

SUMMARY:**A7371** Lancman (MS)

LANCMAN, WEINSTEIN, HOOPER; M-S: Clark, Colton, D. Gordon, Jaffee, Lafayette, Lavine, Pheffer, Sweeney, Titus, Young

Amd S5241, CPLR

Requires that, in actions to enforce a money judgment, applications to assert a mistake of fact in supreme court be made by order to show cause or motion on notice to the creditor in the same action in which the order or judgment sought to be enforced was entered.

Office of Court Administration

BILL TEXT:

STATE OF NEW YORK

7371

2007-2008 Regular Sessions

IN ASSEMBLY

April 12, 2007

Introduced by M. of A. LANCMAN, WEINSTEIN -- Multi-Sponsored by -- M. of A. CLARK, COLTON, D. GORDON, JAFFEE, LAFAYETTE, LAVINE, PHEFFER, SWEENEY, TITUS, YOUNG -- (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 the application made to the supreme court to determine a mistake of fact in an income execution for support enforcement

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

1 Section 1. Subdivision (e) of section 5241 of the civil practice law
2 and rules, as amended by chapter 815 of the laws of 1987, is amended to
3 read as follows:
4 (e) Determination of mistake of fact. Where the execution has been
5 issued by the support collection unit, the debtor may assert a mistake
6 of fact and shall have an opportunity to make a submission in support of
7 the objection within fifteen days from service of a copy thereof. There-
8 after, the agency shall determine the merits of the objection, and
9 shall notify the debtor of its determination within forty-five days
10 after notice to the debtor as provided in subdivision (d) of this
11 section. If the objection is disallowed, the debtor shall be notified
12 that the income execution will be served on the employer or income
13 payor, and of the time that deductions will begin. Where the income
14 execution has been issued by an attorney as officer of the court, or by
15 the sheriff, or by the clerk of the court, the debtor may assert a
16 mistake of fact within fifteen days from service of a copy thereof by
17 application to the supreme court or to the family court having jurisdic-
18 tion in accordance with section four hundred sixty-one of the family

19 court act. If application is made to the family court, such application
20 shall be by petition on notice to the creditor and it shall be heard and
21 determined in accordance with the provisions of section four hundred
22 thirty-nine of the family court act, and a determination thereof shall

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

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A. 7371

2

1 be made, and the debtor notified thereof within forty-five days of the
2 application. If application is made to the supreme court such applica-
3 tion shall be by [~~petition~~] order to show cause or motion on notice to
4 the creditor [~~and, it shall be heard and determined in accordance with~~
5 ~~the provisions of article four of the civil practice law and rules,~~] in
6 the action in which the order or judgement sought to be enforced was
7 entered and a determination thereof shall be made, and the debtor noti-
8 fied thereof within forty-five days of the application.
9 § 2. This act shall take effect immediately.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A7371

SPONSOR: Lancman (MS)

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to the application made to the supreme court to determine a mistake of fact in an income execution for support enforcement

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Advisory Committee on Civil Practice.

This measure would amend CPLR 5241(e) to require that, inactions to enforce a money judgment, applications to assert a mistake of fact in Supreme Court be made by order to show cause or motion on notice to the creditor in the same action in which the order or judgment sought to be enforced was entered.

Currently, the law requires that where an income execution is served on a debtor, the debtor has 15 days to reply and, where the income execution contains an error as defined in CPLR 5241(a)(8), to bring a petition under CPLR Article 4 for mistake of fact. This petition is in aid of a court order, i.e., either a Supreme Court order in a matrimonial proceeding or a Family Court order in a support proceeding. Our Advisory Committee believes that it should not be necessary that a new proceeding be brought to challenge an error in an income execution and recommends removal of the burden of commencing a new, separate, enforcement proceeding, together with payment of a new index number fee and fee for a request for judicial intervention, solely to correct the error.

This measure would have no fiscal impact on the State. It would take effect immediately.

LEGISLATIVE HISTORY:

None. New proposal.

