

5964

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sen. SCHNEIDERMAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil practice law and rules, in relation to determination of finality for the purposes of certain appeals to the court of appeals and 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:

1 Section 1. Section 5513 of the civil practice law and rules is amended  
2 by adding a new subdivision (e) to read as follows:  
3 (E) COMPUTATION OF TIME FOR APPEAL TO THE COURT OF APPEALS WHERE AN  
4 ORDER OF THE APPELLATE DIVISION DIRECTS A NEW TRIAL UNLESS A PARTY STIP-  
5 ULATES TO MODIFICATION. WHERE AN ORDER OF THE APPELLATE DIVISION DIRECTS  
6 A NEW TRIAL UNLESS A PARTY STIPULATES TO A MODIFICATION OF AN ORDER OR  
7 JUDGMENT, AND THE PARTY SO STIPULATES, THE TIME WITHIN WHICH AN APPEAL  
8 MUST BE TAKEN OR A MOTION FOR PERMISSION TO APPEAL MADE SHALL BE  
9 COMPUTED FROM THE LATER OF THE SERVICE OF THE ORDER APPEALED FROM WITH  
10 NOTICE OF ENTRY OR THE SERVICE OF THE STIPULATION OF MODIFICATION WITH  
11 NOTICE OF ENTRY.  
12 S 2. Section 5611 of the civil practice law and rules is amended to  
13 read as follows:  
14 S 5611. When appellate division order deemed final. (A) If the appel-  
15 late division disposes of all the issues in the action its order shall  
16 be considered a final one, and a subsequent appeal may be taken only  
17 from that order and not from any judgment or order entered pursuant to  
18 it. If the aggrieved party is granted leave to replead or to perform  
19 some other act which would defeat the finality of the order, it shall  
20 not take effect as a final order until the expiration of the time limit-  
21 ed for such act without his OR HER having performed it.

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

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1 (B) AN ORDER OF THE APPELLATE DIVISION THAT FINALLY DETERMINES AN  
2 ACTION EXCEPT FOR DIRECTING A NEW TRIAL UNLESS A PARTY STIPULATES TO A  
3 MODIFICATION OF AN ORDER OR JUDGMENT SHALL BE FINAL UPON FILING OF A  
4 STIPULATION ACCEPTING SUCH MODIFICATION. THE APPELLATE DIVISION ORDER  
5 SHALL CONSTITUTE THE PAPER FROM WHICH THE APPEAL IS TO BE TAKEN.

6 S 3. Paragraph 3 of subdivision (a) of section 5701 of the civil prac-  
7 tice law and rules is amended to read as follows:

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

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

14 S 4. Section 5704 of the civil practice law and rules, as added by  
15 chapter 730 of the laws of 1963, subdivision (a) as amended by chapter  
16 435 of the laws of 1972 and subdivision (b) as amended by chapter 577 of  
17 the laws of 1966, is amended to read as follows:

18 S 5704. Review of ex parte orders OR EX PARTE APPLICATIONS FOR PROVI-  
19 SIONAL REMEDIES. (a) By appellate division. The appellate division or a  
20 justice thereof may vacate or modify any order granted without notice to  
21 the adverse party by any court or a judge thereof from which an appeal  
22 would lie to such appellate division; and the appellate division OR A  
23 JUSTICE THEREOF may grant any order or provisional remedy applied for  
24 without notice to the adverse party and refused by any court or a judge  
25 thereof from which an appeal would lie to such appellate division.

26 (b) By appellate term. The appellate term in the first or second judi-  
27 cial department or a justice thereof may vacate or modify any order  
28 granted without notice to the adverse party by any court or a judge  
29 thereof from which an appeal would lie to such appellate term; and such  
30 appellate term OR A JUSTICE THEREOF may grant any order or provisional  
31 remedy applied for without notice to the adverse party and refused by  
32 any court or a judge thereof from which an appeal would lie to such  
33 appellate term.

34 S 5. This act shall take effect on the first of January next succeed-  
35 ing the date on which it shall have become a law and shall apply to  
36 appeals from appellate division orders rendered on or after such effec-  
37 tive date.