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

6131

2009-2010 Regular Sessions

I N A S S E M B L Y

February 25, 2009

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to simplified case resolution; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. The civil practice law and rules is amended by adding a new article 30-A to read as follows:

ARTICLE 30-A

PROCEDURES FOR SIMPLIFIED CASE RESOLUTION

3050. SIMPLIFIED CASE RESOLUTION; WHERE AUTHORIZED.
3051. COMMENCEMENT OF ACTION; PLEADINGS.
3052. PRELIMINARY PROCEEDINGS.
3053. DISPOSITIONAL CONFERENCES.
3054. APPEAL.
3055. WAIVER OF JURY TRIAL.
3056. RULES.

S 3050. SIMPLIFIED CASE RESOLUTION; WHERE AUTHORIZED. THE PROCEDURES AUTHORIZED BY THIS ARTICLE SHALL BE AVAILABLE IN AN ACTION FOR MONEY ONLY, WITH THE EXCEPTION OF ACTIONS TO RECOVER DAMAGES FOR PERSONAL INJURY, INJURY TO PROPERTY OR WRONGFUL DEATH, PROVIDED:

(A) THE AMOUNT SOUGHT TO BE RECOVERED DOES NOT EXCEED SEVENTY-FIVE THOUSAND DOLLARS, EXCLUSIVE OF INTEREST AND COSTS; AND

(B) THE ACTION IS COMMENCED IN A COUNTY THAT THE CHIEF ADMINISTRATOR OF THE COURTS, WITH THE ADVICE AND CONSENT OF THE ADMINISTRATIVE BOARD, HAS DESIGNATED AS A COUNTY IN WHICH SUCH PROCEDURES MAY BE UTILIZED.

S 3051. COMMENCEMENT OF ACTION; PLEADINGS. (A) 1. A PLAINTIFF WHO ELECTS TO USE THE PROCEDURES AUTHORIZED BY THIS ARTICLE SHALL COMMENCE AN ACTION BY FILING A SUMMONS AND COMPLAINT IN ACCORDANCE WITH THIS SECTION AND SECTION THREE HUNDRED FOUR OF THIS CHAPTER. THE SUMMONS

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

LBD09247-01-9

SHALL PROMINENTLY DISPLAY AT THE TOP THEREOF THE WORDS "NOTICE: THIS ACTION IS BROUGHT UNDER THE NEW YORK SIMPLIFIED CASE RESOLUTION PROCEDURE, AS SET FORTH IN THE CIVIL PRACTICE LAW AND RULES ARTICLE THIRTY-A. IF YOU DO NOT AFFIRMATIVELY EXERCISE YOUR RIGHT NOT TO USE THIS PROCEDURE BY SERVING A "NOTICE OF ELECTION NOT TO PROCEED UNDER ARTICLE THIRTY-A" WITHIN THE TIME REQUIRED FOR YOU TO FILE YOUR APPEARANCE IN THIS ACTION, YOU WILL WAIVE YOUR RIGHTS TO A JURY TRIAL, CERTAIN PRE-TRIAL DISCLOSURE OF RELEVANT DOCUMENTS AND INFORMATION, AND CERTAIN RIGHTS TO PRESENT EVIDENCE AND APPEAL AN ADVERSE DETERMINATION."

2. WITHIN THE TIME REQUIRED FOR AN APPEARANCE, THE DEFENDANT MAY SERVE "NOTICE OF ELECTION NOT TO PROCEED UNDER ARTICLE THIRTY-A"; PROVIDED, HOWEVER, THE TIME TO SERVE NOTICE OF ELECTION NOT TO PROCEED MAY BE EXTENDED EITHER BY STIPULATION OR UPON APPLICATION TO THE COURT UPON A SHOWING OF REASONABLE CAUSE FOR THE EXTENSION. WHEN A "NOTICE OF ELECTION NOT TO PROCEED UNDER ARTICLE THIRTY-A" IS SERVED, THE CASE SHALL PROCEED UNDER OTHER APPLICABLE PROVISIONS OF THIS CHAPTER WITHOUT REFERENCE TO THIS ARTICLE.

(B) ALL PLEADINGS IN AN ACTION UNDER THIS ARTICLE SHALL HAVE ATTACHED THERETO AVAILABLE DOCUMENTARY PROOF IN SUPPORT OF THE ALLEGATIONS CONTAINED THEREIN, AND MAY INCLUDE AFFIDAVITS BY PERSONS HAVING KNOWLEDGE OF THE MATERIAL FACTS, AND A STATEMENT OF THE ATTORNEY OF CONTROLLING LEGAL AUTHORITY AND LEGAL ARGUMENT THAT IS ALLEGED TO BE DISPOSITIVE OF ONE OR MORE ISSUES IN THE ACTION.

(C) PRE-ANSWER MOTIONS ARE NOT PERMITTED, BUT MATTERS APPROPRIATE FOR SUCH MOTIONS MAY BE RAISED AT THE PRELIMINARY CONFERENCE.

S 3052. PRELIMINARY PROCEEDINGS. THERE SHALL BE A PRELIMINARY CONFERENCE IN AN ACTION NOT LATER THAN NINETY DAYS AFTER ISSUE IS JOINED. IT SHALL BE SCHEDULED BY THE COURT ON AT LEAST TWENTY DAYS' NOTICE TO THE PARTIES AND, UNLESS THE COURT DIRECTS OTHERWISE, IT SHALL BE HELD BY TELEPHONE OR VIDEO CONFERENCE CALL. THE PURPOSES OF THE PRELIMINARY CONFERENCE SHALL INCLUDE, BUT NOT BE LIMITED TO, ENCOURAGING SETTLEMENT, SIMPLIFYING OR LIMITING ISSUES, ESTABLISHING A TIMETABLE FOR THE PROMPT COMPLETION OF ANY ADDITIONAL PROCEEDINGS THAT ARE REQUIRED AND, GENERALLY, TO ENSURING THE JUST, SPEEDY, AND INEXPENSIVE DETERMINATION OF THE ACTION. IN FURTHERANCE OF THESE PURPOSES, THE COURT BY A JUDGE PERSONALLY ACTING, AT SUCH PRELIMINARY CONFERENCE OR AT ANY TIME THEREAFTER, MAY:

(A) ORDER OR PERMIT ANY PARTY TO SERVE AN ADDITIONAL OR AMENDED PLEADING;

(B) DIRECT AND, WHERE APPROPRIATE, LIMIT PRE-TRIAL DISCLOSURE AUTHORIZED BY ARTICLE THIRTY-ONE OF THIS CHAPTER, AND THE TAKING OF THE TESTIMONY OF ANY PERSON, WHICH MAY BE BY VIDEO DEPOSITION;

(C) DIRECT IN AN APPROPRIATE CASE THE TESTIMONY AND EXAMINATION OF ANY PERSON AT THE DISPOSITIONAL CONFERENCE;

(D) CLARIFY AND DEFINE THE ISSUES TO BE DETERMINED;

(E) CONSOLIDATE THE ACTION WITH ANOTHER ACTION OR SEVER ONE OR MORE CLAIMS IN THE ACTION, AS APPROPRIATE, IN ACCORDANCE WITH ARTICLE SIX OF THIS CHAPTER; PROVIDED THAT ANY PARTY TO AN ACTION IN WHICH THERE IS ASSERTED A COUNTERCLAIM SEEKING DAMAGES IN EXCESS OF SEVENTY-FIVE THOUSAND DOLLARS, EXCLUDING INTEREST AND COSTS, SHALL BE ENTITLED TO SEVERANCE OF SUCH COUNTERCLAIM UPON APPLICATION THEREFOR AND NO JUDGMENT SHALL BE AWARDED IN THE ACTION AUTHORIZED BY THIS ARTICLE UNTIL FINAL RESOLUTION OF THE SEVERED COUNTERCLAIM;

(F) GRANT A MOTION FOR OR RENDER JUDGMENT IN FAVOR OF ANY PARTY ON THE BASIS OF THE PLEADINGS AND PROOFS PRESENTED;

(G) ORDER THAT THE PROCEDURES AUTHORIZED BY THIS ARTICLE NOT BE AVAILABLE IN THE ACTION; AND

(H) SCHEDULE A DISPOSITIONAL CONFERENCE TO BE HELD IN SUCH ACTION NOT LATER THAN NINE MONTHS FROM THE FILING OF THE COMPLAINT.

S 3053. DISPOSITIONAL CONFERENCES. (A) AT LEAST SEVEN, BUT NOT MORE THAN FOURTEEN DAYS PRIOR TO THE DATE OF THE DISPOSITIONAL CONFERENCE, EACH PARTY SHALL FILE A WRITTEN SUBMISSION RECITING THE PARTY'S FINAL OFFER OF SETTLEMENT OR DISPOSITION AND A BRIEF STATEMENT OF THE REASONS WHY SETTLEMENT OR DISPOSITION OF THE ACTION IN ACCORDANCE WITH THE TERMS OF SUCH OFFER WOULD BE JUST.

(B) AT THE DISPOSITIONAL CONFERENCE, THE COURT BY A JUDGE PERSONALLY SHALL HEAR ARGUMENT, RENDER A DECISION IN WRITING OR ON THE RECORD, AND AWARD JUDGMENT IN ACCORDANCE WITH THE RULES AND PRINCIPLES OF SUBSTANTIVE LAW. SUCH AWARD MAY INCLUDE INTEREST AND COSTS, AS APPROPRIATE.

(C) ANY AWARD OF JUDGMENT MADE BY A COURT IN ACCORDANCE WITH THIS SECTION SHALL PROMPTLY BE SERVED UPON THE PARTIES. IT SHALL CONSTITUTE A JUDGMENT FOR ALL PURPOSES UNDER THIS CHAPTER.

S 3054. APPEAL. EXCEPT FOR AN APPEAL TO THE COURT OF APPEALS AS MAY BE AUTHORIZED BY LAW, THERE SHALL BE NO APPEAL FROM ANY ORDER OR JUDGMENT IN AN ACTION SUBJECT TO THE PROCEDURES AUTHORIZED BY THIS ARTICLE, EXCEPT THAT A PARTY MAY TAKE AN APPEAL IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER:

(A) AS OF RIGHT FROM AN ORDER GRANTING A MOTION FOR JUDGMENT OR DISMISSAL OF THE ACTION OR ANY AWARD OF FINAL JUDGMENT FOLLOWING THE DISPOSITIONAL CONFERENCE, ON THE SOLE GROUNDS THAT: THE DISPOSITION EITHER LACKS A RATIONAL FOUNDATION SO AS TO BE ARBITRARY AND CAPRICIOUS OR IS THE RESULT OF A MISTAKE OF LAW; THE JUDGE'S FAILURE TO FOLLOW THE PROCEDURES AUTHORIZED BY THIS ARTICLE MATERIALLY PREJUDICED A SUBSTANTIAL RIGHT OF A PARTY, OR

(B) BY PERMISSION OF THE COURT FROM OR TO WHICH SUCH APPEAL IS TAKEN, IN ANY OTHER CASE.

S 3055. WAIVER OF JURY TRIAL. ANY PARTY TO AN ACTION WHICH IS HEARD AND DETERMINED IN ACCORDANCE WITH THE PROCEDURES AUTHORIZED BY THIS ARTICLE SHALL BE DEEMED TO HAVE WAIVED A TRIAL BY JURY OF ANY AND ALL CLAIMS ASSERTED IN SUCH ACTION.

S 3056. RULES. THE CHIEF ADMINISTRATOR OF THE COURTS, WITH THE ADVICE AND CONSENT OF THE ADMINISTRATIVE BOARD OF THE COURTS, MAY PROMULGATE SUCH RULES, NOT INCONSISTENT WITH THIS ARTICLE, AS MAY BE NECESSARY FOR THE EFFECTIVE IMPLEMENTATION OF THIS ARTICLE.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to actions commenced on or after such date until December 31 of the third calendar year following the effective date when, upon such date the provisions of this act shall be deemed repealed, but it shall apply to any proceedings commenced by filing a summons and complaint on or before such date.