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

6125

I N S E N A T E

(PREFILED)

January 8, 2014

Introduced by Sen. DeFRANCISCO -- 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 motions for summary judgment in lieu of complaint; and to repeal section 3213 of such law relating thereto

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

Section 1. Section 3213 of the civil practice law and rules is REPEALED and a new section 3213 is added to read as follows:

S 3213. MOTION FOR SUMMARY JUDGMENT IN LIEU OF COMPLAINT. (A) MOTION IN LIEU OF COMPLAINT. THE PLAINTIFF MAY SERVE, WITH THE SUMMONS, A MOTION FOR SUMMARY JUDGMENT, WITH SUPPORTING PAPERS DESCRIBED IN THIS SECTION, WHEN THE ACTION IS BASED SOLELY UPON:

(1) ANY JUDGMENT,

(2) AN INSTRUMENT FOR THE PAYMENT OF MONEY ONLY,

(3) ANY OTHER WRITING, SIGNED BY THE DEFENDANT, THAT CONTAINS A CLEAR, UNAMBIGUOUS, ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE OBLIGATION FOR THE PAYMENT OF MONEY IN A SUM CERTAIN OR IN A SUM WHICH CAN BY COMPUTATION BE MADE CERTAIN, OR

(4) A SIGNED GUARANTY, SURETYSHIP AGREEMENT, UNDERTAKING OR BOND SECURING AN OBLIGATION DESCRIBED IN PARAGRAPHS ONE, TWO OR THREE OF THIS SUBDIVISION.

(B) SUPPORTING PROOF. A MOTION FOR SUMMARY JUDGMENT UNDER THIS SECTION SHALL BE SUPPORTED AS PROVIDED IN SUBDIVISION (B) OF RULE THIRTY-TWO HUNDRED TWELVE OF THIS ARTICLE. IN ADDITION, THE MOTION SHALL INCLUDE A COPY OF THE DOCUMENT ON WHICH THE ACTION IS BASED. IF THE ACTION IS BASED ON A JUDGMENT, THE PAPERS SHALL INCLUDE A COPY OF THE JUDGMENT CERTIFIED OR AUTHENTICATED IN ACCORDANCE WITH APPLICABLE LAW.

(C) ANSWERING AND REPLY PAPERS ON THE MOTION. (1) THE SUMMONS SERVED WITH SUCH MOTION PAPERS AND THE NOTICE OF MOTION SHALL STATE THAT THE DEFENDANT MUST SERVE ANSWERING PAPERS ON THE MOTION ON OR BEFORE A DATE WHICH IS NOT LESS THAN THIRTY DAYS AFTER THE COMPLETION OF SERVICE ON THE DEFENDANT OF THE SUMMONS AND SUPPORTING PAPERS.

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

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(2) THE NOTICE OF MOTION SHALL ALSO STATE THE DATE ON WHICH THE MOTION WILL BE HEARD, WHICH SHALL BE AT LEAST FOURTEEN DAYS AFTER THE ANSWERING PAPERS ARE DUE.

(3) ANY REPLY PAPERS SHALL BE SERVED SEVEN DAYS BEFORE THE HEARING DATE.

(4) IF COMPLETION OF SERVICE DOES NOT OCCUR WITH RESPECT TO ALL DEFENDANTS AT LEAST THIRTY DAYS PRIOR TO THE DATE STATED IN THE NOTICE OF MOTION FOR SERVICE OF ANSWERING PAPERS, THE PLAINTIFF MAY SET A NEW HEARING DATE BY SERVING AN AMENDED NOTICE OF MOTION. THERE MAY BE ONLY ONE HEARING DATE FOR ALL DEFENDANTS UNDER THIS SECTION. THE AMENDED NOTICE SHALL SET A NEW RESPONSE DATE FOR SERVICE OF ANSWERING PAPERS AND A NEW HEARING DATE WHICH SHALL COMPLY WITH THE REQUIREMENTS OF PARAGRAPHS ONE AND TWO OF THIS SUBDIVISION. WITH RESPECT TO ANY DEFENDANT WHO HAS BEEN SERVED WITH THE SUMMONS AND ORIGINAL NOTICE OF MOTION, THE AMENDED NOTICE OF MOTION MAY BE SERVED ON SUCH DEFENDANT IN THE MANNER SET FORTH UNDER RULE TWENTY-ONE HUNDRED THREE OF THIS CHAPTER.

(5) NO DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO SUBDIVISION (A) OF SECTION THIRTY-TWO HUNDRED FIFTEEN OF THIS ARTICLE PRIOR TO THE HEARING DATE OF THE MOTION.

(D) DECISION ON THE MOTION; RELIEF. THE COURT SHALL DENY THE MOTION IF IT DETERMINES THAT NONE OF THE CRITERIA SET FORTH IN SUBDIVISION (A) OF THIS SECTION IS SATISFIED. OTHERWISE, THE CRITERIA FOR DECIDING THE MOTION SHALL BE IDENTICAL TO THOSE APPLICABLE WITH RESPECT TO A MOTION UNDER RULE THIRTY-TWO HUNDRED TWELVE OF THIS ARTICLE. THE COURT MAY ENTER SUCH ORDERS AND GRANT SUCH RELIEF AS ARE PROVIDED IN RULE THIRTY-TWO HUNDRED TWELVE OF THIS ARTICLE. IF SUMMARY JUDGMENT DISPOSING OF THE MOTION IN ITS ENTIRETY IS NOT GRANTED, THE MOVING AND ANSWERING PAPERS SHALL BE DEEMED THE COMPLAINT AND ANSWER, RESPECTIVELY, UNLESS THE COURT ORDERS PLEADINGS BE SERVED, IN WHICH CASE, THE COMPLAINT AND ANSWER SHALL BE SERVED WITHIN SUCH TIME AS THE COURT SHALL ORDER.

(C) ACTIONS AGAINST CONSUMERS. THIS SECTION IS INAPPLICABLE WHERE THE PLAINTIFF'S CLAIM IS BASED UPON A TRANSACTION ENTERED INTO BETWEEN A CREDITOR, SELLER, TRANSFEROR OR LESSOR AS ONE PARTY WITH A NATURAL PERSON WHO IS THE DEBTOR, BUYER, TRANSFEREE OR LESSEE AS THE SECOND PARTY, AND THE MONEY, OTHER PROPERTY OR SERVICES WHICH ARE THE SUBJECT OF THE TRANSACTION ARE PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.