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

7552

2013-2014 Regular Sessions

I N A S S E M B L Y

May 23, 2013

Introduced by M. of A. 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, the judiciary law, the penal law and the uniform commercial code, in relation to wrongful financing statements filed under the uniform commercial code

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

Section 1. Subdivision (c) of section 403 of the civil practice law and rules is amended to read as follows:

(c) Manner of service. A notice of petition shall be served in the same manner as a summons in an action EXCEPT THAT A NOTICE OF PETITION IN A SPECIAL PROCEEDING BROUGHT PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (D) OF SECTION 9-518 OF THE UNIFORM COMMERCIAL CODE SHALL BE SERVED BY MAILING IT BY FIRST CLASS MAIL TO THE PERSON TO BE SERVED AT HIS OR HER LAST KNOWN RESIDENCE, PROOF OF SUCH SERVICE SHALL BE FILED WITH THE CLERK OF THE COURT DESIGNATED IN THE NOTICE OF PETITION WITHIN TWENTY DAYS OF SUCH MAILING AND SERVICE SHALL BE COMPLETE FIVE DAYS AFTER SUCH FILING.

S 2. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (s) to read as follows:

(S) ESTABLISH RULES FOR SPECIAL PROCEEDINGS AUTHORIZED BY SUBDIVISION (D) OF SECTION 9-518 OF THE UNIFORM COMMERCIAL CODE. SUCH RULES MAY AUTHORIZE THE COURT IN WHICH SUCH A SPECIAL PROCEEDING IS PENDING TO ORDER A REFEREE TO HEAR AND DETERMINE SUCH SPECIAL PROCEEDING.

S 3. The penal law is amended by adding a new section 175.37 to read as follows:

S 175.37 OFFERING A FALSE INSTRUMENT FOR FILING IN RETALIATION FOR THE PERFORMANCE OF OFFICIAL DUTIES.

A PERSON IS GUILTY OF OFFERING A FALSE INSTRUMENT FOR FILING IN RETALIATION FOR THE PERFORMANCE OF OFFICIAL DUTIES WHEN HE OR SHE COMMITS THE

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

LBD08971-01-3

OFFENSE OF OFFERING A FALSE INSTRUMENT FOR FILING IN THE SECOND DEGREE AND:

1. SUCH INSTRUMENT IS A FINANCING STATEMENT THE CONTENTS OF WHICH ARE PRESCRIBED BY SECTION 9-502 OF THE UNIFORM COMMERCIAL CODE; AND

2. THE COLLATERAL COVERED IN SUCH FINANCING STATEMENT IS THE PROPERTY OF A PUBLIC SERVANT WHO IS A STATE OR LOCAL OFFICER AS DEFINED BY SECTION TWO OF THE PUBLIC OFFICERS LAW OR WHO OTHERWISE IS A JUDGE OR JUSTICE OF THE UNIFIED COURT SYSTEM; AND

3. IT IS ON ACCOUNT OF THAT PUBLIC SERVANT'S PERFORMANCE OF OFFICIAL DUTIES IN HIS OR HER CAPACITY AS A STATE OR LOCAL OFFICER OR JUDGE OR JUSTICE OF THE UNIFIED COURT SYSTEM THAT SUCH FINANCING INSTRUMENT IS FILED.

OFFERING A FALSE INSTRUMENT FOR FILING IN RETALIATION FOR THE PERFORMANCE OF OFFICIAL DUTIES IS A CLASS D FELONY.

S 4. Section 9-518 of the uniform commercial code is amended by adding a new subdivision (d) to read as follows:

(D) SPECIAL PROCEEDING TO REDACT OR EXPUNGE A WRONGFULLY FILED OR AMENDED FINANCING STATEMENT. (1) PROVIDED HE OR SHE IS AN EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION THEREOF, A PERSON IDENTIFIED AS A DEBTOR IN A FINANCING STATEMENT FILED PURSUANT TO THIS SUBPART MAY BRING A SPECIAL PROCEEDING AGAINST THE FILER OF SUCH STATEMENT OR ANY AMENDMENT THEREOF, OR AGAINST THE PERSON ON WHOSE BEHALF THE STATEMENT WAS FILED OR AMENDED, TO INVALIDATE THE FILING OR AMENDMENT THEREOF WHERE SUCH STATEMENT WAS WRONGFULLY FILED OR AMENDED. SUCH SPECIAL PROCEEDING SHALL BE GOVERNED BY ARTICLE FOUR OF THE CIVIL PRACTICE LAW AND RULES, AND SHALL BE COMMENCED IN THE SUPREME COURT OF ALBANY COUNTY, THE COUNTY OF THE PETITIONER'S RESIDENCE OR A COUNTY WITHIN THE JUDICIAL DISTRICT IN WHICH ANY PROPERTY COVERED BY THE FINANCING STATEMENT IS LOCATED. NO FEE PURSUANT TO ARTICLE EIGHTY OF THE CIVIL PRACTICE LAW AND RULES SHALL BE COLLECTED IN SUCH SPECIAL PROCEEDING.

(2) THE PETITION IN A SPECIAL PROCEEDING HEREUNDER SHALL PLEAD THAT:

(A) THE FINANCING STATEMENT FILED OR AMENDED BY THE RESPONDENT PURSUANT TO SECTION 9-509 WAS WRONGFULLY FILED OR AMENDED;

(B) SUCH FINANCING STATEMENT DOES NOT RELATE TO AN INTEREST IN A CONSUMER-GOODS TRANSACTION OR ANY OTHER COMMERCIAL TRANSACTION BETWEEN THE PETITIONER AND THE RESPONDENT;

(C) IT IS ON ACCOUNT OF THE PETITIONER'S PERFORMANCE OF OFFICIAL DUTIES IN HIS OR HER CAPACITY AS AN EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION THEREOF THAT SUCH FINANCING INSTRUMENT WAS FILED; AND

(D) PROMPT REDACTION OR INVALIDATION OF THE FINANCING STATEMENT IS NECESSARY TO AVERT OR MITIGATE PREJUDICE TO THE PETITIONER OR TO THE ADMINISTRATION OF GOVERNMENT.

(3) IF THE COURT DETERMINES THAT THE RESPONDENT WRONGFULLY FILED OR AMENDED, OR CAUSED TO BE WRONGFULLY FILED OR AMENDED, A FINANCING STATEMENT PURSUANT TO SECTION 9-509, THE COURT SHALL ORDER THE EXPUNGEMENT OF SUCH STATEMENT OR ITS REDACTION IN THE PUBLIC RECORDS IN THE OFFICE IN WHICH SUCH STATEMENT IS FILED, AS APPROPRIATE, AND MAY GRANT ANY ADDITIONAL RELIEF AUTHORIZED BY SECTION 9-625. IN SUCH CASE, THE COURT SHALL CAUSE A COPY OF ITS ORDER TO BE FILED WITH THE SECRETARY OF STATE OR OTHER APPROPRIATE FILING OFFICE PURSUANT TO THIS CHAPTER. THE COURT ALSO MAY ENJOIN THE RESPONDENT FROM FILING OR AMENDING ANY FURTHER FINANCING STATEMENT PURSUANT TO THIS ARTICLE WITHOUT LEAVE OF THE COURT. IF THE RESPONDENT IS INCARCERATED AT THE TIME THE COURT ISSUES AN ORDER CONTAINING SUCH AN INJUNCTION, THE COURT SHALL CAUSE THE HEAD OF THE CORRECTIONAL FACILITY IN WHICH THE RESPONDENT IS INCARCERATED TO RECEIVE A COPY OF SUCH DETERMINATION.

(4) FOR PURPOSES OF THIS SUBDIVISION, A FINANCING STATEMENT IS WRONGFULLY FILED OR AMENDED WHERE, AT THE TIME OF ITS FILING OR AMENDMENT, IT CONTAINS A FALSE STATEMENT OR FALSE INFORMATION.

S 5. This act shall take effect immediately; provided that the provisions of section three of this act shall not take effect until the first of November next succeeding the date on which this act shall have become a law; provided, further, subdivision 2 of section 175.35 of the penal law, as added by section three of this act, shall apply solely to the filing or amendment of financing statements under subpart 1 of part 5 of article 9 of the uniform commercial code on or after such effective date.