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SB-439 Special motions to strike: priority housing development projects. (2023-2024)

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Senate Bill No. 439

CHAPTER 779

An act to amend Section 904.1 of, and to add Section 425.19 to, the Code of Civil Procedure, relating to civil actions.

[Approved by Governor October 11, 2023. Filed with Secretary of State October 11, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 439, Skinner. Special motions to strike: priority housing development projects.

Existing law permits any party to file a notice of motion and motion to strike the whole or any part of a pleading. Under existing law, a party may file with the trial court a special motion to strike a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.

This bill would permit a party to file with the trial court a special motion to strike the whole or any part of a pleading in all civil actions brought by any plaintiff to challenge the approval or permitting of a priority housing development project, as defined. The bill would require the trial court to deny the motion to strike if it determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. The bill would entitle a prevailing defendant on a special motion to strike to recover their attorney's fees and costs, except as specified. Except as specified, the bill would require the filing of a special motion to strike within 60 days of the service of the complaint, or in the court's discretion, at any later time the court deems proper. The bill would provide that if the court determines the administrative record is required for its decision, the moving party may, notwithstanding the filing deadlines above, file the special motion to strike within 60 days of the service of the administrative record or, in the court's discretion, at any later time the court deems proper. The bill would require the court to make its determination on the special motion to strike on the pleadings, supporting and opposing affidavits stating the facts upon which the liability or defense is based, and if applicable, the administrative record. The bill would provide that an order granting or denying this special motion to strike is appealable, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 425.19 is added to the Code of Civil Procedure, to read:

425.19. (a) The Legislature finds and declares all of the following:

- (1) The lack of affordable housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) It is in the public interest to encourage priority housing development projects in which 100 percent of the units, exclusive of any manager's unit or units, are reserved for lower income households, as defined in Section 50079.5 of the Health and Safety Code, and ensure such developments are not unnecessarily delayed or caused to fail through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) (A) In all civil actions brought by any plaintiff to challenge the approval or permitting of a priority housing development project, including, but not limited to, actions brought pursuant to Section 21167 of the Public Resources Code, a defendant may bring a special motion to strike the whole or any part of a pleading. The court shall deny the motion to strike if it determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(B) The court shall make its determination on the special motion to strike based on the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. Affidavits submitted with the pleadings may include a request for judicial notice of facts and documents relevant to the court's determination.

(C) (i) If the court is unable to determine whether the plaintiff has established a probability that the plaintiff will prevail on the claim without reviewing the administrative record in an action where the administrative record is required, the court shall make its determination on the special motion to strike based on the documents specified in subparagraph (B) and the administrative record, once prepared.

(ii) If the court determines that an administrative record is required for its decision, the moving party may, notwithstanding the 60-day filing requirement pursuant to paragraph (4) and without appealing an order denying a special motion to strike pursuant to paragraph (7), file the special motion to strike within 60 days of the service of the administrative record or, in the court's discretion, at any later time it deems proper.

(D) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(2) In any action subject to paragraph (1), a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(3) This subdivision does not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(4) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(5) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(6) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(7) An order granting or denying a special motion to strike is appealable under Section 904.1.

(c) "Priority housing development" means a development in which 100 percent of the units, exclusive of any manager's unit or units, will be reserved for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for at least 55 years.

SEC. 2. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), or a judgment of contempt that is made final and conclusive by Section 1222.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(13) From an order granting or denying a special motion to strike under Sections 425.16 and 425.19.

(14) From a final order or judgment in a bifurcated proceeding regarding child custody or visitation rights.

(b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.