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

7206

2011-2012 Regular Sessions

I N A S S E M B L Y

April 15, 2011

Introduced by M. of A. BRAUNSTEIN, WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the time for the making of a motion to dismiss for failure to state a cause of action and motion for summary judgment

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

Section 1. Subdivision (e) of rule 3211 of the civil practice law and rules, as amended by chapter 616 of the laws of 2005, is amended to read as follows:

(e) Number, time and waiver of objections; motion to [plead over] REPLEAD OR AMEND. At any time before service of the responsive pleading is required, a party may move on one or more of the grounds set forth in subdivision (a), and no more than one such motion shall be permitted. Any objection or defense based upon a ground set forth in paragraphs one, three, four, five and six of subdivision (a) is waived unless raised either by such motion or in the responsive pleading. A motion based upon a ground specified in paragraph two[, seven] or ten of subdivision (a) may be made at any subsequent time or in a later pleading, if one is permitted[; an]. A GROUND SPECIFIED IN PARAGRAPH SEVEN OF SUBDIVISION (A) OF THIS SECTION MAY BE ASSERTED IN A LATER PLEADING, OR BY MOTION IF PERMITTED, OR BY A DATE SET BY THE COURT BY AN ORDER MADE IN THE ACTION, OR, IF NO SUCH DATE IS SET, NO LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE FILING OF THE NOTE OF ISSUE; PROVIDED, HOWEVER, THAT THE DEADLINE FOR MAKING SUCH MOTION MAY BE EXTENDED BY THE COURT, UPON GOOD CAUSE SHOWN, IN THE INTEREST OF JUSTICE OR WITH THE CONSENT OF ALL OF THE PARTIES. UNLESS THE COURT ORDERS OTHERWISE, THE GRANTING OF A MOTION UNDER PARAGRAPH SEVEN OF SUBDIVISION (A) OF THIS SECTION SHALL NOT BAR A MOTION TO REPLEAD OR AMEND. AN objection that the summons and complaint, summons with notice, or notice of petition and petition was not properly

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

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served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship. The foregoing sentence shall not apply in any proceeding under subdivision one or two of section seven hundred eleven of the real property actions and proceedings law. The papers in opposition to a motion based on improper service shall contain a copy of the proof of service, whether or not previously filed. An objection based upon a ground specified in paragraph eight or nine of subdivision (a) is waived if a party moves on any of the grounds set forth in subdivision (a) without raising such objection or if, having made no objection under subdivision (a), he or she does not raise such objection in the responsive pleading.

S 2. 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; provided however, that the court may set a date BY AN ORDER MADE IN THE ACTION 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 BY AN ORDER MADE IN THE ACTION, 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]. THE DEADLINE FOR MAKING SUCH MOTION SET BY ORDER OF THE COURT OR PURSUANT TO THIS SUBDIVISION MAY BE EXTENDED BY THE COURT UPON good cause shown, IN THE INTEREST OF JUSTICE OR WITH THE CONSENT OF ALL OF THE PARTIES.

S 3. This act shall take effect immediately and apply to all actions pending on or after such effective date.