S T A T E O F N E W Y O R K

685

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the New York city civil court act, in relation to commencement of a small claims action

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The opening paragraph of subdivision (a) of section 1803-A of the New York city civil court act, as amended by section 35 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars and the cost of mailings as herein provided, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month, and a required statement of its cause of action by the claimant or someone in its behalf to the clerk, who shall reduce the same to a concise, written form and record it in a docket kept especially for such purpose. Such procedure shall provide that the commercial claims part of the court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action or proceeding. Such procedure shall provide for the sending of notice of such claim by [ordinary first class mail and] certified mail with return receipt requested to the party complained against at his residence, if he resides within the city of New York, and his residence is known to the claimant, or at his office or place of regular employment within the

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

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city of New York if he does not reside therein or his residence within the city of New York is not known to the claimant. [If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim.] Such notice shall include a clear description of the procedure for filing a counterclaim, pursuant to subdivision (d) of this section.

S 2. Subdivision (b) of section 1803-A of the New York city civil court act, as amended by section 35 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

(b) (1) Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars and the cost of mailings as herein provided, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on its behalf of the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and record it in the docket marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration.

(2) Such verified certificate shall certify (i) that the claimant has mailed by ordinary first class mail to the party complained against a demand letter, no less than ten days and no more than one hundred eighty days prior to the commencement of the claim, and (ii) that, based upon information and belief, the claimant has not instituted more than five actions or proceedings (including the instant action or proceeding) during the calendar month.

(3) A form for the demand letter shall be prescribed and furnished by the state office of court administration and shall require the following information: the date of the consumer transaction; the amount that remains unpaid; a copy of the original debt instrument or other document underlying the debt and an accounting of all payments, and, if the claimant was not a party to the original transaction, the names and addresses of the parties to the original transaction; and a statement that the claimant intends to use this part of the court to obtain a judgment, that further notice of a hearing date will be sent, unless payment is received by a specified date, and that the party complained against will be entitled to appear at said hearing and present any defenses to the claim.

(4) In the event that the verified certificate is not properly completed by the claimant, the court shall not allow the action to proceed until the verified certificate is corrected. Notice of such claim shall be sent by the clerk by [both ordinary first class mail and] certified mail with return receipt requested to the party complained against at his residence, if he resides within the city of New York, and his residence is known to the claimant, or at his office or place of regular employment within the city of New York if he does not reside therein or his residence within the city of New York is not known to the claimant. [If, after the expiration of thirty days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim.]

(5) Such procedure shall further provide for an early hearing upon and determination of such claim. The hearing shall be scheduled in a manner

which, to the extent possible, minimizes the time the party complained against must be absent from employment. Either party may request that the hearing be scheduled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party complained against within fourteen days of receipt of the notice of claim.

S 3. This act shall take effect immediately and shall apply to actions commenced on and after such date.