

4074

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 30, 2013

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Introduced by M. of A. KATZ, MONTESANO, FINCH -- Multi-Sponsored by --  
M. of A. GABRYSZAK -- read once and referred to the Committee on Judi-  
ciary

AN ACT to amend the civil practice law and rules, in relation to the  
recovery of attorney's fees by the prevailing defendant party

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

1     Section 1. The civil practice law and rules is amended by adding a new  
2     article 87 to read as follows:

3     ARTICLE 87

4     COUNSEL FEES AND EXPENSES GENERALLY

5     SECTION 8700. FEES AND OTHER EXPENSES.

6                8701. DEFINITIONS.

7                8702. INTEREST.

8                8703. APPLICABILITY.

9     S 8700. FEES AND OTHER EXPENSES. (A) WHEN AWARDED. IN ADDITION TO  
10  COSTS, DISBURSEMENTS AND ADDITIONAL ALLOWANCES AWARDED PURSUANT TO  
11  SECTIONS EIGHT THOUSAND TWO HUNDRED ONE THROUGH EIGHT THOUSAND TWO  
12  HUNDRED FOUR AND EIGHT THOUSAND THREE HUNDRED ONE THROUGH EIGHT THOUSAND  
13  THREE HUNDRED THREE OF THIS CHAPTER, AND EXCEPT AS OTHERWISE SPECIF-  
14  ICALLY PROVIDED BY STATUTE, A COURT SHALL AWARD TO A DEFENDANT WHO AFTER  
15  FINAL JUDGMENT IS RENDERED THE PREVAILING PARTY, FEES AND OTHER EXPENSES  
16  INCURRED BY SUCH PARTY IN DEFENSE OF SUCH CIVIL ACTION, UNLESS THE COURT  
17  FINDS THAT THE POSITION OF THE PLAINTIFF WAS SUBSTANTIALLY JUSTIFIED OR  
18  THAT SPECIAL CIRCUMSTANCES MAKE AN AWARD UNJUST. WHETHER THE POSITION OF  
19  THE PLAINTIFF WAS SUBSTANTIALLY JUSTIFIED SHALL BE DETERMINED SOLELY ON  
20  THE BASIS OF THE RECORD BEFORE THE COURT AND THE ACT, ACTS, OR FAILURE  
21  TO ACT THAT GAVE RISE TO THE CIVIL ACTION. FEES SHALL BE DETERMINED  
22  PURSUANT TO PREVAILING MARKET RATES FOR THE KIND AND QUALITY OF THE  
23  SERVICES FURNISHED, EXCEPT THAT FEES AND EXPENSES MAY NOT BE AWARDED TO

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

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1 A PARTY FOR ANY PORTION OF THE LITIGATION IN WHICH THE PARTY HAS UNREA-  
2 SONABLY PROTRACTED THE PROCEEDINGS.

3 (B) APPLICATION FOR FEES. A PARTY SEEKING AN AWARD OF FEES AND OTHER  
4 EXPENSES SHALL, WITHIN THIRTY DAYS OF FINAL JUDGMENT IN THE ACTION  
5 SUBMIT TO THE COURT AN APPLICATION WHICH SETS FORTH (1) THE FACTS  
6 SUPPORTING THE CLAIM THAT THE PARTY IS A PREVAILING DEFENDANT AND IS  
7 ELIGIBLE TO RECEIVE AN AWARD UNDER THIS SECTION, (2) THE AMOUNT SOUGHT,  
8 AND (3) AN ITEMIZED STATEMENT FROM EVERY ATTORNEY OR EXPERT WITNESS FOR  
9 WHOM FEES OR EXPENSES ARE SOUGHT STATING THE ACTUAL TIME EXPENDED AND  
10 THE RATE AT WHICH SUCH FEES AND OTHER EXPENSES ARE CLAIMED.

11 S 8701. DEFINITIONS. FOR THE PURPOSE OF THIS ARTICLE:

12 (A) "ACTION" MEANS ANY CIVIL ACTION OR PROCEEDING BROUGHT TO SEEK  
13 JUDICIAL REVIEW OF AN ACTION INCLUDING AN APPELLATE PROCEEDING.

14 (B) "FEES AND OTHER EXPENSES" MEANS THE REASONABLE EXPENSES OF EXPERT  
15 WITNESSES, THE REASONABLE COST OF ANY STUDY, ANALYSIS, CONSULTATION WITH  
16 EXPERTS, AND LIKE EXPENSES, AND REASONABLE ATTORNEY FEES, INCLUDING FEES  
17 FOR WORK PERFORMED BY LAW STUDENTS OR PARALEGALS UNDER THE SUPERVISION  
18 OF AN ATTORNEY INCURRED IN CONNECTION WITH AN ADMINISTRATIVE PROCEEDING  
19 AND JUDICIAL ACTION.

20 (C) "FINAL JUDGMENT" MEANS A JUDGMENT THAT IS FINAL AND NOT APPEALA-  
21 BLE, AND SETTLEMENT.

22 (D) "PARTY" MEANS (I) AN INDIVIDUAL WHOSE NET WORTH, NOT INCLUDING THE  
23 VALUE OF A HOMESTEAD USED AND OCCUPIED AS A PRINCIPAL RESIDENCE, DID NOT  
24 EXCEED FIFTY THOUSAND DOLLARS AT THE TIME THE CIVIL ACTION WAS FILED;  
25 (II) ANY OWNER OF AN UNINCORPORATED BUSINESS OR ANY PARTNERSHIP, CORPO-  
26 RATION, ASSOCIATION, REAL ESTATE DEVELOPER OR ORGANIZATION WHICH HAD NO  
27 MORE THAN ONE HUNDRED EMPLOYEES AT THE TIME THE CIVIL ACTION WAS FILED,  
28 (III) ANY ORGANIZATION DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL  
29 REVENUE CODE OF 1954 (26 U.S.C. 501(C)(3)) EXEMPT FROM TAXATION UNDER  
30 SECTION 501(A) OF SUCH CODE REGARDLESS OF THE NUMBER OF EMPLOYEES.

31 (E) "PREVAILING PARTY" MEANS A DEFENDANT IN THE CIVIL ACTION AGAINST  
32 THE PLAINTIFF WHO PREVAILS IN WHOLE OR IN SUBSTANTIAL PART WHERE SUCH  
33 PARTY AND THE PLAINTIFF PREVAIL UPON SEPARATE ISSUES.

34 S 8702. INTEREST. IF THE PLAINTIFF APPEALS AN AWARD AND THE AWARD IS  
35 AFFIRMED IN WHOLE OR IN PART, INTEREST SHALL BE PAID ON THE AMOUNT OF  
36 THE AWARD. SUCH INTEREST SHALL RUN FROM THE DATE OF THE AWARD THROUGH  
37 THE DAY BEFORE THE DATE OF THE AFFIRMANCE.

38 S 8703. APPLICABILITY. (A) NOTHING CONTAINED IN THIS ARTICLE SHALL BE  
39 CONSTRUED TO ALTER OR MODIFY THE OTHER PROVISIONS OF THIS CHAPTER.

40 (B) NOTHING CONTAINED IN THIS ARTICLE SHALL BE DEEMED TO AUTHORIZE THE  
41 INSTITUTION OF A CIVIL ACTION FOR THE SOLE PURPOSE OF OBTAINING FEES  
42 INCURRED BY A PARTY TO AN ADMINISTRATIVE PROCEEDING.

43 (C) NOTHING CONTAINED IN THIS ARTICLE SHALL AFFECT OR PRECLUDE THE  
44 RIGHT OF ANY PARTY TO RECOVER FEES OR OTHER EXPENSES AUTHORIZED BY  
45 COMMON LAW OR BY ANY OTHER STATUTE, LAW OR RULE.

46 S 2. This act shall take effect immediately.