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

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Cal. No. 801

2009-2010 Regular Sessions

I N A S S E M B L Y

May 14, 2009

Introduced by M. of A. SCHIMMINGER -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules, in relation to appellate review of an ex parte order or applications for provisional remedies

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

Section 1. Paragraph 3 of subdivision (a) of section 5701 of the civil practice law and rules is amended and a new paragraph 4 is added to read as follows:

3. from an order, where the motion it decided was made upon notice, refusing to vacate or modify a prior order, if the prior order would have been appealable as of right under paragraph two had it decided a motion made upon notice[.]; OR

4. FROM AN ORDER DENYING IN WHOLE OR IN PART AN APPLICATION FOR WHICH, BY ITS NATURE, THERE IS NOT AN ADVERSE PARTY.

S 2. Section 5704 of the civil practice law and rules, as added by chapter 730 of the laws of 1963, subdivision (a) as amended by chapter 435 of the laws of 1972 and subdivision (b) as amended by chapter 577 of the laws of 1966, is amended to read as follows:

S 5704. Review of ex parte orders OR EX PARTE APPLICATIONS FOR PROVISIONAL REMEDIES. (a) By appellate division. The appellate division or a justice thereof may vacate or modify any order granted without FORMAL notice PURSUANT TO SECTION TWENTY-TWO HUNDRED ELEVEN OF THIS CHAPTER to the adverse party by any court or a judge thereof from which an appeal would lie to such appellate division; and the appellate division OR A JUSTICE THEREOF may grant any order or provisional remedy applied for

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

LBD10088-02-0

without notice to the adverse party and refused by any court or a judge thereof from which an appeal would lie to such appellate division.

(b) By appellate term. The appellate term in the first or second judicial department or a justice thereof may vacate or modify any order granted without FORMAL notice PURSUANT TO SECTION TWENTY-TWO HUNDRED ELEVEN OF THIS CHAPTER to the adverse party by any court or a judge thereof from which an appeal would lie to such appellate term; and such appellate term OR A JUSTICE THEREOF may grant any order or provisional remedy applied for without notice to the adverse party and refused by any court or a judge thereof from which an appeal would lie to such appellate term.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.