

CIVIL COURT OF THE CITY OF NEW YORK

CHIEF CLERK’S MEMORANDUM

Subject: Procedure to Determine Adverse Claims
CPLR§ 5239

Class: **CCM-179A Amended**
Category: GP10, LT10 & SC10
Eff. Date: August 25, 2009

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BACKGROUND

The original CCM-179 dealt with how we proceed when a person comes into court to release a restraint on a bank account in which he/she is a joint account holder but not a party to the action. This CCM explains that CPLR§ 5239 sets forth the procedure to determine adverse claims with the commencement of a special proceeding. It has come to our attention that an alternative to CPLR § 5239 may be CPLR § 5240 which allows the court, at any time, on it’s own initiative or on motion of any interested person, to make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure. To further clarify the procedure and ensure consistent practices citywide we are establishing the following procedure.

PROCEDURE

When a non-party joint account holder requests information on how his/her bank account can be released from a restraint, the clerk will advise the person that he/she may either:

a) File an Order to Show Cause (OSC), using the original index number, requesting the court to stay the proceedings and make an order denying, limiting, conditioning, regulating, extending or modifying the use of the restraint.

or

b) Commence a special proceeding in the Civil Part to determine his/her rights to the property. The special proceeding may be commenced only prior to the time that the money in the joint bank account has been applied to the satisfaction of the judgment. When the clerk is preparing the papers for a self represented user, the clerk is to use the order to show cause and Verified Petition form, CIV-GP-126, to commence the special proceeding.

Both options are available for restraints based on judgments issued in Civil, Landlord and Tenant (L&T) and Small Claims actions. If an OSC is filed on an L&T action where the landlord-tenant relationship no longer exists the OSC should be made returnable to a Judge of the Civil Court using the Landlord Tenant index number.

Please note that until an OSC form is created with this specific relief the clerks are directed to use the existing form and cross out the language “to vacate the judgment” as CPLR § 5240 only relates to enforcement proceedings.

08/25/2009
Date

/s/
Jack Baer
Chief Clerk

/s/
Hon. Fern A. Fisher
Deputy Chief Administrative Judge