STATE OF NEW YORK

5516

2017-2018 Regular Sessions

IN ASSEMBLY

February 9, 2017

Introduced by M. of A. SEPULVEDA, DAVILA -- read once and referred 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:

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

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

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

3. This section shall not apply to:

a. actions by the state, other government entities, or public officials acting in their official capacity or under color of law;

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

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

d. actions by pro se litigants, except where the court also finds that the pro se party acted unreasonably in bringing, or refusing to voluntarily withdraw, the dismissed claim;

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

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

f. any claim for which relief could be granted under a law, regulation, a court precedent that was in effect and applicable to the claim at the time the claim was filed; where that law, regulation, or precedent was cited in the pleading in which the dismissed claim was made or in the response to the motion to dismiss; and where court granted the motion to dismiss the claim due to the subsequent repeal, amendment, overruling, or distinguishing of that law, regulation, or court precedent.

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

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

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

(a) If in an action to recover damages for personal injury, injury to property or wrongful death, or an action brought by the individual who committed a crime against the victim of the crime, 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~~] each prevailing party costs and reasonable attorney's fees not exceeding [~~ten~~] twenty-five thousand dollars for each frivolous claim, defense or cross claim.

§ 3. This act shall take effect immediately.