

CPLR 5520(a): Extension of Time Granted to Cure Inadvertent Filing and Service Omissions of Notice of Appeal

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ARTICLE 55 — APPEALS GENERALLY

CPLR 5520(a): Extension of time granted to cure inadvertent filing and service omissions of notice of appeal.

In *Gamble v. Gamble*,²⁶⁰ appellant served timely notice of appeal upon respondent's attorney, but inadvertently failed to serve the receiver in the original action²⁶¹ and to file such notice in the trial court.²⁶² The appellate division held that these inadvertent omissions were excusable under CPLR 5520(a) and an extension of time was granted to cure the defects.

Basically, three elements are required to come within the purview of 5520(a): (1) filing or service on at least one essential party; (2) within the time limited; and (3) omissions having been caused by "mistake or excusable neglect."²⁶³ Although this statute is substantially similar to its predecessor, CPA § 107, the changes made²⁶⁴ were intended to liberalize its operation,²⁶⁵ and this sentiment was captured by the court in the instant case. However, care should be taken to comply with all filing and service requirements; "mistake or excusable neglect" are tenuous grounds upon which to rely to perfect an appeal.

ARTICLE 61 — ARREST

CPLR 6111: Full hearing required to prove extrinsic facts relied upon to procure civil arrest.

Under the CPA, affidavits were sufficient to establish an order of arrest.²⁶⁶ If a defendant sought to contest the validity of a civil arrest, he had the burden of initiating a hearing.²⁶⁷ Under CPLR 6111, an order of arrest must state, *inter alia*, that a court hearing will be held within 48 hours of arrest and must specify the amount of bail.

In *De Bierre v. Darvas*,²⁶⁸ an order of arrest was appropriately formed and served with several supporting affidavits produced by

²⁶⁰ 23 App. Div. 2d 887, 259 N.Y.S.2d 910 (2d Dep't 1965).

²⁶¹ See CPLR 2103(e).

²⁶² See CPLR 5515.

²⁶³ CPLR 5520(a).

²⁶⁴ Under the CPLR, it is now possible, *inter alia*, to cure other omissions such as failure to serve or file the record and to obtain the extension of time from the trial court. See 7 WEINSTEIN, KORN & MILLER, *op. cit. supra* note 216, ¶ 5520.01.

²⁶⁵ *Ibid.*

²⁶⁶ *Burns v. Newman*, 274 App. Div. 301, 83 N.Y.S.2d 285 (1st Dep't 1948).

²⁶⁷ 7 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 6111.08 (1964).

²⁶⁸ 22 App. Div. 2d 550, 257 N.Y.S.2d 179 (1st Dep't 1965).