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M THE DOLAN COMPANY

Nursing home's dismissal of suit doesn't shield it from sanctions

By David E. Frank

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A Superior Court judge has found that a plaintiff nursing home must pay attorneys' fees and costs for filing a frivolous lawsuit, even though the underlying complaint was withdrawn before the judge reached a ruling on the defendant's anti-SLAPP motion to dismiss.

The plaintiffs argued that Judge Carol S. Ball did not have the authority to impose sanctions under G.L.c. 231, §6F, since she only had taken the anti-SLAPP motion under advisement when the nursing

home exercised its unconditional right to dismiss the negligence complaint against the defendant, a former employee.

But the judge, in an issue of first impression, disagreed and found that justice required her to award the defendant his costs and fees.

"Although there seems to be no definitive precedent either permitting or precluding the award of G.L.c. 231, §6F damages after dismissal, ... the court finds that it would be manifestly unfair in the circumstances of this case not to award [the defendant] his attorneys' fees and costs in defending the plaintiffs' wholly insubstantial, frivolous and not advanced in good faith action," she wrote.

The seven-page decision is *Winthrop Healthcare Investors, L.P., et al. v. Cogan*, Lawyers Weekly No. 12-277-10. The ruling can be ordered at www.mass-lawyersweekly.com.

'End run'

In addition to the anti-SLAPP

to prevent the plaintiffs from doing an "end-run" around the anti-SLAPP statute, which does not award fees and costs unless and until a judge grants a defendant's special-motion to dismiss.

"The anti-SLAPP statute may have an unintended escape hatch that plaintiffs who bring bad-faith litigation can take advantage of by filing a notice of dismissal before the judge gets a chance to rule," he said. "If that happens, in one sense you are happy because the case is dismissed, but it deprives the defendant of its rights under the anti-SLAPP statute to recover costs and attorneys' fees."

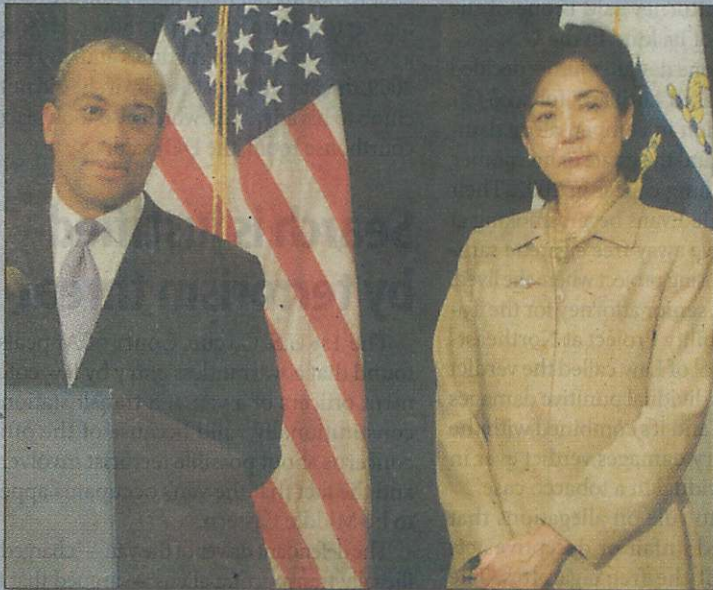
By filing under Rule 12(b)(6), defendants can move for sanctions under G.L.c. 231, §6F, Clements said.

"What this decision means is that in circumstances where there is bad faith, frivolous litigation, and the anti-SLAPP statute either doesn't apply or is evaded by filing a notice of dismissal, lawyers should look seriously at using [G.L.c.



CLEMENTS
Prevailing
defense attorney

See opinion
digest for
*Winthrop
Healthcare
Investors, L.P.,
et al. v. Cogan*
on page 30.



CHRISTINA PAZZANESE

DUFFLY'S THE ONE -- Gov. Deval L. Patrick ends months of speculation over who he'll name to the Supreme Judicial Court with his nomination last week of Judge Fernando R.V. Duffly. See story on page 3.

Faulty notice blocks eviction

Judge also finds
93A violation

By Eric T. Berkman

Lawyers say a recent Housing Court decision holding a landlord accountable for a process server's

a constable's 48-hour notice failed to provide the name, address and phone number of either the constable or the warehouse where the tenant's possessions were to be stored.

Additionally, the judge applied the Supreme Judicial Court's 1978 decision in *Schubach v. Household Fin. Corp.*, to find that

ises may be unfair and deceptive within the meaning of [93A]," Fields wrote.

A clear, "self-evident" lesson from the case is to read the statute and comply with it, said Faye B. Rachlin, managing director of the Legal Assistance Corp. of Central Massachusetts in Worcester and a tenants' rights lawyer

See opinion digest