

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:

1 Section 1. Subdivision (b) of rule 3212 of the civil practice law and
2 rules, as amended by charter 651 of the laws of 1973, is amended to read
3 as follows:
4 (b) Supporting proof; grounds; relief to either party. A motion for
5 summary judgment shall be supported by affidavit, by a copy of the
6 pleadings and by other available proof, such as depositions and written
7 admissions. The affidavit shall be by a person having knowledge of the
8 facts; it shall recite all the material facts; and it shall show that
9 there is no defense to the cause of action or that the cause of action
10 or defense has no merit. WHERE AN EXPERT AFFIDAVIT IS SUBMITTED IN
11 SUPPORT OF, OR OPPOSITION TO, A MOTION FOR SUMMARY JUDGMENT, THE COURT
12 SHALL NOT DECLINE TO CONSIDER THE AFFIDAVIT BECAUSE AN EXPERT EXCHANGE
13 PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (1) OF SUBDIVISION (D) OF
14 SECTION 3101 WAS NOT FURNISHED PRIOR TO THE SUBMISSION OF THE AFFIDAVIT.
15 The motion shall be granted if, upon all the papers and proof submitted,
16 the cause of action or defense shall be established sufficiently to
17 warrant the court as a matter of law in directing judgment in favor of
18 any party. Except as provided in subdivision (c) of this rule the motion
19 shall be denied if any party shall show facts sufficient to require a
20 trial of any issue of fact. If it shall appear that any party other than
21 the moving party is entitled to a summary judgment, the court may grant
22 such judgment without the necessity of a cross-motion.
23 S 2. This act shall take effect immediately and shall apply to all
24 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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1 the date on which it shall have become law and all cases filed on or
2 after such effective date.