

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 02TR

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THE NEW YORK TIMES COMPANY	INDEX NO.	<u>153170/2022</u>
Plaintiff,	MOTION DATE	<u>07/06/2022</u>
- v -	MOTION SEQ. NO.	<u>001</u>
PETER BRIMELOW,		
Defendant.		

**DECISION + ORDER ON
MOTION**

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for DISMISSAL.

Plaintiff The New York Times Company (“the Times”) commenced this action seeking costs and attorney’s fees from Defendant Peter Brimelow (“Brimelow”) pursuant to New York State’s anti-strategic lawsuit against public participation (“anti-SLAPP”) law as amended in 2020. Brimelow moves to dismiss the action, arguing the Times is not entitled the relief sought because the anti-SLAPP law as amended is not retroactive and therefore does not apply to the Times in this case. The Times opposes the motion.

In January 2020, Brimelow commenced an action for defamation against the Times in federal court (“the underlying action”). An Amended Complaint and Second Amended Complaint were subsequently filed. The Times moved to dismiss the Second Amended Complaint and that motion was granted on December 17, 2020 (*Brimelow v New York Times Co.*, 2020 US Dist LEXIS 237463, 2020 WL 7405261 [SD NY, Dec. 17, 2020, No. 20 Civ 222, Failla, J.]). Brimelow appealed and on October 21, 2021 the U.S. Court of Appeals affirmed the District Court’s order dismissing the action (2021 US App LEXIS 31672, 2021 WL 4901969 [2d

Cir, Oct. 21, 2021, No. 21-66-civ]). Brimelow again appealed, and the U.S. Supreme Court denied certiorari on February 28, 2022 (142 S Ct 1210 [2022]).

While the motion to dismiss the underlying action was pending in the Southern District of New York, New York State adopted amendments to its anti-SLAPP law (*see* Civil Rights Law § 70 *et seq.*), effective November 10, 2020. These amendments, *inter alia*, required courts to award fees to defendants in anti-SLAPP suits which result in a dismissal (Civil Rights Law § 70-a[1][a]). Prior to the 2020 amendment, Civil Rights Law § 70-a(1)(a) provided: “costs and attorney’s fees may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law” As amended, the law provides that costs and fees “shall be recovered” upon said demonstration, including after an adjudication pursuant to a motion to dismiss or for summary judgment.

The Times commenced this action for costs and attorney’s fees pursuant to the amended Civil Rights Law § 70-a(1)(a) on April 12, 2022. The Complaint explicitly relies on the statute as amended in 2020 (Complaint ¶¶ 26, 30). The Complaint alleges “the district court’s opinion, the Second Circuit’s opinion, the Supreme Court’s denial of certiorari, and Mr. Brimelow’s pleadings, briefing, and other public statements make clear that he both commenced and continued his action without a substantial basis in fact and law” (*id.* ¶ 28).

Brimelow moves to dismiss the Complaint. He contends the Times cannot seek costs and fees incurred in the underlying action based on the amended anti-SLAPP law because the underlying action was already pending when the anti-SLAPP amendments went into effect. In opposition, the Times concedes that the anti-SLAPP law as amended is not retroactive, but contends application would not be retroactive here because the appeals taken from the District Court’s order and Second Circuit’s order were filed after the November 2020 effective date and because the law requires a fee award when an action is “continued without a substantial basis in

law,” the Times can avail itself of the new law in seeking costs and fees incurred in these appellate proceedings.

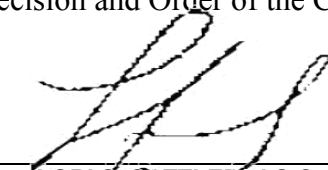
The Appellate Division, First Department has held that the November 2020 amendments do not apply retroactively (*Gottwald v Sebert*, 203 AD3d 488 [1st Dept 2022]; *see also Kurland & Assoc., P.C. v Glassdoor, Inc.*, 2022 NY Slip Op 03323 [1st Dept 2022]; *Robbins v 315 W. 103 Enters. LLC*, 204 AD3d 551 [1st Dept 2022]). In *Gottwald*, the First Department wrote: “there is insufficient evidence supporting the conclusion that the legislature intended its 2020 amendments to [the anti-SLAPP law] to apply retroactively *to pending claims . . .*” (203 AD3d at 488 [Emphasis added]).

Brimelow’s defamation claims were pending in the District Court when the amendments went into effect and as such the amended anti-SLAPP law did not apply to them. The Court finds that the amended anti-SLAPP law is likewise inapplicable to a subsequent action for fees incurred while litigating those claims. The Times’s argument that the new law can be used to seek fees for the appellate proceedings because they were commenced after the law’s effective date is unpersuasive. The appellate litigation is merely an extension of Brimelow’s pending claims that began at the trial court. As the Complaint seeks relief only pursuant to the amended Civil Rights Law § 70-a(1)(a), Brimelow’s motion must be granted, and it is hereby:

ORDERED that the Complaint is dismissed in its entirety and the Clerk is directed to enter judgment accordingly in favor of Defendant Peter Brimelow.

All other relief sought is denied. This constitutes the Decision and Order of the Court.

10/14/2022
DATE


LORI B. SATTLER, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT

APPLICATION:

CHECK IF APPROPRIATE:

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