

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Deeb v. Tougher Industries, Inc.

216 A.D.2d 667, 627 N.Y.S.2d 793 (N.Y. App. Div. 1995) · Decided June 8, 1995

SUMMARY

The New York Appellate Division, Third Department reviewed sanctions imposed sua sponte against plaintiff’s counsel in an employment compensation action. The court held that counsel was entitled to notice and a reasonable opportunity to be heard before sanctions could be imposed, reversed the \$1,500 sanction, and remitted the matter for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Yesawich Jr., J.; Mikoll, J.P.; Mercure, J.; Crew III, J.; White, J.
JURISDICTION	New York
DECIDED	June 8, 1995
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal by plaintiff's counsel from the portion of an order imposing a \$1,500 monetary sanction against him.
STANDARD OF REVIEW	Review of the sanction order for compliance with the procedural requirements of 22 NYCRR 130-1.1.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Mark W. Couch v. Tougher Industries, Inc., Defendants

TOPICS

- sanctions
- appellate procedure
- civil procedure
- employment contracts
- remedies

PRACTICE AREAS

- civil procedure
- appellate procedure
- employment law
- remedies

QUESTIONS PRESENTED

1. Whether Supreme Court could impose a monetary sanction sua sponte without first notifying plaintiff's counsel that a sanction might be imposed and providing a reasonable opportunity to be heard.

HOLDINGS

1. Although a court may impose sanctions on its own initiative, it may not impose a sanction where the sanctioned party was not notified in advance that a penalty might be imposed and was not given a reasonable opportunity to be heard in opposition.

KEY QUOTATIONS

“nevertheless, where, as here, no request has been made for such relief, and the sanctioned party has not been notified in advance that a penalty might be imposed, he or she cannot be said to have been accorded “a reasonable opportunity to be heard” in opposition thereto” (668)

FACTUAL BACKGROUND

Plaintiff brought an action to recover bonus compensation allegedly owed under an employment contract. Plaintiff's counsel, Mark W. Couch, had previously been associated with a law firm retained by defendants, creating a conflict of interest that Supreme Court found required his disqualification. Supreme Court imposed a monetary sanction sua sponte against each attorney for allowing the action to proceed for four years without bringing the conflict to the court's attention, without first notifying counsel that a sanction might be imposed.

PROCEDURAL HISTORY

Plaintiff commenced an action in 1990 seeking bonus compensation allegedly due under an employment contract. After nearly four years, plaintiff moved to compel the deposition of defendants' attorney, and defendants cross-moved to depose plaintiff's counsel concerning a potential conflict of interest. Supreme Court denied both motions, determined that plaintiff's counsel had a disqualifying conflict, and sua sponte imposed a \$1,500 sanction against each attorney for failing to bring the conflict to the court's attention. Plaintiff's counsel withdrew and appealed the sanction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Supreme Court must reconsider whether to sanction Mark W. Couch after affording him an opportunity to place on the record evidence or argument showing that a sanction is inappropriate or that the amount assessed is unwarranted.

CASES CITED

- Breslaw v. Breslaw, 209 A.D.2d 662, 663
- Flaherty v. Stavropoulos, 199 A.D.2d 301, 302
- Matter of Minister, Elders & Deacons of Refm. Prot. Dutch Church v. 198 Broadway, 76 N.Y.2d 411, 413 n.

OPINION

YESAWICH, J.

Yesawich Jr., J. Appeal from that part of an order of the Supreme Court (Teresi, J.), entered May 17, 1994 in Albany County, which imposed sanctions against plaintiff's counsel. Plaintiff commenced this action in 1990 to recover amounts allegedly due him, as bonus compensation, under an employment contract. Nearly four years later, he moved to compel the examination before trial of defendant's attorney, contending that the latter is the only person with knowledge of information needed to defend against several counterclaims. *668Defendants, in turn, cross-moved to depose plaintiffs counsel, Mark W. Couch, purportedly to discover whether Couch, who was previously associated with a law firm that had been retained by defendants, should be disqualified from further representation of plaintiff in this action.

In the course of denying both motions, Supreme Court observed that examination of Couch was unnecessary because it was clear that there was a conflict of interest mandating his disqualification. In addition, the court, sua sponte, imposed a \$1,500 sanction against each party's attorney for delaying the action by permitting it to proceed for four years without bringing this conflict to the court's attention.

Couch, who has since withdrawn from representing plaintiff in this matter, appeals from the portion of the order directing that he pay the monetary sanction. A court may impose sanctions on its own initiative (see, 22 NYCRR 130-1.1 [d]); nevertheless, where, as here, no request has been made for such relief, and the sanctioned party has not been notified in advance that a penalty might be imposed, he or she cannot be said to have been accorded "a reasonable opportunity to be heard" in opposition thereto, as required by the pertinent rule (see, 22 NYCRR 130-1.1 [d]; *Breslaw v Breslaw*, 209 AD2d 662, 663; *Flaherty v Stavropoulos*, 199 AD2d 301, 302; cf., *Matter of Minister, Elders & Deacons of Refm.*

Prot. Dutch Church v 198 Broadway, 76 NY2d 411, 413, n). Accordingly, the order must be modified as requested, and the matter remitted, to enable Supreme Court to reconsider its decision to sanction Couch, after affording him an opportunity to place on the record any evidence or argument that might persuade the court that a sanction is inappropriate, or that the amount assessed is not warranted.

Mikoll, J. P., Mercure, Crew III and White, JJ., concur. Ordered that the order is modified, on the law, without costs, by reversing so much thereof as imposed a sanction in the amount of \$1,500 against Mark W. Couch; matter remitted to the Supreme Court for further proceedings not inconsistent with this Court's decision; and, as so modified, affirmed.