

2392

2009-2010 Regular Sessions

I N S E N A T E

February 19, 2009

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to permitting a plaintiff to recover against a third party defendant in certain cases

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 1405 to read as follows:

3 S 1405. PERMITTING PLAINTIFF, AS JUDGMENT CREDITOR AGAINST DEFENDANT,
4 TO RECOVER AND COLLECT UNSATISFIED JUDGMENT OR PORTION OF JUDGMENT
5 AGAINST THIRD-PARTY DEFENDANT OR CO-DEFENDANT LIABLE FOR CONTRIBUTION OR
6 INDEMNIFICATION. (A) WHERE A PLAINTIFF HAS ENTERED A JUDGMENT AGAINST A
7 DEFENDANT AND THE JUDGMENT REMAINS UNSATISFIED THIRTY DAYS AFTER IT HAS
8 BEEN SERVED ON THE DEFENDANT-JUDGMENT DEBTOR, AND WHERE JUDGMENT HAS
9 BEEN ENTERED IN FAVOR OF THE DEFENDANT-JUDGMENT DEBTOR AGAINST A CO-DE-
10 FENDANT OR THIRD-PARTY DEFENDANT ON A CAUSE OF ACTION FOR CONTRIBUTION
11 OR FOR CONTRACTUAL OR COMMON LAW INDEMNIFICATION, THE PLAINTIFF-JUDGMENT
12 CREDITOR MAY COLLECT ANY UNSATISFIED AMOUNT OF THE PLAINTIFF'S JUDGMENT
13 AGAINST THE DEFENDANT FROM THE CO-DEFENDANT OR THIRD-PARTY DEFENDANT UP
14 TO THE AMOUNT AWARDED ON THE CAUSE OF ACTION FOR CONTRIBUTION OR INDEM-
15 NIFICATION.

16 (B) WHERE THE PLAINTIFF'S JUDGMENT REMAINS UNSATISFIED THIRTY DAYS
17 AFTER IT HAS BEEN SERVED ON THE DEFENDANT-JUDGMENT DEBTOR, AND WHERE THE
18 DEFENDANT-JUDGMENT DEBTOR HAS A CAUSE OF ACTION FOR CONTRIBUTION OR FOR
19 CONTRACTUAL OR COMMON LAW INDEMNIFICATION WHICH HAS NOT BEEN REDUCED TO
20 JUDGMENT, THE PLAINTIFF-JUDGMENT CREDITOR MAY ATTACH, OR TAKE AN ASSIGN-
21 MENT FROM THE DEFENDANT-JUDGMENT DEBTOR OF, THE CAUSE OF ACTION FOR
22 CONTRIBUTION OR INDEMNIFICATION, AND PROSECUTE THE CAUSE OF ACTION IN
23 THE PLAINTIFF'S OWN NAME OR IN THE NAME OF THE DEFENDANT-JUDGMENT
24 DEBTOR, AND RECOVER A JUDGMENT THEREIN FOR THE SAME AMOUNT OF CONTRIB-

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

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1 UTION OR INDEMNIFICATION AS WOULD BE AWARDED TO THE DEFENDANT-JUDGMENT
2 DEBTOR IF THE DEFENDANT-JUDGMENT DEBTOR HAD SATISFIED PLAINTIFF'S
3 ORIGINAL JUDGMENT IN FULL. SUCH REMEDY IS IN ADDITION TO ANY OTHER MEANS
4 AVAILABLE TO THE PLAINTIFF-JUDGMENT DEBTOR FOR ENFORCEMENT OF THE JUDG-
5 MENT. THIS SECTION SHALL NOT AUTHORIZE DIRECT RECOVERY AGAINST A THIRD-
6 PARTY DEFENDANT IN THOSE CIRCUMSTANCES IN WHICH THE THIRD-PARTY CLAIM
7 AGAINST THAT THIRD-PARTY DEFENDANT WOULD HAVE BEEN BARRED BY THE
8 PROVISIONS OF SECTION ELEVEN OF THE WORKERS' COMPENSATION LAW.
9 S 2. This act shall take effect immediately, and shall apply to all
10 judgments entered by plaintiffs on or after such date.