

STATE OF NEW YORK

4827--C

2019-2020 Regular Sessions

IN SENATE

March 26, 2019

Introduced by Sens. THOMAS, FELDER, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules and the judiciary law, 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. Section 105 of the civil practice law and rules is amended by
4 adding two new subdivisions (h-1) and (q-1) to read as follows:

5 (h-1) Finance charge. The term "finance charge" means the cost of
6 consumer credit as a dollar amount, includes any charge payable directly
7 or indirectly by the consumer and imposed directly or indirectly by the
8 creditor as an incident to or a condition of the extension of credit,
9 and does not include any charge of a type payable in a comparable cash
10 transaction.

11 (q-1) Original creditor. The term "original creditor" means the entity
12 that owned a consumer credit account at the date of default giving rise
13 to a cause of action.

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

17 2. an action upon a contractual obligation or liability, express or
18 implied, except as provided in section two hundred thirteen-a or two

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

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1 private attorney or legal aid office, there are free legal assistance
2 computer programs that you can use online to help you represent yourself
3 in this lawsuit.

4 For further information, or to locate a legal aid program near you, you
5 may visit the LawHelpNY website or the New York state court system
6 website, which has information for representing yourself and links to
7 other resources at [insert URL for consumer credit resources for unrep-
8 resented litigants published by the New York state office of court
9 administration].

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

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

24 (d) The chief administrative judge shall issue a Spanish translation
25 of the notice in subdivision (a) of this section and shall maintain and
26 publish the URL address for the web page containing consumer resources
27 for unrepresented litigants.

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

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

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

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

46 (1) The name of the original creditor;

47 (2) The last four digits of the account number printed on the most
48 recent monthly statement recording a purchase transaction, last payment
49 or balance transfer;

50 (3) The date and amount of the last payment or, if no payment was
51 made, a statement that the purchaser, borrower or debtor made no payment
52 on the account;

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

1 (5) (A) Except as provided in subparagraph (B) of this paragraph, an
2 itemization of the amount sought, by (i) principal; (ii) finance charge
3 or charges; (iii) fees imposed by the original creditor; (iv) collection
4 costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and
5 charges.

6 (B) If the account was a revolving credit account, an itemized
7 accounting of the debt, including: (i) the total amount of the debt due
8 as of charge-off; (ii) the total amount of interest accrued since
9 charge-off; (iii) the total amount of non-interest charges or fees
10 accrued since charge-off; and (iv) the total amount of payments and/or
11 credits made on the debt since charge-off;

12 (6) The account balance printed on the most recent monthly statement
13 recording a purchase transaction, last payment or balance transfer;

14 (7) (A) Whether the plaintiff is the original creditor.

15 (B) If the plaintiff is not the original creditor, the complaint shall
16 also state (i) the date on which the debt was sold or assigned to the
17 plaintiff; (ii) the name of each previous owner of the account from the
18 original creditor to the plaintiff and the date on which the debt was
19 assigned to that owner by the original creditor or subsequent owner; and
20 (iii) the amount due at the time of the sale or assignment of the debt
21 by the original creditor; and

22 (8) Any matters required to be stated with particularity pursuant to
23 rule 3015 of this article.

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

27 (e) Number, time and waiver of objections; motion to plead over. At
28 any time before service of the responsive pleading is required, a party
29 may move on one or more of the grounds set forth in subdivision (a) of
30 this rule, and no more than one such motion shall be permitted. Any
31 objection or defense based upon a ground set forth in paragraphs one,
32 three, four, five and six of subdivision (a) of this rule is waived
33 unless raised either by such motion or in the responsive pleading. A
34 motion based upon a ground specified in paragraph two, seven or ten of
35 subdivision (a) of this rule may be made at any subsequent time or in a
36 later pleading, if one is permitted; an objection that the summons and
37 complaint, summons with notice, or notice of petition and petition was
38 not properly served is waived if, having raised such an objection in a
39 pleading, the objecting party does not move for judgment on that ground
40 within sixty days after serving the pleading, unless the court extends
41 the time upon the ground of undue hardship. The foregoing sentence shall
42 not apply in any proceeding to collect a debt arising out of a consumer
43 credit transaction where a consumer is a defendant or under subdivision
44 one or two of section seven hundred eleven of the real property actions
45 and proceedings law. The papers in opposition to a motion based on
46 improper service shall contain a copy of the proof of service, whether
47 or not previously filed. An objection based upon a ground specified in
48 paragraph eight or nine of subdivision (a) of this rule is waived if a
49 party moves on any of the grounds set forth in subdivision (a) of this
50 rule without raising such objection or if, having made no objection
51 under subdivision (a) of this rule, he or she does not raise such
52 objection in the responsive pleading which, in any action to collect a
53 debt arising out of a consumer credit transaction where a consumer is a
54 defendant, includes any amended responsive pleading.

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

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

1. At the time of service of a notice of motion any part of which requests summary judgment in whole or in part, where the moving party is a plaintiff and the respondent is a consumer defendant in an action to collect a debt arising out of a consumer credit transaction, and where the consumer defendant against whom summary judgment is sought is not represented by an attorney, the plaintiff shall submit to the clerk a stamped, unsealed envelope addressed to the defendant together with the following additional notice in English and Spanish to be printed in clear type no less than twelve-point in size:

IMPORTANT NOTICE

The Plaintiff has asked the Court to enter judgment against you by making a Motion for Summary Judgment. Keep this Notice and the envelope it came in. The Motion for Summary Judgment was separately served on you. To avoid entry of judgment:

(1) You must appear in court as directed below:

WHERE: Name of Court, Street Address, Room Number

WHEN: Date and time

(2) You should oppose the motion IN WRITING.

HOW TO OPPOSE THE MOTION:

(1) State the legal reasons why the court should not enter judgment against you, including your defenses.

(2) State the facts that support your defenses.

(3) Attach affidavits and/or exhibits to support the facts you assert.

(a) Affidavits are sworn statements of witnesses (including you) who state facts they know to be true. The affidavit should state the facts and how the witness knows them. Also, the affidavit should explain any exhibits. An affidavit of service is an affidavit that states how and when papers were served. An affidavit must be signed in front of a notary. Free forms are available on the New York State Court system website at [insert URL for consumer credit resources for unrepresented litigants published by the New York State Office of Court Administration].

(b) Exhibits are copies of documents. Exhibits are usually attached to affidavits.

(4) Have someone (not you or another defendant in the lawsuit) mail a copy of your opposition to the plaintiff's attorney before your court date and have them prepare an affidavit of service by mail.

(5) Bring a copy of your opposition and the affidavit of service to your court date.

(6) Attend your court date.

IF YOU NEED MORE TIME:

If you need more time to prepare your written response, you should appear at your court date and ask the judge for more time. You can also ask the judge to refer you for legal help.

IF YOU NEED LEGAL HELP:

You may seek legal help from a private attorney or a legal aid office. Some courts have free legal assistance programs for people without lawyers. You can find resources on the New York State court system website at [insert URL for consumer credit resources for unrepresented litigants published by the New York State Office of Court Administration].

2. The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph one of this subdivision and note the date of mailing in the case record. Summary

judgment shall not be entered based on defendant's failure to oppose the motion unless there has been compliance with this section and at least fourteen days have elapsed from the date of mailing by the clerk or nineteen days if the plaintiff's notice of motion demands additional time under subdivision (b) of rule 2214 of this chapter.

3. The chief administrative judge shall issue a Spanish translation of the notice in paragraph one of this subdivision and shall maintain and publish the URL address for the web page containing consumer credit resources for unrepresented litigants.

§ 10. 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 exceeding ten days, prior to such hearing date. 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. The additional notice required by subdivision (j) of rule 3212 shall be applicable to a motion made pursuant to this section in any action to collect a debt arising out of a consumer credit transaction where a consumer is a defendant.

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

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. In an action arising out of a consumer credit transaction, if the plaintiff is not the original creditor, the applicant shall include: (1) an affidavit by the original creditor of the facts constituting the debt, the default in payment, the sale or assignment of the debt, and the amount due at the time of sale or assignment; (2) for each subsequent assignment or sale of the debt to another entity, an affidavit of sale of the debt by the debt seller, completed by the seller or assignor; and (3) an affidavit of a witness of the plaintiff, which includes a chain of title of the debt, completed by the plaintiff or plaintiff's witness. The chief administrative judge shall issue form affidavits to satisfy the requirements of this subdivision

1 for consumer credit transactions. When jurisdiction is based on an
2 attachment of property, the affidavit must state that an order of
3 attachment granted in the action has been levied on the property of the
4 defendant, describe the property and state its value. Proof of mailing
5 the notice required by subdivision (g) of this section, where applica-
6 ble, shall also be filed.

7 (j) Affidavit. A request for a default judgment entered by the clerk,
8 must be accompanied by an affidavit by the plaintiff or plaintiff's
9 attorney stating that after reasonable inquiry, he or she has reason to
10 believe that the statute of limitations has not expired. The chief
11 administrative judge shall issue form affidavits to satisfy the require-
12 ments of this subdivision for consumer credit transactions.

13 § 12. The civil practice law and rules is amended by adding a new
14 section 7516 to read as follows:

15 § 7516. Confirmation of an award based on a consumer credit trans-
16 action. In any proceeding under section 7510 of this article to confirm
17 an award based on a consumer credit transaction, the party seeking to
18 confirm the award shall plead the actual terms and conditions of the
19 agreement to arbitrate. The party shall attach to its petition (a) the
20 agreement to arbitrate; (b) the demand for arbitration or notice of
21 intention to arbitrate, with proof of service; and (c) the arbitration
22 award, with proof of service. If the award does not contain a statement
23 of the claims submitted for arbitration, of the claims ruled upon by the
24 arbitrator, and of the calculation of figures used by the arbitrator in
25 arriving at the award, then the petition shall contain such a statement.
26 The court shall not grant confirmation of an award based on a consumer
27 credit transaction unless the party seeking to confirm the award has
28 complied with this section.

29 § 13. Subdivision 2 of section 212 of the judiciary law is amended by
30 adding a new paragraph (aa) to read as follows:

31 (aa) Not later than January first, two thousand twenty-one, make
32 available Spanish translations of the additional notices in consumer
33 credit transaction actions and proceedings required by section 306-d and
34 subdivision (j) of rule 3212 of the civil practice law and rules, and
35 make available form affidavits required for a motion for default judg-
36 ment in a consumer credit transaction action or proceeding required by
37 subdivision (f) of section 3215 of the civil practice law and rules.

38 § 14. This act shall take effect immediately; provided, however, that
39 sections two, three, five, six, seven, eight, nine, ten, eleven and
40 twelve shall take effect on the one hundred eightieth day after it shall
41 have become a law and shall apply to actions and proceedings commenced
42 on or after such date; and provided, further, that section four of this
43 act shall take effect on the one hundred fiftieth day after this act
44 shall have become a law.