

STATE OF NEW YORK

5637

2017-2018 Regular Sessions

IN SENATE

April 24, 2017

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

AN ACT to amend the civil practice law and rules, in relation to attorneys' fees and costs for meritless actions and abusive lawsuits

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 8101-a to read as follows:

3 § 8101-a. Attorneys' fees and costs for meritless actions and abusive
4 actions. 1. Where a court grants a motion to dismiss for failure to
5 state a cause of action upon which relief may be granted, the court
6 shall award the party or parties against whom the dismissed claims were
7 asserted reasonable attorneys' fees and costs incurred in the proceeding
8 as a consequence of the dismissed claims.

9 2. Notwithstanding any other provision of this section, the court
10 shall not require a party to pay attorneys' fees and costs under this
11 section in excess of fifteen thousand dollars in any single lawsuit.

12 3. This section shall not apply to:

13 a. actions by the state, other government entities, or public offi-
14 cials acting in their official capacity or under color of law;

15 b. any claim that is dismissed by the granting of a motion to dismiss
16 that was filed more than sixty days after the moving party received
17 service of the latest complaint, counter-complaint or cross-complaint in
18 which that dismissed claim was made;

19 c. any claim that the party against whom the motion to dismiss was
20 granted in good faith amended to state a claim upon which relief may be
21 granted;

22 d. actions by pro se litigants, except where the court also finds that
23 the pro se party acted unreasonably in bringing, or refusing to volun-
24 tarily withdraw, the dismissed claim;

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

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1 e. any claim which is a good faith, non-frivolous claim for the
2 express purpose of extending, modifying, or reversing existing prece-
3 dent, law or regulation, or for the express purpose of establishing the
4 meaning, lawfulness or constitutionality of a law, regulation or consti-
5 tutional right where the issue is a matter of first impression or
6 subject to conflicting interpretations. This subdivision shall not apply
7 when the party that asserted the dismissed claim specifically pleaded
8 that the dismissed claim was made for one of the express purposes listed
9 above and cited the contrary precedent or interpretation the party seeks
10 to distinguish or overcome, or whether the issue to be decided is a
11 matter of first impression or conflicting interpretations as described
12 in this subdivision; or

13 f. any claim for which relief could be granted under a law, regu-
14 lation, a court precedent that was in effect and applicable to the claim
15 at the time the claim was filed; where that law, regulation, or prece-
16 dent was cited in the pleading in which the dismissed claim was made or
17 in the response to the motion to dismiss; and where court granted the
18 motion to dismiss the claim due to the subsequent repeal, amendment,
19 overruling, or distinguishing of that law, regulation, or court prece-
20 dent.

21 4. An award pursuant to this section shall be made only after all
22 appeals of the issue of the granting of the motion to dismiss have been
23 exhausted and if the final outcome is the granting of the motion to
24 dismiss.

25 5. Nothing in this section shall be construed to limit the award of
26 attorneys' fees, costs, or sanctions authorized by other law.

27 § 2. Subdivision (a) of section 8303-a of the civil practice law and
28 rules, as amended by chapter 620 of the laws of 1997, is amended to read
29 as follows:

30 (a) If in an action to recover damages for personal injury, injury to
31 property or wrongful death, or an action brought by the individual who
32 committed a crime against the victim of the crime, and such action or
33 claim is commenced or continued by a plaintiff or a counterclaim,
34 defense or cross claim is commenced or continued by a defendant and is
35 found, at any time during the proceedings or upon judgment, to be frivo-
36 lous by the court, the court shall award to [~~the successful~~] each
37 prevailing party costs and reasonable attorney's fees not exceeding
38 [~~ten~~] twenty-five thousand dollars for each frivolous claim, defense or
39 cross claim.

40 § 3. This act shall take effect immediately.