STATE OF NEW YORK

5442

2017-2018 Regular Sessions

IN ASSEMBLY

February 9, 2017

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

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, as amended by chapter 210 of the laws of 1969, is amended to read as follows:

§ 3213. Motion for summary judgment in lieu of complaint. [~~When an action is based upon an instrument for the payment of money only or upon any judgment, the~~] **(a) Motion in lieu of complaint. The** plaintiff may serve**,** with the summons**,** a notice of motion for summary judgment [~~and the~~]**, with** supporting papers [~~in lieu of a complaint~~] **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 paragraph (1), (2) or (3) of this subdivision.

[~~The summons served with such motion papers shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion. The minimum time such motion shall be noticed to be heard shall be as provided by subdivision (a) of rule 320 for making an appearance, depending upon the method of service. If the plaintiff sets the hearing date of the motion later than the minimum time therefor, he may require the defendant to serve a copy of his answering papers upon him within such extended period of time, not exceeding ten days, prior to such hearing date.~~]

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

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(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.

(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 (1) and (2) 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 3215 prior to the hearing date of the motion. [~~If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise.~~]

(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 are satisfied. Otherwise, the criteria for deciding the motion are 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.

(e) Actions against consumers or with respect to home loans. This section is inapplicable:

(1) 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; or

(2) where the plaintiff's claim is based upon a note evidencing a "home loan" as defined in subdivision five of section thirteen hundred four of the real property actions and proceedings law.

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