

New York's High Court Agrees with Carter Ledyard, Holds that Recently Enacted Anti-SLAPP Law May Not Be Applied Retroactively

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In connection with the high-profile defamation case involving the recording artist Kesha Rose Sebert (aka "Ke\$ha") and music producer Lukasz "Dr. Luke" Gottwald, the New York Court of Appeals has held that legislation enacted in 2020, substantially expanding the scope of New York's 30-year-old Anti-SLAPP Act, does not apply retroactively. See *Gottwald v. Sebert*, No. 32, 2023 WL 3959051 (N.Y. June 13, 2023). In so holding, the Court echoed the reasoning of an *amicus curiae* brief submitted to the high court by Carter Ledyard in support of Gottwald's position.

In 2020, New York enacted an enhanced version of its three-decade old "Anti-SLAPP" law. These statutes, which have proliferated nationally, are meant to target what are known as "SLAPPS" – so-called "strategic lawsuits against public participation." New York's recent legislation substantially expands the class of lawsuits subject to regulation as a "SLAPP" by now defining any lawsuit that relates to a communication on a subject of "public interest" as a SLAPP. One consequence of defining a lawsuit as a SLAPP is that the plaintiff who brings such a lawsuit must prove "actual malice" – a high burden.

Several years prior to the 2020 legislation, Gottwald filed a defamation action against Ke\$ha for alleged defamatory statements. After the 2020 Anti-SLAPP legislation was passed, the issue arose of how the new legislation would apply to Gottwald's pending lawsuit, if at all.

Gottwald's lawyers contacted Alan Lewis, Chair of Carter Ledyard's Media Law Group, who represents plaintiffs in high stakes defamation cases. Carter Ledyard then submitted to the Court of Appeals an *amicus* brief arguing that the 2020 Anti-SLAPP legislation should not be applied retroactively.

Last month, the Court of Appeals agreed with Carter Ledyard's position, observing that "the strong presumption against retroactive legislation has not been overcome with respect to the amendments to the anti-SLAPP statute." The court technically declined to answer a related question – whether a case that was outside the definition of a SLAPP, at the time it was brought, could be converted into one, before its conclusion, by the enactment of the new legislation. But by failing to rule on this question, the Court left in place the judgment of the intermediate appellate court, the First Department of the Appellate Division, under which pending cases not defined as SLAPPS when commenced cannot be treated as SLAPPS by virtue of the new legislation.

Finally, the Gottwald decision also limited any theoretical awards of attorneys' fees under the Anti-SLAPP Act to only those fees incurred to defend against a SLAPP after the effective date of the 2020 legislation.

Carter Ledyard's team was led by Alan Lewis, partner, and Nicholas Tapert, associate.

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