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

6129

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 causes of action for which a motion for summary judgment in lieu of a complaint may be made

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

Section 1. Section 3213 of the civil practice law and rules, as amended by chapter 210 of the laws of 1969, is amended to read as follows:

S 3213. Motion for summary judgment in lieu of complaint. (A) MOTION IN LIEU OF COMPLAINT. When an action is based [upon an instrument for the payment of money only or upon any judgment] SOLELY UPON ANY ONE OR MORE OF THE FOLLOWING CAUSES OF ACTION, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint:

1. A CAUSE OF ACTION, OTHER THAN ONE ARISING OUT OF A CONSUMER CREDIT TRANSACTION, TO COLLECT A DEBT IN A SUM CERTAIN OR IN A SUM WHICH CAN BY COMPUTATION BE MADE CERTAIN BASED SOLELY UPON ONE OR MORE OF THE FOLLOWING DOCUMENTS EXECUTED BY THE DEFENDANT:

(I) AN ACKNOWLEDGEMENT THAT THE DEBT TO THE PLAINTIFF IS DUE;

(II) A NEGOTIABLE OR NON-NEGOTIABLE INSTRUMENT FOR THE PAYMENT OF MONEY;

(III) A WRITTEN AGREEMENT TO PAY A DEFINED AMOUNT FOR GOODS THAT HAVE BEEN SOLD AND DELIVERED OR SERVICES THAT HAVE BEEN RENDERED TO THE DEFENDANT;

(IV) A GUARANTY, SURETYSHIP AGREEMENT, UNDERTAKING, OR BOND SECURING ANY OF THE CAUSES OF ACTION SPECIFIED IN SUBPARAGRAPHS (I), (II), AND (III) OF THIS PARAGRAPH OR ON ANY OBLIGATION WHICH HAS BEEN REDUCED TO JUDGMENT.

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

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2. A CAUSE OF ACTION, OTHER THAN ONE ARISING OUT OF A CONSUMER CREDIT TRANSACTION, BASED UPON AN ACCOUNT THE ACCURACY OF WHICH HAS BEEN CONFIRMED IN A WRITING SIGNED BY THE DEFENDANT OR A CAUSE OF ACTION BASED UPON A WRITTEN GUARANTEE OF SUCH A CONFIRMED ACCOUNT.

3. A CAUSE OF ACTION TO ENFORCE A WRITTEN ACCORD OR STIPULATION SIGNED BY THE DEFENDANT AND ENTERED INTO TO SETTLE AN ACTION, A PROCEEDING, OR A PREVIOUSLY THREATENED ACTION OR PROCEEDING, WHERE THE WRITING STATES THAT IT IS FOR THAT PURPOSE.

4. A CAUSE OF ACTION BASED UPON A JUDGMENT.

5. A CAUSE OF ACTION BASED UPON AN INSTRUMENT FOR PAYMENT OF MONEY ONLY, OR A GUARANTY, SURETYSHIP AGREEMENT, UNDERTAKING, OR BOND SECURING THE SAME.

(B) ANSWERING PAPERS ON THE MOTION. The summons served with such motion papers shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion. The minimum time such motion shall be noticed to be heard shall be as provided by subdivision (a) of rule 320 for making an appearance, depending upon the method of service. If the plaintiff sets the hearing date of the motion later than the minimum time therefor, [he] THE PLAINTIFF may require the defendant to serve a copy of his, HER, OR ITS answering papers upon him, HER, OR IT within such extended period of time, not exceeding ten days, prior to such hearing date. No default judgment may be entered pursuant to subdivision (a) of section 3215 prior to the hearing date of the motion.

(C) DENIAL OF MOTION. If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise.

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