a statement that receipt was refused.

Such notice of ex parte attachment shall be in substantially the following form and contain the indicated declarations:

NOTICE OF EX PARTE ATTACHMENT

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

LBD09654-01-1

On or about , a sheriff of the State of New York, County of , levied upon property in which you have an interest, pursuant to an order of attachment signed (date) by (identify name and address of court) in an action entitled , and with the index number . A copy of the court's order is enclosed, together with the papers upon which the order was based.

You may make a motion within ten days of receipt of this notice for an order pursuant to section 6223 of the New York Civil Practice Law and Rules (CPLR) to vacate the order of attachment if you believe the order was not properly issued. Such motion to vacate shall be made by order to show cause and the court shall set the hearing on the motion at the earliest possible time. Upon the hearing, the plaintiff(s) shall have the burden of establishing the grounds for the attachment, the need for continuing the levy and the probability that the plaintiff(s) will succeed on the merits of the action.

Your making of the foregoing motion to vacate the order of attachment and participating in the hearing thereof shall not, by themselves, subject you to the court's jurisdiction on any matter other than the adjudication of the motion and any appeal thereof. Your failure to make the motion does not waive any other remedies you may have under CPLR Article 62 or any other provision of law.

THIS NOTICE OF EX PARTE ATTACHMENT DOES NOT CONSTITUTE THE SERVICE OF PROCESS OR OTHERWISE AUTHORIZE THE COURT TO ADJUDICATE THE MERITS OF THE ACTION.

DATED at , New York, this day of ,

Signed name of Plaintiff's Attorney
Printed name of attorney
Firm name
Street address
City, State, Zip Code
Telephone:
Email address:
Facsimile:
Attorney(s) for Plaintiff(s) (party names)

§ 2. Section 6213 of the civil practice law and rules, as amended by chapter 216 of the laws of 1992, is amended to read as follows:

§ 6213. Service of summons. An order of attachment granted before service is made on the defendant against whom the attachment is granted is valid only if, within sixty days after the order is granted, a summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed, except that a person upon whom the order of attachment is served shall not be liable for acting upon it as if it were valid without knowledge of the invalidity. If the defendant dies within sixty days after the order is granted and before the summons is served upon him or publication is completed, the order is valid only if the summons is served upon his executor or administrator within sixty days after letters are issued. Upon such terms as may be just and upon good cause shown the court may extend the time, not exceeding sixty days, within which the summons must be served or publication commenced pursuant to this section, provided that the application for extension is made before the expiration of the time fixed. Notwithstanding the foregoing time periods, when service of the summons must be made in a

foreign country, the time within which the summons must be served shall be one hundred twenty days from the date the action is commenced or the date the order of attachment is granted, whichever is earlier, except that the court may extend the time for service for good cause shown either before or after the expiration of the one hundred twenty day period. Subsequent extensions may be granted for good cause shown.

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