Feb 2024 | Articles Blog: The Westchester Litigator

Retroactive v. Prospective Application of the 2020 NY Anti-SLAPP Amendments

New York's Anti-SLAPP ("Strategic Lawsuits Against Public Participation") legislation was significantly expanded in 2020 to provide greater protection to public discourse by the everyday consumer. From a litigator's standpoint, however, it was an open question as to whether the amended statute applied retroactively to anti-SLAPP lawsuits filed prior to its effective date, as the amendments themselves are silent on the issue. In a matter of first impression, the Appellate Division, Second Department, recently considered a motion to dismiss a complaint that had been filed prior to the effective date of the anti-SLAPP amendments. The movants asked the court to apply the amendments retroactively, but the trial court declined to do so and denied the motion. On appeal, the Second Department affirmed.

The Case: *VIP Pet Grooming Studio, Inc. v. Sproule*

In Sproule, the plaintiff, a pet grooming studio, brought a civil action against the defendant pet owner, to recover damages for defamation stemming from the defendant's public statements cautioning against the use of the plaintiff's grooming services. The plaintiff filed suit approximately eight days before the effective date of the anti-SLAPP 2020 amendments, but the defendant filed her motion to dismiss in January 2021, after the effective date. The defendant argued that the expanded version of the anti-SLAPP legislation applied, based on the timing of the motion and the amendment's silence on retroactivity, and the litigation properly constituted an action involving public petition and participation. The Nassau Supreme Court denied the plaintiff's motion to dismiss, and the Appellate Division affirmed.

The Second Department explained that if the 2020 amendments were applied, the social media posting by the defendant, acting as a critical consumer, might qualify as "public participation in furtherance of the public interest," but would not fall under the anti-SLAPP legislation prior to 2020. Where a statute is silent on retroactivity, as this amendment is, courts apply the presumption of prospective application, i.e., no retroactive application.

The court conducted that analysis with respect to the 2020 amendments, ultimately concluding that the presumption of prospective application had not been overcome. In so doing, the court departed from the holdings of several federal district courts, including the Southern District of New York, and aligned with the First Department in holding that the absence of retroactivity language and lack of a clear expression of legislative intent barred the application of the 2020 amendments to suits filed prior to the effective date of amendment. The Second Department further held that the fact that the motion to dismiss was filed after the effective date was "of no moment," as the filing of the complaint itself defined the operative date for the analysis.

Takeaways

While New York's anti-SLAPP legislation is expansively pro-consumer, the Second Department has made clear that any suits filed prior to the 2020 amendments will not be analyzed under the broadened definitions therein. Litigators in late-stage motion practice must be wary of this court's holding, as well as the application of this holding to future legislation silent on retroactivity, for the presumption of prospective application remains alive and well.