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

5188

2015-2016 Regular Sessions

I N S E N A T E

May 6, 2015

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 use of expert affidavits in summary judgment motions

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

Section 1. Subdivision (b) of rule 3212 of the civil practice law and rules, as amended by charter 651 of the laws of 1973, is amended to read as follows:

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. *WHERE AN EXPERT AFFIDAVIT IS SUBMITTED IN SUPPORT OF, OR OPPOSITION TO, A MOTION FOR SUMMARY JUDGMENT, THE COURT SHALL NOT DECLINE TO CONSIDER THE AFFIDAVIT BECAUSE AN EXPERT EXCHANGE PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (1) OF SUBDIVISION (D) OF SECTION 3101 WAS NOT FURNISHED PRIOR TO THE SUBMISSION OF THE AFFIDAVIT.* The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.

S 2. This act shall take effect immediately and shall apply to all pending cases for which a summary judgment motion is made on or after

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

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the date on which it shall have become law and all cases filed on or after such effective date.