

2612

2015-2016 Regular Sessions

I N A S S E M B L Y

January 20, 2015

Introduced by M. of A. WEPRIN -- read once and referred 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 repealing certain
provisions of such law relating thereto

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

1 Section 1. Section 3213 of the civil practice law and rules is
2 REPEALED and a new section 3213 is added to read as follows:
3 S 3213. MOTION FOR SUMMARY JUDGMENT IN LIEU OF COMPLAINT. (A) MOTION
4 IN LIEU OF COMPLAINT. THE PLAINTIFF MAY SERVE, WITH THE SUMMONS, A
5 MOTION FOR SUMMARY JUDGMENT, WITH SUPPORTING PAPERS DESCRIBED IN THIS
6 SECTION, WHEN THE ACTION IS BASED SOLELY UPON:
7 (1) ANY JUDGMENT;
8 (2) AN INSTRUMENT FOR THE PAYMENT OF MONEY ONLY;
9 (3) ANY OTHER WRITING, SIGNED BY THE DEFENDANT, THAT CONTAINS A CLEAR,
10 UNAMBIGUOUS, ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE OBLIGATION FOR THE
11 PAYMENT OF MONEY IN A SUM CERTAIN OR IN A SUM WHICH CAN BY COMPUTATION
12 BE MADE CERTAIN; OR
13 (4) A SIGNED GUARANTY, SURETYSHIP AGREEMENT, UNDERTAKING OR BOND
14 SECURING AN OBLIGATION DESCRIBED IN PARAGRAPH ONE, TWO OR THREE OF THIS
15 SUBDIVISION.
16 (B) SUPPORTING PROOF. A MOTION FOR SUMMARY JUDGMENT UNDER THIS SECTION
17 SHALL BE SUPPORTED AS PROVIDED IN SUBDIVISION (B) OF RULE 3212 OF THIS
18 ARTICLE. IN ADDITION, SUCH MOTION SHALL INCLUDE A COPY OF THE DOCUMENT
19 ON WHICH THE ACTION IS BASED. IF THE ACTION IS BASED ON A JUDGMENT, THE
20 PAPERS SHALL INCLUDE A COPY OF THE JUDGMENT CERTIFIED OR AUTHENTICATED
21 IN ACCORDANCE WITH APPLICABLE LAW.
22 (C) ANSWERING AND REPLY PAPERS ON THE MOTION. (1) THE SUMMONS SERVED
23 WITH SUCH MOTION PAPERS AND THE NOTICE OF MOTION SHALL STATE THAT THE
24 DEFENDANT MUST SERVE ANSWERING PAPERS ON THE MOTION ON OR BEFORE A DATE

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

LBD07727-01-5

1 WHICH IS NOT LESS THAN THIRTY DAYS AFTER THE COMPLETION OF SERVICE ON
2 THE DEFENDANT OF THE SUMMONS AND SUPPORTING PAPERS.

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

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

8 (4) IF COMPLETION OF SERVICE DOES NOT OCCUR WITH RESPECT TO ALL
9 DEFENDANTS AT LEAST THIRTY DAYS PRIOR TO THE DATE STATED IN THE NOTICE
10 OF MOTION FOR SERVICE OF ANSWERING PAPERS, THE PLAINTIFF MAY SET A NEW
11 HEARING DATE BY SERVING AN AMENDED NOTICE OF MOTION. THERE MAY BE ONLY
12 ONE HEARING DATE FOR ALL DEFENDANTS UNDER THIS SECTION. THE AMENDED
13 NOTICE SHALL SET A NEW RESPONSE DATE FOR SERVICE OF ANSWERING PAPERS AND
14 A NEW HEARING DATE WHICH SHALL COMPLY WITH THE REQUIREMENTS OF PARA-
15 GRAPHS ONE AND TWO OF THIS SUBDIVISION. WITH RESPECT TO ANY DEFENDANT
16 WHO HAS BEEN SERVED WITH THE SUMMONS AND ORIGINAL NOTICE OF MOTION, THE
17 AMENDED NOTICE OF MOTION MAY BE SERVED ON SUCH DEFENDANT IN THE MANNER
18 SET FORTH UNDER RULE 2103 OF THIS CHAPTER.

19 (5) NO DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO SUBDIVISION (A) OF
20 SECTION 3215 OF THIS ARTICLE PRIOR TO THE HEARING DATE OF THE MOTION.

21 (D) DECISION ON THE MOTION; RELIEF. THE COURT SHALL DENY THE MOTION IF
22 IT DETERMINES THAT NONE OF THE CRITERIA SET FORTH IN SUBDIVISION (A) OF
23 THIS SECTION IS SATISFIED. OTHERWISE, THE CRITERIA FOR DECIDING THE
24 MOTION ARE IDENTICAL TO THOSE APPLICABLE WITH RESPECT TO A MOTION UNDER
25 RULE 3212 OF THIS ARTICLE. THE COURT MAY ENTER SUCH ORDERS AND GRANT
26 SUCH RELIEF AS ARE PROVIDED IN RULE 3212 OF THIS ARTICLE. IF SUMMARY
27 JUDGMENT DISPOSING OF THE MOTION IN ITS ENTIRETY IS NOT GRANTED, THE
28 MOVING AND ANSWERING PAPERS SHALL BE DEEMED THE COMPLAINT AND ANSWER,
29 RESPECTIVELY, UNLESS THE COURT ORDERS PLEADINGS BE SERVED, IN WHICH
30 CASE, THE COMPLAINT AND ANSWER SHALL BE SERVED WITHIN SUCH TIME AS THE
31 COURT SHALL ORDER.

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

39 S 2. This act shall take effect on the first of January next succeed-
40 ing the date on which it shall have become a law.