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I N   S E N A T E

June 20, 2014

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Introduced by Sen. SKELOS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil rights law, in relation to actions involving public petition and participation and the civil practice law and rules, in relation to actions involving public petition or participation

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

1     Section 1. Subdivision 1 of section 70-a of the civil rights law, as  
2     added by chapter 767 of the laws of 1992, is amended to read as follows:  
3     1. A defendant in an action involving public petition and partic-  
4     ipation, as defined in paragraph (a) of subdivision one of section  
5     seventy-six-a of this article, may maintain an action, claim, cross  
6     claim or counterclaim to recover damages, including costs and attorney's  
7     fees, from any person who commenced or continued such action; provided  
8     that:  
9     (a) costs and REASONABLE attorney's fees [may] SHALL be recovered upon  
10    a demonstration, PURSUANT TO SECTION EIGHTY-THREE HUNDRED THREE-B OF THE  
11    CIVIL PRACTICE LAW AND RULES; OR MAY BE RECOVERED IF THE COURT FINDS  
12    that the action involving public petition and participation was  
13    commenced or continued BY A PLAINTIFF OR A COUNTERCLAIM, DEFENSE OR  
14    CROSS-CLAIM IS COMMENCED OR CONTINUED BY A DEFENDANT AND IS FOUND TO BE  
15    without [a substantial] ANY REASONABLE basis in fact and law and could  
16    not be supported by [a substantial] AN argument for the extension,  
17    modification or reversal of existing law;  
18    (B) AN AWARD OF COSTS OR FEES WILL NOT BE ASSESSED IN AN ACTION THAT  
19    WAS DISCONTINUED WITHIN TWENTY DAYS OF THE PARTY OR ATTORNEY RECEIVING  
20    ACTUAL NOTICE THAT THE CLAIM LACKED A REASONABLE BASIS IN FACT OR LAW,  
21    WHICH MAY HAVE OCCURRED PRIOR TO THE COMMENCEMENT OF THE ACTION. SUCH  
22    NOTICE SHALL BE PROVIDED TO THE PARTY OR ATTORNEY ON A FORM THAT SHALL  
23    BE PRODUCED AND MADE AVAILABLE BY THE NEW YORK STATE OFFICE OF COURT  
24    ADMINISTRATION WITHIN NINETY DAYS OF THIS PARAGRAPH TAKING EFFECT. THE  
25    FORM SHALL BE IN PLAIN LANGUAGE AND SHALL BE NO MORE THAN ONE PAGE IN  
26    LENGTH;

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

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1 [(b)] (C) other compensatory damages may only be recovered upon an  
2 additional demonstration that the action involving public petition and  
3 participation was commenced or continued for the purpose of harassing,  
4 intimidating, punishing or otherwise maliciously inhibiting the free  
5 exercise of speech, petition or association rights; and

6 [(c)] (D) punitive damages may only be recovered upon an additional  
7 demonstration that the action involving public petition and partic-  
8 ipation was commenced or continued for the sole purpose of harassing,  
9 intimidating, punishing or otherwise maliciously inhibiting the free  
10 exercise of speech, petition or association rights.

11 S 2. Subdivision 1 of section 76-a of the civil rights law, as added  
12 by chapter 767 of the laws of 1992, is amended to read as follows:

13 1. For purposes of this section:

14 (a) An "action involving public petition and participation" is [an  
15 action,] A claim[, cross claim or counterclaim for damages that is  
16 brought by a public applicant or permittee, and is materially related to  
17 any efforts of the defendant to report on, comment on, rule on, chal-  
18 lenge or oppose such application or permission] BASED UPON:

19 (1) ANY COMMUNICATION IN A PLACE OPEN TO THE PUBLIC OR A PUBLIC FORUM  
20 IN CONNECTION WITH AN ISSUE OF PUBLIC CONCERN; OR

21 (2) ANY OTHER LAWFUL CONDUCT IN FURTHERANCE OF THE EXERCISE OF THE  
22 CONSTITUTIONAL RIGHT OF FREE SPEECH IN CONNECTION WITH AN ISSUE OF  
23 PUBLIC CONCERN, OR IN FURTHERANCE OF THE EXERCISE OF THE CONSTITUTIONAL  
24 RIGHT OF PETITION.

25 (b) ["Public applicant or permittee" shall mean any person who has  
26 applied for or obtained a permit, zoning change, lease, license, certif-  
27 icate or other entitlement for use or permission to act from any govern-  
28 ment body, or any person with an interest, connection or affiliation  
29 with such person that is materially related to such application or  
30 permission] "CLAIM" INCLUDES ANY LAWSUIT, CAUSE OF ACTION, CROSS-CLAIM,  
31 COUNTERCLAIM, OR OTHER JUDICIAL PLEADING OR FILING REQUESTING RELIEF.

32 (c) "Communication" shall mean any statement, claim, allegation in a  
33 proceeding, decision, protest, writing, argument, contention or other  
34 expression.

35 [(d) "Government body" shall mean any municipality, the state, any  
36 other political subdivision or agency of such, the federal government,  
37 any public benefit corporation, or any public authority, board, or  
38 commission.]

39 S 3. The civil practice law and rules is amended by adding a new  
40 section 8303-b to read as follows:

41 S 8303-B. COSTS UPON FRIVOLOUS CLAIMS AND COUNTERCLAIMS IN ACTIONS TO  
42 RECOVER DAMAGES FOR PUBLIC PETITION OR PARTICIPATION. (A) IF AN ACTION  
43 TO RECOVER DAMAGES INVOLVES PUBLIC PETITION OR PARTICIPATION, AND SUCH  
44 ACTION OR CLAIM IS COMMENCED OR CONTINUED BY A PLAINTIFF OR A COUNTER-  
45 CLAIM, DEFENSE OR CROSS-CLAIM IS COMMENCED OR CONTINUED BY A DEFENDANT  
46 AND IS FOUND, AT ANY TIME DURING THE PROCEEDINGS OR UPON JUDGMENT, TO BE  
47 FRIVOLOUS BY THE COURT, THE COURT SHALL AWARD TO THE SUCCESSFUL PARTY  
48 COSTS AND REASONABLE ATTORNEY'S FEES.

49 (B) THE COSTS AND FEES AWARDED UNDER SUBDIVISION (A) OF THIS SECTION  
50 SHALL BE ASSESSED EITHER AGAINST THE PARTY BRINGING THE ACTION, CLAIM,  
51 CROSS-CLAIM, DEFENSE OR COUNTERCLAIM OR AGAINST THE ATTORNEY FOR SUCH  
52 PARTY, OR AGAINST BOTH, AS MAY BE DETERMINED BY THE COURT, BASED UPON  
53 THE CIRCUMSTANCES OF THE CASE. SUCH COSTS AND FEES SHALL BE IN ADDITION  
54 TO ANY OTHER JUDGMENT AWARDED TO THE SUCCESSFUL PARTY.

1 (C) IN ORDER TO FIND THE ACTION, CLAIM, COUNTERCLAIM, DEFENSE OR  
2 CROSS-CLAIM TO BE FRIVOLOUS UNDER SUBDIVISION (A) OF THIS SECTION, THE  
3 COURT MUST FIND ONE OR MORE OF THE FOLLOWING:

4 (I) THE ACTION, CLAIM, COUNTERCLAIM, DEFENSE OR CROSS-CLAIM WAS  
5 COMMENCED, USED OR CONTINUED IN BAD FAITH, SOLELY TO DELAY OR PROLONG  
6 THE RESOLUTION OF THE LITIGATION OR TO HARASS OR MALICIOUSLY INJURE  
7 ANOTHER;

8 (II) THE ACTION, CLAIM, COUNTERCLAIM, DEFENSE OR CROSS-CLAIM WAS  
9 COMMENCED OR CONTINUED IN BAD FAITH WITHOUT ANY REASONABLE BASIS IN LAW  
10 OR FACT AND COULD NOT BE SUPPORTED BY A GOOD FAITH ARGUMENT FOR AN  
11 EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW. IF THE ACTION,  
12 CLAIM, COUNTERCLAIM, DEFENSE OR CROSS-CLAIM WAS PROMPTLY DISCONTINUED  
13 WHEN THE PARTY OR THE ATTORNEY LEARNED OR SHOULD HAVE LEARNED THAT THE  
14 ACTION, CLAIM, COUNTERCLAIM, DEFENSE OR CROSS-CLAIM LACKED SUCH A  
15 REASONABLE BASIS, THE COURT MAY FIND THAT THE PARTY OR THE ATTORNEY DID  
16 NOT ACT IN BAD FAITH.

17 S 4. This act shall take effect immediately and shall apply to  
18 actions, cross-claims or counterclaims commenced on or after such date.