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I N   S E N A T E

(PREFILED)

January 8, 2014

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

AN ACT to amend the civil practice law and rules, in relation to motions  
for summary judgment in lieu of complaint; and to repeal section 3213  
of such law relating thereto

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

1     Section 1. Section 3213 of the civil practice law and rules is  
2     REPEALED and a new section 3213 is added to read as follows:  
3     S 3213. MOTION FOR SUMMARY JUDGMENT IN LIEU OF COMPLAINT. (A) MOTION  
4     IN LIEU OF COMPLAINT. THE PLAINTIFF MAY SERVE, WITH THE SUMMONS, A  
5     MOTION FOR SUMMARY JUDGMENT, WITH SUPPORTING PAPERS DESCRIBED IN THIS  
6     SECTION, WHEN THE ACTION IS BASED SOLELY UPON:  
7        (1) ANY JUDGMENT,  
8        (2) AN INSTRUMENT FOR THE PAYMENT OF MONEY ONLY,  
9        (3) ANY OTHER WRITING, SIGNED BY THE DEFENDANT, THAT CONTAINS A CLEAR,  
10     UNAMBIGUOUS, ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE OBLIGATION FOR THE  
11     PAYMENT OF MONEY IN A SUM CERTAIN OR IN A SUM WHICH CAN BY COMPUTATION  
12     BE MADE CERTAIN, OR  
13        (4) A SIGNED GUARANTY, SURETYSHIP AGREEMENT, UNDERTAKING OR BOND  
14     SECURING AN OBLIGATION DESCRIBED IN PARAGRAPHS ONE, TWO OR THREE OF THIS  
15     SUBDIVISION.  
16     (B) SUPPORTING PROOF. A MOTION FOR SUMMARY JUDGMENT UNDER THIS SECTION  
17     SHALL BE SUPPORTED AS PROVIDED IN SUBDIVISION (B) OF RULE THIRTY-TWO  
18     HUNDRED TWELVE OF THIS ARTICLE. IN ADDITION, THE MOTION SHALL INCLUDE A  
19     COPY OF THE DOCUMENT ON WHICH THE ACTION IS BASED. IF THE ACTION IS  
20     BASED ON A JUDGMENT, THE PAPERS SHALL INCLUDE A COPY OF THE JUDGMENT  
21     CERTIFIED OR AUTHENTICATED IN ACCORDANCE WITH APPLICABLE LAW.  
22     (C) ANSWERING AND REPLY PAPERS ON THE MOTION. (1) THE SUMMONS SERVED  
23     WITH SUCH MOTION PAPERS AND THE NOTICE OF MOTION SHALL STATE THAT THE  
24     DEFENDANT MUST SERVE ANSWERING PAPERS ON THE MOTION ON OR BEFORE A DATE  
25     WHICH IS NOT LESS THAN THIRTY DAYS AFTER THE COMPLETION OF SERVICE ON  
26     THE DEFENDANT OF THE SUMMONS AND SUPPORTING PAPERS.

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

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1 (2) THE NOTICE OF MOTION SHALL ALSO STATE THE DATE ON WHICH THE MOTION  
2 WILL BE HEARD, WHICH SHALL BE AT LEAST FOURTEEN DAYS AFTER THE ANSWERING  
3 PAPERS ARE DUE.

4 (3) ANY REPLY PAPERS SHALL BE SERVED SEVEN DAYS BEFORE THE HEARING  
5 DATE.

6 (4) IF COMPLETION OF SERVICE DOES NOT OCCUR WITH RESPECT TO ALL  
7 DEFENDANTS AT LEAST THIRTY DAYS PRIOR TO THE DATE STATED IN THE NOTICE  
8 OF MOTION FOR SERVICE OF ANSWERING PAPERS, THE PLAINTIFF MAY SET A NEW  
9 HEARING DATE BY SERVING AN AMENDED NOTICE OF MOTION. THERE MAY BE ONLY  
10 ONE HEARING DATE FOR ALL DEFENDANTS UNDER THIS SECTION. THE AMENDED  
11 NOTICE SHALL SET A NEW RESPONSE DATE FOR SERVICE OF ANSWERING PAPERS AND  
12 A NEW HEARING DATE WHICH SHALL COMPLY WITH THE REQUIREMENTS OF PARA-  
13 GRAPHS ONE AND TWO OF THIS SUBDIVISION. WITH RESPECT TO ANY DEFENDANT  
14 WHO HAS BEEN SERVED WITH THE SUMMONS AND ORIGINAL NOTICE OF MOTION, THE  
15 AMENDED NOTICE OF MOTION MAY BE SERVED ON SUCH DEFENDANT IN THE MANNER  
16 SET FORTH UNDER RULE TWENTY-ONE HUNDRED THREE OF THIS CHAPTER.

17 (5) NO DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO SUBDIVISION (A) OF  
18 SECTION THIRTY-TWO HUNDRED FIFTEEN OF THIS ARTICLE PRIOR TO THE HEARING  
19 DATE OF THE MOTION.

20 (D) DECISION ON THE MOTION; RELIEF. THE COURT SHALL DENY THE MOTION IF  
21 IT DETERMINES THAT NONE OF THE CRITERIA SET FORTH IN SUBDIVISION (A) OF  
22 THIS SECTION IS SATISFIED. OTHERWISE, THE CRITERIA FOR DECIDING THE  
23 MOTION SHALL BE IDENTICAL TO THOSE APPLICABLE WITH RESPECT TO A MOTION  
24 UNDER RULE THIRTY-TWO HUNDRED TWELVE OF THIS ARTICLE. THE COURT MAY  
25 ENTER SUCH ORDERS AND GRANT SUCH RELIEF AS ARE PROVIDED IN RULE THIRTY-  
26 TWO HUNDRED TWELVE OF THIS ARTICLE. IF SUMMARY JUDGMENT DISPOSING OF THE  
27 MOTION IN ITS ENTIRETY IS NOT GRANTED, THE MOVING AND ANSWERING PAPERS  
28 SHALL BE DEEMED THE COMPLAINT AND ANSWER, RESPECTIVELY, UNLESS THE COURT  
29 ORDERS PLEADINGS BE SERVED, IN WHICH CASE, THE COMPLAINT AND ANSWER  
30 SHALL BE SERVED WITHIN SUCH TIME AS THE COURT SHALL ORDER.

31 (C) ACTIONS AGAINST CONSUMERS. THIS SECTION IS INAPPLICABLE WHERE THE  
32 PLAINTIFF'S CLAIM IS BASED UPON A TRANSACTION ENTERED INTO BETWEEN A  
33 CREDITOR, SELLER, TRANSFEROR OR LESSOR AS ONE PARTY WITH A NATURAL  
34 PERSON WHO IS THE DEBTOR, BUYER, TRANSFEREE OR LESSEE AS THE SECOND  
35 PARTY, AND THE MONEY, OTHER PROPERTY OR SERVICES WHICH ARE THE SUBJECT  
36 OF THE TRANSACTION ARE PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD  
37 PURPOSES.

38 S 2. This act shall take effect on the first of January next succeed-  
39 ing the date on which it shall have become a law.