

7552

2015-2016 Regular Sessions

I N A S S E M B L Y

May 18, 2015

Introduced by M. of A. BRENNAN, 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 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. Paragraph 3 of subdivision (a) of section 5701 of the civil  
2 practice law and rules is amended and a new paragraph 4 is added to read  
3 as follows:

4 3. from an order, where the motion it decided was made upon notice,  
5 refusing to vacate or modify a prior order, if the prior order would  
6 have been appealable as of right under paragraph two had it decided a  
7 motion made upon notice; OR

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

10 S 2. Section 5704 of the civil practice law and rules, as added by  
11 chapter 730 of the laws of 1963, subdivision (a) as amended by chapter  
12 435 of the laws of 1972, and subdivision (b) as amended by chapter 577  
13 of the laws of 1966, is amended to read as follows:

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

22 (b) By appellate term. The appellate term in the first or second judi-  
23 cial department or a justice thereof may vacate or modify any order

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

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1 granted without notice to the adverse party by any court or a judge  
2 thereof from which an appeal would lie to such appellate term; and such  
3 appellate term OR A JUSTICE THEREOF may grant any order or provisional  
4 remedy applied for without notice to the adverse party and refused by  
5 any court or a judge thereof from which an appeal would lie to such  
6 appellate term.

7 S 3. This act shall take effect on the first of January next succeed-  
8 ing the date on which it shall have become a law.