

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 24-01650

PRESENT: LINDLEY, J.P., BANNISTER, OGDEN, NOWAK, AND DELCONTE, JJ.

DANIEL CHARCHOLLA, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CHANNEL 13 NEWS, ALSO KNOWN AS 13 WHAM, AND
DEERFIELD MEDIA (ROCHESTER), INC.,
DEFENDANTS-RESPONDENTS.

VIVEK J. THIAGARAJAN, WEBSTER, FOR PLAINTIFF-APPELLANT.

BALLARD SPAHR LLP, NEW YORK CITY (JACQUELYN N. SCHELL OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Monroe County (Elena F. Cariola, J.), entered August 26, 2024, in a defamation action. The order granted in part the motion of defendants for attorney's fees.

It is hereby ORDERED that the order so appealed from is reversed on the law without costs and the motion is denied in its entirety.

Memorandum: Plaintiff appeals from an order that granted in part defendants' motion for attorney's fees and costs pursuant to Civil Rights Law § 70-a following an inquest. We reverse.

We agree with plaintiff that Supreme Court erred in granting the motion in part and awarding an amount of attorney's fees and costs to defendants. Civil Rights Law § 70-a (1) provides, in relevant part, that "[a] defendant in an action involving public petition and participation . . . , may maintain an action, claim, cross claim or counterclaim to recover *damages*, including costs and attorney's fees, from any person who commenced or continued such action" (emphasis added). Here, the record establishes that the attorney's fees and costs were billed to and paid by a nonparty entity and not defendants. Although defendants' counsel alleged that a corporate relationship existed between defendants and the nonparty entity, defendants established no contractual obligation between them and the nonparty from which to conclude that defendants suffered damages by the imposition of attorney's fees and costs as contemplated by the statute.

Plaintiff's remaining contentions need not be reached in light of our determination. We note that the record does not contain a notice of cross-appeal and, therefore, the purported cross-appeal of defendants was deemed dismissed inasmuch as it was not timely

perfected pursuant to the six-month rule (see 22 NYCRR 1250.7 [b] [4]; 1250.10 [a]; *Porschia C. v Sodus Cent. Sch. Dist.*, 231 AD3d 1520, 1521 [4th Dept 2024]; see generally *Bryden v Hankins*, 124 AD3d 1263, 1263-1264 [4th Dept 2015]). Consequently, the contentions of defendants pertaining to the order are not properly before us (see *Porschia C.*, 231 AD3d at 1521; *Perri v Case*, 208 AD3d 1046, 1047 [4th Dept 2022]).

All concur except OGDEN, J., who dissents and votes to affirm in the following memorandum: I respectfully dissent. I disagree with the majority that Supreme Court erred in granting, in part, defendants' motion for attorney's fees and costs pursuant to Civil Rights Law § 70-a.

Civil Rights Law § 70-a (1) provides, in relevant part, that "[a] defendant in an action involving public petition and participation . . . , may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action." The majority's rationale in reversing the order is that the attorney's fees and costs were billed to and paid by a nonparty entity and not defendants. The majority places a burden on defendants to establish the existence of any legal or contractual relationship between defendants and the nonparty entity that served as the payor. That burden is not appropriate here. The court properly found that Civil Rights Law § 70-a (1) does not require that the fees be paid by the named defendant. As a remedial statute (see *Gottwald v Sebert*, 40 NY3d 240, 264 [2023]; *Hoi Trinh v Nguyen*, 211 AD3d 1623, 1625 [4th Dept 2022]), Civil Rights Law § 70-a (1) should be "liberally construed to carry out the reforms intended and to promote justice . . . , and interpreted broadly to accomplish [its] goals" (*Kimmel v State of New York*, 29 NY3d 386, 396 [2017] [internal quotation marks omitted]; see generally *Graham Ct. Owners Corp. v Taylor*, 24 NY3d 742, 750-751 [2015]). There is no express prohibition on the recovery of attorney's fees and costs that have been advanced or paid by a nonparty for the benefit of the prevailing party, and "[i]t is not for this Court to engraft limitations onto the plain language of the statute" (*Kimmel*, 29 NY3d at 401; cf. *Cardo v Board of Mgrs., Jefferson Vil. Condo 3*, 67 AD3d 945, 946 [2d Dept 2009]). At this juncture, defendants—by virtue of being *the named defendants* in this action involving public petition and participation—are entitled to recover from plaintiff their attorney's fees and costs (see § 70-a [1]; *Reeves v Associated Newspapers, Ltd.*, 232 AD3d 10, 25 [1st Dept 2024], *lv dismissed* 44 NY3d 990 [2025]; see generally *Centennial Contrs. Enters. v East N.Y. Renovation Corp.*, 79 AD3d 690, 693 [2d Dept 2010]).

Finally, none of the other contentions raised on plaintiff's appeal warrant reversal or modification of the order and, inasmuch as defendants failed to perfect the cross-appeal, their contentions with respect to the order are not properly before this Court (see 22 NYCRR

1250.10 [a]; see generally *Bryden v Hankins*, 124 AD3d 1263, 1263-1264 [4th Dept 2015]). I would therefore affirm the order.

Entered: March 27, 2026

Ann Dillon Flynn
Clerk of the Court