

**§738. Dismissal of cause of action in whole or in part**

**1. Dismissal with prejudice.** In ruling on a motion under section 734, the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

A. The moving party establishes under section 733, subsection 2 that this Act applies; [PL 2023, c. 626, §2 (NEW); PL 2023, c. 626, §§3, 4, 7 (AFF).]

B. The responding party fails to establish under section 733, subsection 3 that this Act does not apply; and [PL 2023, c. 626, §2 (NEW); PL 2023, c. 626, §§3, 4, 7 (AFF).]

C. Either:

(1) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or

(2) The moving party establishes that:

(a) The responding party failed to state a cause of action upon which relief can be granted; or

(b) There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action. [PL 2023, c. 626, §2 (NEW); PL 2023, c. 626, §§3, 4, 7 (AFF).]

[PL 2023, c. 626, §2 (NEW); PL 2023, c. 626, §§3, 4, 7 (AFF).]

**2. Dismissal without prejudice; right to costs, attorney's fees and expenses.** A voluntary dismissal without prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under section 734 does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney's fees and expenses under section 740.

[PL 2023, c. 626, §2 (NEW); PL 2023, c. 626, §§3, 4, 7 (AFF).]

**3. Dismissal with prejudice; prevailed on motion.** A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under section 734 establishes for the purpose of section 740 that the moving party prevailed on the motion.

[PL 2023, c. 626, §2 (NEW); PL 2023, c. 626, §§3, 4, 7 (AFF).]

**SECTION HISTORY**

PL 2023, c. 626, §2 (NEW). PL 2023, c. 626, §§3, 4, 7 (AFF).

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