

4595

2011-2012 Regular Sessions

I N S E N A T E

April 13, 2011

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

1 Section 1. Subdivision (e) of rule 3211 of the civil practice law and
2 rules, as amended by chapter 616 of the laws of 2005, is amended to read
3 as follows:
4 (e) Number, time and waiver of objections; motion to [plead over]
5 REPLEAD OR AMEND. At any time before service of the responsive pleading
6 is required, a party may move on one or more of the grounds set forth in
7 subdivision (a), and no more than one such motion shall be permitted.
8 Any objection or defense based upon a ground set forth in paragraphs
9 one, three, four, five and six of subdivision (a) is waived unless
10 raised either by such motion or in the responsive pleading. A motion
11 based upon a ground specified in paragraph two[, seven] or ten of subdivi-
12 sion (a) may be made at any subsequent time or in a later pleading, if
13 one is permitted[; an]. A GROUND SPECIFIED IN PARAGRAPH SEVEN OF SUBDI-
14 VISION (A) OF THIS SECTION MAY BE ASSERTED IN A LATER PLEADING, OR BY
15 MOTION IF PERMITTED, OR BY A DATE SET BY THE COURT BY AN ORDER MADE IN
16 THE ACTION, OR, IF NO SUCH DATE IS SET, NO LATER THAN ONE HUNDRED TWENTY
17 DAYS AFTER THE FILING OF THE NOTE OF ISSUE; PROVIDED, HOWEVER, THAT THE
18 DEADLINE FOR MAKING SUCH MOTION MAY BE EXTENDED BY THE COURT, UPON GOOD
19 CAUSE SHOWN, IN THE INTEREST OF JUSTICE OR WITH THE CONSENT OF ALL OF
20 THE PARTIES. UNLESS THE COURT ORDERS OTHERWISE, THE GRANTING OF A MOTION
21 UNDER PARAGRAPH SEVEN OF SUBDIVISION (A) OF THIS SECTION SHALL NOT BAR A
22 MOTION TO REPLEAD OR AMEND. AN objection that the summons and complaint,
23 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.

LBD09310-01-1

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

14 S 2. Subdivision (a) of rule 3212 of the civil practice law and rules,
15 as amended by chapter 492 of the laws of 1996, is amended to read as
16 follows:

17 (a) Time; kind of action. Any party may move for summary judgment in
18 any action, after issue has been joined; provided however, that the
19 court may set a date BY AN ORDER MADE IN THE ACTION after which no such
20 motion may be made, such date being no earlier than thirty days after
21 the filing of the note of issue. If no such date is set by the court BY
22 AN ORDER MADE IN THE ACTION, such motion shall be made no later than one
23 hundred twenty days after the filing of the note of issue[, except with
24 leave of court on]. THE DEADLINE FOR MAKING SUCH MOTION SET BY ORDER OF
25 THE COURT OR PURSUANT TO THIS SUBDIVISION MAY BE EXTENDED BY THE COURT
26 UPON good cause shown, IN THE INTEREST OF JUSTICE OR WITH THE CONSENT OF
27 ALL OF THE PARTIES.

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