S T A T E O F N E W Y O R K

7924

I N S E N A T E

June 20, 2014

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:

Section 1. Subdivision 1 of section 70-a of the civil rights law, as added by chapter 767 of the laws of 1992, is amended to read as follows:

1. A defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(a) costs and REASONABLE attorney's fees [may] SHALL be recovered upon a demonstration, PURSUANT TO SECTION EIGHTY-THREE HUNDRED THREE-B OF THE CIVIL PRACTICE LAW AND RULES; OR MAY BE RECOVERED IF THE COURT FINDS that the action involving public petition and participation was commenced or continued BY A PLAINTIFF OR A COUNTERCLAIM, DEFENSE OR CROSS-CLAIM IS COMMENCED OR CONTINUED BY A DEFENDANT AND IS FOUND TO BE without [a substantial] ANY REASONABLE basis in fact and law and could not be supported by [a substantial] AN argument for the extension, modification or reversal of existing law;

(B) AN AWARD OF COSTS OR FEES WILL NOT BE ASSESSED IN AN ACTION THAT WAS DISCONTINUED WITHIN TWENTY DAYS OF THE PARTY OR ATTORNEY RECEIVING ACTUAL NOTICE THAT THE CLAIM LACKED A REASONABLE BASIS IN FACT OR LAW, WHICH MAY HAVE OCCURRED PRIOR TO THE COMMENCEMENT OF THE ACTION. SUCH NOTICE SHALL BE PROVIDED TO THE PARTY OR ATTORNEY ON A FORM THAT SHALL BE PRODUCED AND MADE AVAILABLE BY THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION WITHIN NINETY DAYS OF THIS PARAGRAPH TAKING EFFECT. THE FORM SHALL BE IN PLAIN LANGUAGE AND SHALL BE NO MORE THAN ONE PAGE IN LENGTH;

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

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

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

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

1. For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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