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

6562

2009-2010 Regular Sessions

I N A S S E M B L Y

March 6, 2009

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

AN ACT to amend the civil practice law and rules, in relation to summary judgment procedure

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

Section 1. Subdivision (a) of rule 3212 of the civil practice law and rules, as amended by chapter 492 of the laws of 1996, is amended to read as follows:

(a) Time; kind of action. Any party may move for summary judgment in any action, after [issue has been joined] THE EARLIER OF DEFENDANT'S APPEARANCE BY ANSWER OR MOTION OR THE EXPIRATION OF THE TIME FOR DEFENDANT'S APPEARANCE SET FORTH IN RULE THREE HUNDRED TWENTY OF THIS CHAPTER, WHERE THE DEFENDANT HAS NOT APPEARED; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown. A MOTION FOR SUMMARY JUDGMENT MAY NOT BE MADE BY CROSS MOTION EXCEPT IN RESPONSE TO A MOTION FOR SUMMARY JUDGMENT OR A MOTION PERMITTED UNDER SUBDIVISION (A) OF RULE THIRTY-TWO HUNDRED ELEVEN OF THIS ARTICLE THAT IS SERVED AFTER ISSUE IS JOINED.

S 2. Subdivision (f) of rule 3211 of the civil practice law and rules is amended to read as follows:

(f) Extension of time to plead. [Service] UNLESS THE COURT ORDERS OTHERWISE, SERVICE of a notice of motion under subdivision (a) or (b) OF THIS RULE before service of a pleading responsive to the cause of action or defense sought to be dismissed, OR SERVICE OF A MOTION UNDER SUBDIVISION (A) OF RULE THIRTY-TWO HUNDRED TWELVE OF THIS ARTICLE PRIOR TO JOINDER OF ISSUE extends the time to serve the pleading until ten days

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

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after service of notice of entry of the order RESOLVING ALL SUCH MOTIONS. NOTWITHSTANDING THE FOREGOING, NO PARTY SHALL OBTAIN MORE THAN ONE EXTENSION OF TIME TO PLEAD BY REASON OF SUCH MOTION OR MOTIONS.

S 3. 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 only to actions commenced on or after such date.