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ESPINOSA, J., with whom, D'AURIA, J., joins, dissenting. This certified appeal requires us to interpret the meaning of the phrase "successfully . . . defends an action," as used in General Statutes § 42-150bb,[1] where a commercial party plaintiff, here, the plaintiff, the Connecticut Housing Finance Authority, has withdrawn an action as a matter of right prior to any hearing on the merits pursuant to General Statutes § 52-80,[2] and a defendant-consumer, the defendant Asdrubal Alfaro, thereafter seeks attorney's fees. The majority concludes that, when a plaintiff withdraws its action as a matter of right, it creates "a rebuttable presumption" that the defendant has "successfully . . . defend[ed] an action" and, accordingly, is owed fees under § 42-150bb. I interpret the operative statutory language in § 42-150bb to require a defendant to win—or actually to prevail in—the action, as evidenced by a "[material] alter[ation] [of] the legal relationship between the parties . . . ." (Internal quotation marks omitted.) *Wallerstein* v. *Stew Leonard's Dairy*, 258 Conn. 299, 304, 780 A.2d 916 (2001). A material alteration of the legal relationship between the parties does not occur when a plaintiff withdraws its action as a matter of right. Put another way, all that the defendant gains when the plaintiff withdraws its action as of right is a return to the status quo, which means that an action could be brought against him again tomorrow. That is not winning. Thus, I disagree with the majority and, accordingly, respectfully dissent.

To begin, I agree with the facts and procedural background as set forth by the majority opinion and, thus, I need not repeat them in this dissent. I also agree with the majority that, in determining the meaning of the phrase "successfully . . . defends" in § 42-150bb, we apply plenary review in accordance with General Statutes § 1-2z.[3] See, e.g., *Mayer* v. *Historic District Commission*, 325 Conn. 765, 774, 160 A.3d 333 (2017).

I turn first to the statutory text, as § 1-2z requires. Section 42-150bb provides in relevant part that in an action on a consumer contract that provides for recovery of attorney's fees by the commercial party, "an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends" that action. Because "the statute does not define the phrase ['successfully . . . defends an action'], in accordance with General Statutes § 1-1 (a), we look to the common understanding expressed in dictionaries in order to afford the term its ordinary meaning." *In re Elianah T.-T.*, 326 Conn. 614, 622, 165 A.3d 1236 (2017).

I agree with the majority that the definitions of the component terms "successfully" and "defend" fail to provide a single unambiguous meaning to the phrase

as used in § 42-150bb. My review of the definitions of the terms in § 42-150bb leads me to conclude, however, that "successfully defend" is the functional equivalent of "prevailing party." Specifically, the occurrence of the phrase "successfully . . . defends" in the definition of "[p]revailing party" in Black's Law Dictionary (5th Ed. 1979), a review of related statutes, and the contextual usage of "successfully . . . defends an action" in § 42-150bb provide further clarity.

The phrase "successfully defends" appears in Black's Law Dictionary, supra, as part of the definition of "[p]revailing party," which specifically provides in relevant part: "The party to a suit who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily to the extent of his original contention. . . ." This definition of prevailing party hews very closely to the ordinary understanding that is created when one combines the definitions of the component words of the phrase "successfully . . . defends an action," and is functionally equivalent. See *Graham Court Owner's Corp.* v. *Taylor*, 24 N.Y.3d 742, 752, 28 N.E.3d 527, 5 N.Y.S.3d 348 (2015) (interpreting phrase "successful defense" in New York's landlord-tenant reciprocity statute, N.Y. Real Property Law § 234 [McKinney 2006], to mean "prevailing party, who has achieved 'the central relief sought' ").

Because "successfully defends" and "prevailing party" are functional equivalents, this court's interpretations of other fee statutes that utilize the term "prevailing party" in their text provide additional support to the proper meaning of "successfully . . . defends an action" in § 42-150bb. In the context of other fee statutes, this court has recognized that "[i]t is elementary that, whether fees and costs are a matter of right or discretion, they ordinarily are awarded to the party that prevails in the case and, until there is a prevailing party, they do not arise." (Internal quotation marks omitted.) *Barry* v. *Quality Steel Products, Inc.*, 280 Conn. 1, 24, 905 A.2d 55 (2006) (referring to General Statutes § 52-257, fees of parties in civil actions); see also *Frillici* v. *Westport*, 264 Conn. 266, 284, 823 A.2d 1172 (2003) (quoting to same effect in context of product liability action under General Statutes § 52-240a). In other words, the prevailing party is the one who wins the lawsuit.

In construing the phrase "successfully defends," we also must consider the meaning of the accompanying phrase "successfully prosecutes," and such consideration lends further support to the functional equivalence of "successfully defends" and "prevailing party." The two verbs share a single modifier. Because this language is linked, one phrase cannot be defined accurately without reference to the other.

"Prosecute" is defined in Black's Law Dictionary, supra, as: "To follow up; to carry on an action or other

judicial proceeding; to proceed against a person criminally. *To 'prosecute' an action is not merely to commence it, but includes following it to an ultimate conclusion.*" (Emphasis added.) This court also has interpreted the phrase "successfully prosecute" to require the party in question to prove the underlying claim in an action. See *Blake* v. *Levy*, 191 Conn. 257, 261, 464 A.2d 52 (1983) (holding that, in tortious interference case, "[f]or a plaintiff successfully to prosecute such an action it must prove that the defendant's conduct was in fact tortious" [internal quotation marks omitted]). Moreover, the term "successfully prosecutes" accompanies the term "successfully defends" in the definition of "[p]revailing party" in Black's Law Dictionary, supra, strongly supporting an understanding that "successfully prosecutes" and "successfully defends" are interrelated terms and, depending on the context, functional equivalents to "[p]revailing party." Following this relationship to its logical conclusion in the context of § 42-150bb, if a successful prosecution requires a party to prove the underlying claim in an action; see *Blake* v. *Levy*, supra, 261; then a successful defense may be interpreted similarly to require a party to *disprove* the underlying claim in an action.

Disproving a claim on its merits is not the same as winning a case by default because the opposing party has withdrawn as a matter of right. In the latter situation, the defendant's efforts have not caused the withdrawal, and no change to the parties' legal relationship has occurred. Rather, the withdrawal results from the plaintiff's voluntary choice and not from a successful defense. Accordingly, I reject the majority's contention that one may win an action by virtue of the opposing party's voluntary withdrawal.

The majority relies on General Statutes § 52-81 as support for its contention that costs are due to a defendant whenever a civil action is withdrawn. Although § 52-81 sets forth when costs are due following a withdrawal under § 52-80, its scope has not been interpreted by this court. Further, nothing in § 52-81 indicates that the defendant will be awarded costs when a determination in his favor is made on the merits. Moreover, costs are different from attorney's fees, and neither § 52-80 nor § 52-81 discusses attorney's fees. Thus, I am persuaded that the specific attorney's fees statutes discussed previously, § 52-257 for civil actions and § 52-240a for product liability, are relevant to interpreting the award of attorney's fees under § 42-150bb, but § 52-81 is not.

The majority contends that individual definitions of "successful" and "defend" support an understanding that "successfully . . . defends" means "any resolution of the matter in which the party obtains the desired result of warding off an attack made by the action, regardless of whether there was a resolution on the

merits." I agree generally that the definitions of these individual terms may reasonably support a commonly understood meaning of "successfully . . . defends an action" as encompassing temporary relief from a legal action, unaccompanied by a resolution on the merits. I contend, however, as previously explained, that an interpretation of the operative statutory phrase is incomplete without consideration of the related term "prevailing party," a review of related statutes and the linked phrase, "successfully prosecutes." Thus, although I ultimately determine that my view of the common understanding of "successfully . . . defends an action" is persuasive, I agree with the majority that the phrase "successfully . . . defends an action" is susceptible to more than one reasonable interpretation and, therefore, ambiguous when read in the context of a withdrawal as a matter of right prior to a hearing on the merits. This ambiguity requires us to consider extratextual evidence. See, e.g., *Mayer* v. *Historic District Commission*, supra, 325 Conn. 775 ("When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." [Internal quotation marks omitted.]). Unlike the majority, however, I conclude, after reviewing such evidence, that one who "successfully . . . defends an action," as contemplated by § 42-150bb, is functionally equivalent to a prevailing party. A prevailing party is one who wins a lawsuit, which is demonstrated by a material alteration of the parties' legal relationship. A successful defense, in my view, cannot occur when the plaintiff withdraws its action as a matter of right prior to a hearing on the merits.

I observe initially that the legal origin of the rebuttable presumption recognized by the majority, which is that attorney's fees are owed to a defendant once he has asserted that the plaintiff withdrew its action as a matter of right pursuant to § 52-80 as a result of the defendant's actions, unless the plaintiff provides as alternative reason for the withdrawal, is far from clear. The text and legislative history of § 42-150bb do not provide support for the majority's interpretation, and it is otherwise unexplained. Despite citing to decisions in the courts of other states, the majority does not provide any case law that explicates this rebuttable presumption.

The majority's interpretation employs a rationale similar to the catalyst theory, which was discarded by the United States Supreme Court in *Buckhannon Board & Care Home, Inc.* v. *West Virginia Dept. of Health &*

Human Resources, 532 U.S. 598, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001). The catalyst theory posits that attorney's fees are owed to a party who demonstrates that its actions catalyzed the "desired result" by bringing "about a voluntary change in the [opposing party's] conduct." Id., 601. In rejecting the catalyst theory, the court observed that it was not reconcilable with "the 'American [r]ule' that attorney's fees will not be awarded absent 'explicit statutory authority' . . . ." Id., 608. It is particularly instructive that in rejecting the catalyst theory, the court cited to the principle that "[o]nly when a party has prevailed on the merits of at least some of his claims . . . has there been a determination of the substantial rights of the parties . . . ." (Internal quotation marks omitted.) Id. The majority claims that its interpretation is necessary to ensure that a commercial party does not unilaterally withdraw in order to avoid paying attorney's fees where problems in successfully prosecuting an action have been revealed. I note that the United States Supreme Court, in construing the analogous term, "prevailing party," rejected a similar argument that "the 'catalyst theory' is necessary to prevent [parties] from unilaterally mooting an action before judgment in an effort to avoid an award of attorney's fees" as "entirely speculative and unsupported by any empirical evidence . . . ." Id. Although federal precedent is not binding on this court, I find this analysis persuasive and applicable to the present case. See *Lyme Land Conservation Trust, Inc.* v. *Platner*, 325 Conn. 737, 759, 159 A.3d 666 (2017) ("Connecticut follows the American rule").

Moreover, this method of proving that one party catalyzed the result sets up a system of competing affidavits where the trial court must then make factual determinations on why, precisely, an action was withdrawn. To make these determinations where both parties offer plausible reasons for the withdrawal, the trial court may need to hold an evidentiary hearing to hear a witness or to obtain other evidence. This not only causes more litigation in a situation where a case would otherwise be concluded, but also may raise questions of fact and credibility determinations. For instance, when faced with a need to prove its withdrawal was not due to the defendant's actions, a plaintiff may contend that it realized it would require too much money or effort or time to pursue the case to a conclusion, because it knows the defendant will fight every step of the process. Making the necessary factual findings in this situation places a burden on the trial court that is detrimental to judicial economy and requires the parties, including consumers, to use more resources. See *Buckhannon Board & Care Home, Inc.* v. *West Virginia Dept. of Health & Human Resources*, supra, 532 U.S. 609 (observing that "[a] request for attorney's fees should not result in a second major litigation," and that the court has "accordingly avoided an interpretation of the

fee-shifting statutes that would have spawn[ed] a second litigation of significant dimension" [citation omitted; internal quotation marks omitted]). Moreover, a policy permitting voluntary withdrawals is intended to avoid litigation.

In my review of extratextual evidence, I turn first to the legislative history of § 42-150bb. As discussed by the majority, the legislative history has been interpreted previously by this court. We explained that § 42-150bb "was designed to provide equitable results for a consumer who successfully defended an action under a commercial contract [providing that] the commercial party . . . was entitled to attorney's fees." *Aaron Manor, Inc.* v. *Irving*, 307 Conn. 608, 617–18, 57 A.3d 342 (2013); see also *Rizzo Pool Co.* v. *Del Grosso*, 240 Conn. 58, 74–76, 689 A.2d 1097 (1997) (discussing legislative history of § 42-150bb).

The majority claims that the legislative intent of assuring parity between commercial parties and consumers supports its interpretation of § 42-150bb as being pro-consumer. I disagree. The majority's rule could give rise to incentives that have a decidedly anti-consumer effect. For instance, the majority's rule may cause a plaintiff to continue pursuing a case in order to avoid liability for the defendant's attorney's fees even in situations in which the plaintiff might have determined on its own not to pursue the case. I also disagree with the majority's claim that its interpretation protects consumers because it prevents a commercial party plaintiff from withdrawing to avoid attorney's fees. This argument ignores an already existing deterrent. Under the existing rules, commercial party plaintiffs are already selective about the lawsuits they bring. Specifically, a plaintiff is disincentivized from bringing a lawsuit by the fact that, pursuant to § 42-150bb, if the case goes to judgment and the defendant prevails, the plaintiff would be liable for attorney's fees.

The majority also alleges that my interpretation of § 42-150bb is anti-consumer. I disagree. By enabling withdrawals as of right without additional burdens of proof, my interpretation supports the goal of ending litigation sooner. From a policy standpoint, this promotes judicial economy, which benefits all parties, including consumers. The majority's interpretation runs counter to principles of judicial economy.

In interpreting the phrase "successfully . . . defends an action" in the present case, I observe that the word "defends" was added only after the suggestion of Attorney Raphael Podolsky, speaking on behalf of the Legal Services Legislative Office in support of Senate Bill No. 1559.[4] Attorney Podolsky explained that, as originally drafted, the bill said "that it makes [attorney's fees] reciprocal to the consumer who successfully prosecutes an action or a counterclaim. Most cases in which the consumer will be involved, the consumer will be the

defendant. And, if the consumer prevails in defending a suit, he should also get the benefit of the reciprocal attorney's fees, so it ought to say who successfully prosecutes or defends an action or a counterclaim. You need that to have a true reciprocity under the bill." Conn. Joint Standing Committee Hearings, Judiciary, Pt. 3, 1979 Sess., p. 801. It is logical to infer that the subsequent incorporation of the phrase "successfully . . . defends an action" into the draft statute was intended to ensure that the "consumer [who] prevails in defending a suit" is the recipient of fees, as advocated by Podolsky. The concept of "prevailing" relating to the operative phrase was reinforced by Senator Alfred Santaniello, Jr., who similarly stated that fees would be owed "to the prevailing debtor who successfully prosecutes or defends an action . . . ." 22 S. Proc., Pt. 8, 1979 Sess., p. 2542.

My interpretation of § 42-150bb also finds support in background principles concerning attorney's fees. Connecticut follows "[t]he general rule of law known as the American rule . . . . [Under this rule] attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception." (Internal quotation marks omitted.) *Rizzo Pool Co.* v. *Del Grosso*, supra, 240 Conn. 72. One of the statutory exceptions to the American rule is § 42-150bb. See id., 73–76; see also *Traystman, Coric & Keramidas, P.C.* v. *Daigle*, 282 Conn. 418, 429, 922 A.2d 1056 (2007) ("Costs are the creature of statute . . . and unless the statute clearly provides for them courts cannot tax them. . . . Section 42-150bb clearly authorizes an award of attorney's fees to the consumer who successfully prosecutes or defends an action or a counterclaim on a consumer contract or lease." [Citation omitted; internal quotation marks omitted.]). This court has acknowledged that "[t]he purpose of § 42-150bb is to bring parity between a commercial party and a consumer who defends successfully an action on a contract prepared by the commercial party." (Internal quotation marks omitted.) *Aaron Manor, Inc.* v. *Irving*, supra, 307 Conn. 618.

As discussed previously in this dissenting opinion, this court has interpreted other fee statutes that award fees to the "prevailing party" in the case. See *Barry* v. *Quality Steel Products, Inc.*, supra, 280 Conn. 24. In *Frillici* v. *Westport*, supra, 264 Conn. 285, this court analyzed which party prevailed in the action. Specifically, where the trial court rendered judgment in the defendants' favor on all counts of the plaintiffs' amended complaint and was upheld on appeal, and the plaintiffs did not receive any of the relief they had sought, the defendants "prevailed." Id. In other words, the defendants won the lawsuit.

As examined previously, the definitions of terms in the phrase "successfully prosecutes or defends" closely

comport with the definition of "prevailing party," making the terms functional equivalents. See *Retained Realty, Inc.* v. *Spitzer*, 643 F. Supp. 2d 228, 232, 239 (D. Conn. 2009) (analogizing, without analysis, party who " 'successfully prosecut[ed] or defend[ed]' " to "prevailing party"); *Wilkes* v. *Thomson*, 155 Conn. App. 278, 283, 109 A.3d 543 (2015) (determining that there was no successful defense by defendants when they "did not prevail on the merits of their answer or special defenses"). Even some of the cases cited by the defendant in purported support of his position contain language analogizing one who mounts a successful defense to a prevailing party. See, e.g., *Citimortgage, Inc.* v. *Speer*, Superior Court, judicial district of New London, Docket No. CV-09-6001411 (April 30, 2012) (53 Conn. L. Rptr. 888, 889) ("the defendant is the prevailing party in the defense of this action" under § 42-150bb). Therefore, I maintain that the proper interpretation of § 42-150bb requires construing one who "successfully prosecutes or defends" as functionally equivalent to a prevailing party. See *Wilkes* v. *Thomson*, supra, 283 (The Appellate Court applied § 42-150bb to conclude "that a party does not 'prevail' by filing a dispositive motion that is denied by the trial court, even if the court errs in denying the motion. [Instead] [w]ere the party successfully to appeal and to have judgment rendered in its favor on remand, it would be in a tenable position to claim attorney's fees." Likewise, a party does not prevail "by obtaining a dismissal of the action as moot" after "vacat[ing] the premises [and] voluntarily providing the only relief sought by the plaintiff." Rather, prevailing parties are recognized as those who "prevail on the merits of their answer or special defenses.").

This court has previously interpreted who is a "prevailing party" for attorney's fees purposes. Specifically, this court has recognized the United States Supreme Court's determination, "in construing the [attorney's] fees provision of the Fair Housing Amendments Act; 42 U.S.C. § 3613 (c) (2); and the Americans with Disabilities Act; 42 U.S.C. § 12205; that the term prevailing party is a legal term of art . . . [referring to] one who has been awarded some relief by the court . . . . Other courts have held that, under various federal fee shifting statutes, the term prevailing party includes a plaintiff who has secured actual relief on the merits of his claim [that] materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff . . . ." (Citations omitted; internal quotation marks omitted.) *Wallerstein* v. *Stew Leonard's Dairy*, supra, 258 Conn. 304. By extension, I believe that this same standard should apply when a defendant seeks fees for successfully defending an action pursuant to § 42-150bb, requiring a demonstration that the action's disposition provided "actual relief [to the defendant] on the merits of [the] claim [that] materially alter[ed] the legal relationship

between the parties . . . .” Id.; see *Sole* v. *Wyner*, 551 U.S. 74, 82, 127 S. Ct. 2188, 167 L. Ed. 2d 1069 (2007) (“‘[t]he touchstone of the prevailing party inquiry’ . . . is ‘the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute’ ”); *Buckhannon Board & Care Home, Inc.* v. *West Virginia Dept. of Health & Human Resources*, supra, 532 U.S. 605 (precedent “counsel[s] against holding that the term ‘prevailing party’ authorizes an award of attorney’s fees *without* a corresponding alteration in the legal relationship of the parties” [emphasis in original]).

I acknowledge that conflicting authority does exist, holding that a party may prevail when a withdrawal as a matter of right, also known as a voluntary dismissal without prejudice, has occurred. The majority relies on an annotation in 66 A.L.R.3d 1087, 1089, § 2 (1975): “In applying a statute providing for an award of costs to the ‘prevailing party’ or the ‘successful party’ to cases in which the plaintiff had voluntarily dismissed his action, the courts have generally held that the defendant in such a case is entitled to recover his costs as the ‘prevailing party’ . . . .” However, the majority omits the remainder of the sentence, which provides: “although there is some authority holding that the defendant cannot be considered the ‘prevailing party’ in such a situation, since a voluntary dismissal of the plaintiff’s action does not result in a final disposition of the case on its merits.” Id. Moreover, the majority omits § 3 (b) of the annotation, which, in contrast to § 3 (a), compiles cases in which the plaintiff has voluntarily withdrawn an action and the defendant was not a “prevailing party.” See id., § 3 (b), p. 1095.

Upon review, I contend that stronger and more persuasive authority supports my position that a prevailing party is one who effects a material alteration of the legal relationship between the parties. See 10 C. Wright et al., Federal Practice and Procedure § 2667 (3d Ed. 2017) (“[A] dismissal of the action, whether on the merits or not, generally means that [the] defendant is the prevailing party. . . . However, courts also have ruled that a dismissal without prejudice does not qualify the defendant as a prevailing party because [the] defendant remains potentially subject to liability.” [Footnotes omitted.]); 20 Am. Jur. 2d 26–27, Costs § 19 (2015) (“[although as] a general rule, where a plaintiff voluntarily dismisses his or her action, [and] the defendant is entitled to recover costs [as a prevailing party] . . . it has been held that a dismissal without prejudice does not sufficiently conclude the matter such that a determination of the prevailing party, as a basis for a statutory attorney’s fee award, can be stated with certainty; the potential for further litigation on the same issues with possibly contrary outcomes precludes the identification of a prevailing party”); see also *Szabo Food Service, Inc.* v. *Canteen Corp.*, 823 F.2d 1073, 1076–77 (7th Cir.

1987) ("A dismissal without prejudice under Rule 41 [a] [1] [i] does not decide the case on the merits" because a "plaintiff may refile" and "[t]he defendant remains at risk. . . . Because the . . . dismissal is without prejudice . . . it is not the practical equivalent of a victory for [the] defendant on the merits."), cert. dismissed, 485 U.S. 901, 108 S. Ct. 1101, 99 L. Ed. 2d 229 (1988); *RFR Industries, Inc.* v. *Century Steps, Inc.*, 477 F.3d 1348, 1353 (Fed. Cir. 2007) ("hold[ing] that a plaintiff's voluntary dismissal without prejudice . . . does not bestow 'prevailing party' status upon the defendant," and reasoning that it "does not constitute a change in the legal relationship of the parties because the plaintiff is free to refile its action"); *Mitchell-Tracey* v. *United General Title Ins. Co.*, 839 F. Supp. 2d 821, 826 (D. Md. 2012) ("when a defendant remains at risk of another suit on the same claim, he can hardly be considered to be in the same position as a defendant who no longer faces the claim due to a dismissal with prejudice" [internal quotation marks omitted]); *Burnette* v. *Perkins & Associates*, 343 Ark. 237, 242, 33 S.W.3d 145 (2000) ("[O]ne must prevail on the merits in order to be considered a prevailing party under Ark. Code Ann. § 16-22-308. A dismissal without prejudice does not sufficiently conclude the matter such that a determination of the prevailing party can be stated with certainty. The potential for further litigation on the same issues with possible contrary outcomes precludes the identification of a prevailing party for purposes of the statute." [Footnote omitted.]); *D.S.I.* v. *Natare Corp.*, 742 N.E.2d 15, 24 (Ind. App. 2000), ("prevailing party" is one who "successfully prosecutes its claim or asserts its defense" where form of judgment "resolved the dispute generally in the favor of the one requesting [attorney's] fees and altered the litigants' legal relationship in a way favorable to the requesting party").[5]

The defendant asserts that a number of trial court decisions have "recogniz[ed] plaintiffs' unilateral withdrawal[s] as successful defenses . . . ." The plaintiff counters, however, that "none of the cases contain an in-depth examination of the precise statutory language at issue or analyze the established meaning of the term 'prevailing party.' " I agree with the plaintiff. In the absence of detailed analysis into the meaning of "successfully . . . defends," these cases provide no support for the defendant's position.

Although the trial court in *Bank of New York* v. *Bell*, 52 Conn. Supp. 32, 39–40, 23 A.3d 121 (2011), analyzed the meaning of "successfully . . . defends," the case is distinguishable from the present procedural situation. In *Bell*, the plaintiff sought to withdraw the action pursuant to § 52-80 after a "judgment had been entered against the defendant," which "constituted a hearing on issues of fact and, as a result," required the trial court to hold an additional hearing to determine "whether there was cause for the withdrawal." Id., 33–

34. By contrast, the plaintiff in the present case withdrew the action as a matter of right prior to any hearing on the facts or the merits. There is a difference between withdrawal as a matter of right and withdrawal for cause shown. Where the plaintiff's withdrawal is a matter of right, no justification or hearings are required to effectuate the plaintiff's voluntary and unilateral decision. Where the plaintiff's withdrawal is for cause shown, the plaintiff must justify its withdrawal to the court in a hearing. Whether attorney's fees may be obtained by a defendant in the latter situation is not before the court in the present case.

The defendant also claims that "[d]efendants succeed by maintaining the status quo" and need not defeat the underlying obligation to successfully defend an action pursuant to § 42-150bb. However, the cases cited in support of this allegation are distinguishable in that each case ended with a *court's* dismissal of the plaintiff's action, not the plaintiff's withdrawal of its action. See, e.g., *Centrix Management Co., LLC* v. *Valencia*, 145 Conn. App. 682, 689, 76 A.3d 694 (2013) (defendants obtained judgment dismissing plaintiff's action, which was affirmed on appeal, thereby successfully defending against it). Moreover, from a logical standpoint, it is misleading to assert that the defendant obtained the result he sought in the present case because in fact he did not; a legal action could still be brought against him again at any time.[6] Therefore, he has not succeeded in any real sense.

Although the Appellate Court and the trial courts have construed "successfully prosecutes" or "successfully defends" in the context of § 42-150bb, this court has not directly interpreted those isolated phrases. In *Anderson* v. *Latimer Point Management Corp.*, 208 Conn. 256, 265, 545 A.2d 525 (1988), however, this court considered the meaning of the broader phrase "successfully prosecutes or defends an action or a counterclaim based upon the contract or lease," in a case for attorney's fees under § 42-150bb involving a lease agreement. The plaintiff sought attorney's fees for a successful prosecution and successful defense, respectively, after the court entered orders in his favor as to his underlying claim and the defendants' counterclaim. Id., 265–66. As relevant to the present appeal, this court determined that the counterclaim had been resolved in favor of the plaintiff "on the basis of the inadequate bylaws [and the plaintiff's complaint] and not on considerations involving the sublease [on which the plaintiff had relied or] . . . the counterclaim." Id., 266. Accordingly, this court denied attorney's fees on the counterclaim because "the [trial] court's rendering of a judgment in favor of the plaintiff on the counterclaim does not, in reality, constitute a successful defense of a counterclaim under the lease." Id. The court's formulation in *Anderson* both interprets the impact of the truncated phrase "under the lease" and supports the general con-

cept that a party must have actively contributed to the arguments which led to the result in order to collect attorney's fees pursuant to § 42-150bb. This general concept supports my contention in the present appeal that a withdrawal as of right "does not, in reality, constitute a successful defense" because the result, withdrawal, arises from the plaintiff's voluntary choice and is not forced by arguments of the opposing party. Although I agree with the majority that *Anderson* is instructive regarding the conduct necessary to obtain attorney's fees pursuant to § 42-150bb where the trial court has entered orders resolving a case, I distinguish it procedurally from the present appeal where the plaintiff acted unilaterally.

In sum, I would interpret "successfully . . . defends an action," as used in § 42-150bb, to require the defendant to actually prevail in the action, demonstrated via a material alteration to the legal relationship between the parties, which does not occur when the plaintiff has withdrawn the action as a matter of right prior to a hearing on the merits. I therefore would affirm the judgment of the Appellate Court.

Accordingly, I respectfully dissent.

[1] General Statutes § 42-150bb provides in relevant part: "Whenever any contract or lease . . . to which a consumer is a party, provides for the attorney's fee of the commercial party to be paid by the consumer, an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease. . . ."

[2] General Statutes § 52-80 provides in relevant part: "The plaintiff may withdraw any action . . . returned to and entered in the docket of any court, before the commencement of a hearing on the merits thereof. After the commencement of a hearing on an issue of fact in any such action, the plaintiff may withdraw such action, or any other party thereto may withdraw any cross complaint or counterclaim filed therein by him, only by leave of court for cause shown."

[3] General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

[4] This court has previously recognized that "[a]lthough we generally restrict our review of a statute's legislative history to the discussions conducted on the floor of the House of Representatives or of the Senate, we will consider such committee hearing testimony of individuals addressing the proposed enactment when such testimony provides particular illumination for subsequent actions on proposed bills, such as in this instance." *Elections Review Committee of the Eighth Utilities District* v. *Freedom of Information Commission*, 219 Conn. 685, 695 n.10, 595 A.2d 313 (1991).

[5] Relatedly, I observe also that case law from other jurisdictions is inconsistent even as to whether prevailing party status is accorded following involuntary dismissals without prejudice, with some courts concluding that it is not. See, e.g., *Oscar* v. *Alaska Dept. of Education & Early Development*, 541 F.3d 978, 981 (9th Cir. 2008) (holding involuntary "dismissal without prejudice does not alter the legal relationship of the parties because the defendant remains subject to the risk of re-filing" and, therefore, prevailing status is not conferred). Case law is also mixed for voluntary dismissals with prejudice, as noted by the United States Court of Appeals for the Sixth Circuit. See *United States* v. *Alpha Medical, Inc.*, 102 Fed. Appx. 8, 9–10 (6th Cir. 2004); see also *McKnight* v. *12th & Division Properties, LLC*, 709 F. Supp. 2d 653, 656 (M.D. Tenn. 2010) (citing case law from various courts with opposing views as to whether defendant in action ended by voluntary dismissal with prejudice should be recognized as prevailing party). I note

that I make no conclusions as to whether involuntary dismissals without prejudice or voluntary dismissals with prejudice constitute successful defenses under § 42-150bb because those questions are not before the court in the present case.

[6] The plaintiff, in fact, did bring a second action against the defendant and, thereafter, succeeded in obtaining summary judgment as to liability in its favor. *Connecticut Housing Finance Authority* v. *Alfaro*, Superior Court, judicial district of Fairfield, Docket No. CV-14-6045155-S (April 20, 2017) (64 Conn. L. Rptr. 324, 326).