

10358

I N A S S E M B L Y

May 23, 2016

Introduced by M. of A. WEINSTEIN -- read once and referred to the
Committee on Judiciary

AN ACT to amend the civil rights law, in relation to actions involving
public petition and 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, INCLUDING AN ADJUDICATION PURSUANT TO SUBDIVISION (G)
11 OF RULE THIRTY-TWO HUNDRED ELEVEN OR SUBDIVISION (H) OF RULE THIRTY-TWO
12 HUNDRED TWELVE OF THE CIVIL PRACTICE LAW AND RULES, that the action
13 involving public petition and participation was commenced or continued
14 without a substantial basis in fact and law and could not be supported
15 by a substantial argument for the extension, modification or reversal of
16 existing law;
17 (b) AN ACTION, CLAIM, CROSS CLAIM OR COUNTERCLAIM MADE PURSUANT TO
18 THIS SUBDIVISION MAY BE FILED WITHIN SIXTY DAYS OF THE SERVICE OF THE
19 COMPLAINT OR, IN THE COURT'S DISCRETION, AT ANY LATER TIME UPON TERMS IT
20 DEEMS PROPER;
21 (C) other compensatory damages may only be recovered upon an addi-
22 tional demonstration that the action involving public petition and
23 participation was commenced or continued for the purpose of harassing,
24 intimidating, punishing or otherwise maliciously inhibiting the free
25 exercise of speech, petition or association rights; and
26 [(c)] (D) punitive damages may only be recovered upon an additional
27 demonstration that the action involving public petition and partic-
28 ipation was commenced or continued for the sole purpose of harassing,

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

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1 intimidating, punishing or otherwise maliciously inhibiting the free
2 exercise of speech, petition or association rights.

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

5 1. For purposes of this section:

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

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

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

17 (b) ["Public applicant or permittee" shall mean any person who has
18 applied for or obtained a permit, zoning change, lease, license, certif-
19 icate or other entitlement for use or permission to act from any govern-
20 ment body, or any person with an interest, connection or affiliation
21 with such person that is materially related to such application or
22 permission] "CLAIM" SHALL MEAN ANY LAWSUIT, CAUSE OF ACTION, CROSS
23 CLAIM, COUNTERCLAIM, OR OTHER JUDICIAL PLEADING OR FILING REQUESTING
24 RELIEF.

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

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

32 S 3. This act shall take effect immediately and shall apply to
33 actions, cross claims or counterclaims commenced on or after such date.