

# 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*,<sup>260</sup> appellant served timely notice of appeal upon respondent's attorney, but inadvertently failed to serve the receiver in the original action<sup>261</sup> and to file such notice in the trial court.<sup>262</sup> 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."<sup>263</sup> Although this statute is substantially similar to its predecessor, CPA § 107, the changes made<sup>264</sup> were intended to liberalize its operation,<sup>265</sup> 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.<sup>266</sup> If a defendant sought to contest the validity of a civil arrest, he had the burden of initiating a hearing.<sup>267</sup> 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*,<sup>268</sup> an order of arrest was appropriately formed and served with several supporting affidavits produced by

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

<sup>261</sup> See CPLR 2103(e).

<sup>262</sup> See CPLR 5515.

<sup>263</sup> CPLR 5520(a).

<sup>264</sup> 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.

<sup>265</sup> *Ibid.*

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

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

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