

STATE OF NEW YORK

S. 4827

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2019-2020 Regular Sessions

SENATE - ASSEMBLY

March 26, 2019

IN SENATE -- Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. WEINSTEIN, JAFFEE, COLTON, GALEF, ABINANTI, ZEBROWSKI, O'DONNELL, FAHY, PEOPLES-STOKES, L. ROSENTHAL, M. G. MILLER, DINOWITZ, SEAWRIGHT, GLICK, WEPRIN, MOSLEY, TAYLOR -- Multi-Sponsored by -- M. of A. CAHILL, COOK, CYMBROWITZ, EPSTEIN, GOTTFRIED, McDONOUGH, PERRY -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to consumer credit transactions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "consumer credit fairness act".

3 § 2. Subdivision 2 of section 213 of the civil practice law and rules,
4 as amended by chapter 709 of the laws of 1988, is amended to read as
5 follows:

6 2. an action upon a contractual obligation or liability, express or
7 implied, except as provided in section two hundred thirteen-a or two
8 hundred fourteen-h of this article or article 2 of the uniform commer-
9 cial code or article 36-B of the general business law;

10 § 3. The civil practice law and rules is amended by adding a new
11 section 214-h to read as follows:

12 § 214-h. Certain actions arising out of consumer credit transactions
13 to be commenced within three years. An action arising out of a consumer
14 credit transaction where a purchaser, borrower or debtor is a defendant
15 must be commenced within three years, except as provided in section two
16 hundred thirteen-a of this article or article 2 of the uniform commer-
17 cial code or article 36-B of the general business law. When the period
18 within which an action may be commenced under this section has expired,

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

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the right to collect consumer credit debt is extinguished as well as the remedy.

For purposes of this section, "the right to collect consumer credit debt" shall mean any attempts by the creditor, third party purchaser, or other authorized third party to collect such debt including, but not limited to, calls, mail or other attempts to collect.

§ 4. The civil practice law and rules is amended by adding a new section 306-d to read as follows:

§ 306-d. Additional mailing of notice in an action arising out of a consumer credit transaction. (a) At the time of filing with the clerk of the proof of service of the summons and complaint in an action arising out of a consumer credit transaction, the plaintiff shall submit to the clerk a stamped unsealed envelope addressed to the defendant together with a written notice in clear type of no less than twelve-point in size, in both English and Spanish, and containing the following language:

ADDITIONAL NOTICE OF LAWSUIT

(NAME OF COURT)

(COUNTY)

(STREET ADDRESS, ROOM NUMBER)

(CITY, STATE, ZIP CODE)

(NAME OF DEFENDANT)

(ADDRESS OF DEFENDANT)

Plaintiff:

Defendant:

Name of original creditor, unless same:

Index number:

Attention: a lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt.

You may wish to contact an attorney.

You should respond to the lawsuit as soon as possible by filing an "answer" which may be done at the court clerk's office listed above.

If you do not respond to the lawsuit, the court may enter a money judgment against you. Once entered, a judgment is good and can be used against you for twenty years, and your personal property and money, including a portion of your paycheck and/or bank account, may be taken from you. Also, a judgment may affect your credit score and can affect your ability to rent a home, find a job, or take out a loan.

You CANNOT be arrested or sent to jail for owing a debt.

Additional information can be found at the court system website at:
www.nycourts.gov

Sources of information and assistance:

The court encourages you to inform yourself about your options as a defendant in this lawsuit. In addition to seeking assistance from a private attorney or legal aid office, there are free legal assistance programs that you can use online to help you represent yourself in this lawsuit.

For further information, or to locate an entity or program near you, you may visit the New York state unified court system's "resources for unrepresented litigants" website at:

<http://ww2.nycourts.gov/RULES/CCR/resources.shtml>

(b) The face of the envelope shall be addressed to the defendant at the address at which process was served, and shall contain the defendant's name, address (including apartment number) and zip code. The face of the envelope also shall state the appropriate clerk's office as its return address.

(c) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in subdivision (a) of this section. No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable. Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

§ 5. Subdivision (a) of section 3012 of the civil practice law and rules is amended to read as follows:

(a) Service of pleadings. The complaint may be served with the summons, except that in an action arising out of a consumer credit transaction, the complaint shall be served with the summons. A subsequent pleading asserting new or additional claims for relief shall be served upon a party who has not appeared in the manner provided for service of a summons. In any other case, a pleading shall be served in the manner provided for service of papers generally. Service of an answer or reply shall be made within twenty days after service of the pleading to which it responds.

§ 6. Rule 3016 of the civil practice law and rules is amended by adding a new subdivision (j) to read as follows:

(j) Consumer credit transactions. In an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, the contract or other written instrument on which the action is based shall be attached to the complaint and the following information shall be set forth in the complaint:

1. The name of the original creditor;

2. The last four digits of the original account number;

3. The date and amount of the last payment;

4. If the complaint contains a cause of action based on an account stated, the date that the final statement of account was mailed to the defendant;

5. An itemization of the amount sought, by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges. The term "finance charge" means a finance charge as defined in Regulation Z, 12 C.F.R. § 226.4;

6. Whether the plaintiff is the original creditor. If the plaintiff is not the original creditor, the complaint shall also state (i) the date on which the debt was sold or assigned to the plaintiff; (ii) the name of each previous owner of the account and the date on which the debt was assigned to that owner; and (iii) the amount due at the time of the sale or assignment of the debt by the original creditor; and

7. Any matters required to be stated with particularity pursuant to rule three thousand fifteen of this article.

§ 7. Subdivision (e) of rule 3211 of the civil practice law and rules, as amended by chapter 616 of the laws of 2005, is amended to read as follows:

(e) Number, time and waiver of objections; motion to plead over. At any time before service of the responsive pleading is required, a party

1 may move on one or more of the grounds set forth in subdivision (a) of
2 this rule, and no more than one such motion shall be permitted. Any
3 objection or defense based upon a ground set forth in paragraphs one,
4 three, four, five and six of subdivision (a) of this rule is waived
5 unless raised either by such motion or in the responsive pleading. A
6 motion based upon a ground specified in paragraph two, seven or ten of
7 subdivision (a) of this rule may be made at any subsequent time or in a
8 later pleading, if one is permitted; an objection that the summons and
9 complaint, summons with notice, or notice of petition and petition was
10 not properly served is waived if, having raised such an objection in a
11 pleading, the objecting party does not move for judgment on that ground
12 within sixty days after serving the pleading, unless the court extends
13 the time upon the ground of undue hardship. The foregoing sentence shall
14 not apply in any proceeding to collect a debt arising out of a consumer
15 credit transaction where a consumer is a defendant or under subdivision
16 one or two of section seven hundred eleven of the real property actions
17 and proceedings law. The papers in opposition to a motion based on
18 improper service shall contain a copy of the proof of service, whether
19 or not previously filed. An objection based upon a ground specified in
20 paragraph eight or nine of subdivision (a) of this rule is waived if a
21 party moves on any of the grounds set forth in subdivision (a) of this
22 rule without raising such objection or if, having made no objection
23 under subdivision (a) of this rule, he or she does not raise such
24 objection in the responsive pleading which, in any action to collect a
25 debt arising out of a consumer credit transaction where a consumer is a
26 defendant, includes any amended responsive pleading.

27 § 8. Rule 3212 of the civil practice law and rules is amended by
28 adding a new subdivision (j) to read as follows:

29 (j) Additional notice in any action to collect a debt arising out of
30 a consumer credit transaction where a consumer is a defendant.

31 1. At the time of service of a notice of motion any part of which
32 requests summary judgment in whole or in part, where the moving party
33 is a plaintiff and the respondent is a consumer defendant in an action
34 to collect a debt arising out of a consumer credit transaction, and
35 where the consumer defendant against whom summary judgment is sought is
36 not represented by an attorney, the plaintiff shall serve, together with
37 the notice of motion, the following additional notice to be printed in
38 clear type no less than twelve-point in size:

39 Important notice to pro se defendants

40 (Name of court)

41 (Street address, room number)

42 (City, state, zip code)

43 Plaintiff:

44 Defendant:

45 Index number:

46 Motion return date and time:

47 Attention CPLR Rule 3212 motion for summary judgment

48 This notice is to advise you that the plaintiff in this case has filed a
49 motion for summary judgment against you pursuant to CPLR Rule 3212,
50 which means that summary judgment will be granted if the court finds
51 that there is no genuine issue as to any material fact and that the
52 plaintiff is entitled to judgment as a matter of law.

Failure to respond to this motion for summary judgment may result in a money judgment being entered against you in favor of the plaintiff.

Once entered, a judgment is good and can be used against you for twenty years, and your personal property and money, including a portion of your paycheck and/or bank account, may be taken from you. Also, a judgment may affect your credit score and can affect your ability to rent a home, find a job, or take out a loan. You CANNOT be arrested or sent to jail for owing a debt.

Opposing this motion for summary judgment:

If you wish to oppose the plaintiff's request for judgment, you should set forth in a written response the reasons that the plaintiff has not shown that it is entitled to judgment as a matter of law, and any facts that you believe show that you are not liable to the plaintiff or have a defense. You should submit affidavits or exhibits supporting any facts that you assert show that you are not liable or have a defense. Each affidavit should set forth relevant facts and show that the person submitting the affidavit has personal knowledge of those facts. If you rely on exhibits, you should attach copies of them to an affidavit that explains what they are and how they show that you are not liable or have a defense. You should bring your opposition papers to court on the court date and mail a copy to the plaintiff's attorney in advance of the court date. You should also attend court on the return date.

Sources of information and assistance:

The court encourages you to inform yourself about your options as a defendant in this lawsuit. In addition to seeking assistance from a private attorney or legal aid office, there may be free legal assistance programs that you may contact for help in representing yourself in this lawsuit.

For further information, or to locate an entity or program near you, you may visit the New York state unified court system's "resources for unrepresented litigants" website at:

<http://ww2.nycourts.gov/RULES/CCR/resources.shtml>

2. The plaintiff seeking summary judgment shall file proof of service of the additional notice with the court, and no motion for which this additional notice is required shall be granted unless such proof of service has been filed.

§ 9. 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 plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint. 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

1 exceeding ten days, prior to such hearing date. No default judgment may
2 be entered pursuant to subdivision (a) of section 3215 prior to the
3 hearing date of the motion. If the motion is denied, the moving and
4 answering papers shall be deemed the complaint and answer, respectively,
5 unless the court orders otherwise. The additional notice required by
6 subdivision (j) of rule thirty-two hundred twelve of this article shall
7 be applicable to a motion made pursuant to this section in any action to
8 collect a debt arising out of a consumer credit transaction where a
9 consumer is a defendant.

10 § 10. Subdivision (f) of section 3215 of the civil practice law and
11 rules, as amended by chapter 453 of the laws of 2006, is amended and a
12 new subdivision (j) is added to read as follows:

13 (f) Proof. On any application for judgment by default, the applicant
14 shall file proof of service of the summons and the complaint, or a
15 summons and notice served pursuant to subdivision (b) of rule 305 or
16 subdivision (a) of rule 316 of this chapter, and proof of the facts
17 constituting the claim, the default and the amount due by affidavit made
18 by the party, or where the state of New York is the plaintiff, by affi-
19 davit made by an attorney from the office of the attorney general who
20 has or obtains knowledge of such facts through review of state records
21 or otherwise. Where a verified complaint has been served, it may be used
22 as the affidavit of the facts constituting the claim and the amount due;
23 in such case, an affidavit as to the default shall be made by the party
24 or the party's attorney. In an action arising out of a consumer credit
25 transaction, if the plaintiff is not the original creditor, the appli-
26 cant shall include: (1) an affidavit by the original creditor of the
27 facts constituting the debt, the default in payment, the sale or assign-
28 ment of the debt, and the amount due at the time of sale or assignment;
29 (2) for each subsequent assignment or sale of the debt to another enti-
30 ty, an affidavit of sale of the debt by the debt seller, completed by
31 the seller or assignor; and (3) an affidavit of a witness of the plain-
32 tiff, which includes a chain of title of the debt, completed by the
33 plaintiff or plaintiff's witness. When jurisdiction is based on an
34 attachment of property, the affidavit must state that an order of
35 attachment granted in the action has been levied on the property of the
36 defendant, describe the property and state its value. Proof of mailing
37 the notice required by subdivision (g) of this section, where applica-
38 ble, shall also be filed.

39 (j) A request for a default judgment entered by the clerk, must be
40 accompanied by an affidavit by the plaintiff or plaintiff's attorney
41 stating that after reasonable inquiry, he or she has reason to believe
42 that the statute of limitations has not expired.

43 § 11. The civil practice law and rules is amended by adding a new
44 section 7516 to read as follows:

45 § 7516. Confirmation of an award based on a consumer credit trans-
46 action. In any proceeding under section 7510 of this article to confirm
47 an award based on a consumer credit transaction, the party seeking to
48 confirm the award shall plead the actual terms and conditions of the
49 agreement to arbitrate. The party shall attach to its petition (a) the
50 agreement to arbitrate; (b) the demand for arbitration or notice of
51 intention to arbitrate, with proof of service; and (c) the arbitration
52 award, with proof of service. If the award does not contain a statement
53 of the claims submitted for arbitration, of the claims ruled upon by the
54 arbitrator, and of the calculation of figures used by the arbitrator in
55 arriving at the award, then the petition shall contain such a statement.
56 The court shall not grant confirmation of an award based on a consumer

1 credit transaction unless the party seeking to confirm the award has
2 complied with this section.

3 § 12. This act shall take effect on the first of January next succeed-
4 ing the date on which it shall have become a law, except that section
5 three of this act shall take effect on the one hundred fiftieth day
6 after this act shall have become a law.