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

5073

2013-2014 Regular Sessions

I N S E N A T E

May 8, 2013

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- 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 want of prosecution

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

Section 1. Subdivisions (a) and (b) of rule 3216 of the civil practice law and rules, as added by chapter 770 of the laws of 1967, paragraph 3 of subdivision (b) as amended by chapter 4 of the laws of 1978, are amended to read as follows:

(a) Where a party unreasonably neglects to proceed generally in an action or otherwise delays in the prosecution thereof against any party who may be liable to a separate judgment, or unreasonably fails to serve and file a note of issue, the court, on its own initiative or upon motion, WITH NOTICE TO THE PARTIES, may dismiss the party's pleading on terms. Unless the order specifies otherwise, the dismissal is not on the merits.

(b) No dismissal shall be directed under any portion of subdivision (a) of this rule and no court initiative shall be taken or motion made thereunder unless the following conditions precedent have been complied with:

(1) Issue must have been joined in the action;

(2) One year must have elapsed since the joinder of issue OR SIX MONTHS MUST HAVE ELAPSED SINCE THE ISSUANCE OF THE PRELIMINARY COURT CONFERENCE ORDER WHERE SUCH AN ORDER HAS BEEN ISSUED, WHICHEVER IS LATER;

(3) The court or party seeking such relief, as the case may be, shall have served a written demand by registered or certified mail requiring the party against whom such relief is sought to resume prosecution of the action and to serve and file a note of issue within ninety days

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

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after receipt of such demand, and further stating that the default by the party upon whom such notice is served in complying with such demand within said ninety day period will serve as a basis for a motion by the party serving said demand for dismissal as against him OR HER for unreasonably neglecting to proceed. WHERE THE WRITTEN DEMAND IS SERVED BY THE COURT, THE DEMAND SHALL SET FORTH THE SPECIFIC CONDUCT CONSTITUTING THE NEGLECT, WHICH CONDUCT SHALL DEMONSTRATE A GENERAL PATTERN OF DELAY IN PROCEEDING WITH THE LITIGATION.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become law.