

VERMONT SUPERIOR COURT, CIVIL DIVISION, RUTLAND UNIT

Timothy Johnson et al. v. J. Jeremy Sullivan

Johnson v. Sullivan · No. 24-CV-00146 · Decided May 14, 2026

SUMMARY

The Vermont Superior Court, Rutland Unit, addresses Defendant Jeremy Sullivan’s motion for recovery of costs and attorneys’ fees caused by a mistrial. The court concludes that Plaintiffs are responsible for the mistrial and that compensatory sanctions are authorized, but reduces the requested recovery to account for trial-preparation work likely to remain useful for a retrial and excludes certain fees. The motion is granted in part and denied in part.

CASE DETAILS

COURT	Vermont Superior Court, Civil Division, Rutland Unit
WRITING FOR THE COURT	Susan A. McManus
JURISDICTION	Vermont Superior Court, Civil Division, Rutland Unit
DECIDED	May 14, 2026
DOCKET	24-CV-00146
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for recovery of costs and expenses, including attorneys’ fees, as compensatory sanctions for a mistrial caused by prejudicial testimony. Plaintiffs opposed the amount of fees, sought to defer enforcement, and alternatively requested entry of a final judgment under Vermont Rule of Civil Procedure 54(b).
STANDARD OF REVIEW	The opinion applies the court’s discretion to determine reasonable compensatory sanctions, costs, and attorneys’ fees arising from litigation misconduct and a mistrial.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- sanctions
- attorney fees
- costs
- civil procedure
- breach of contract

PRACTICE AREAS

- civil procedure
- sanctions
- attorney fees
- contracts
- evidence

QUESTIONS PRESENTED

1. Whether the court could impose compensatory sanctions under its inherent authority for misconduct that caused a mistrial.
2. Whether Defendant's reasonable first-trial preparation fees should be reduced because some preparation might be useful in a second trial.
3. Whether fees for a junior associate's attendance at trial were reasonably and distinctly incurred rather than duplicative or educational.
4. Whether the sanctions order qualified as a claim for relief subject to final judgment under Vermont Rule of Civil Procedure 54(b).
5. Whether enforcement of the compensatory sanctions award should be stayed until the underlying litigation and any appeals were completed.

HOLDINGS

1. The court may use its inherent authority to award reasonable costs and expenses caused by litigation misconduct resulting in a mistrial, but the award must be compensatory rather than punitive.
2. First-trial preparation fees may not be categorically denied or reduced solely because some of the work may be useful in a future trial; however, on the evidence and the parties' position in this case, a 50 percent reduction of first-trial-related preparation fees was appropriate.
3. Fees for a junior associate's attendance at trial are recoverable when the associate performs distinct second-chair functions and the attendance is reasonably necessary, even if the associate does not question witnesses or make arguments.
4. A litigation-sanctions order is not a claim for relief under Vermont Rule of Civil Procedure 54(b) and therefore does not qualify for Rule 54(b) final-judgment treatment.
5. The compensatory sanctions award should be enforceable within 30 days rather than stayed until final resolution of the underlying case and appeals.

KEY QUOTATIONS

"Thus, the reasoning in Bat—which was similarly blind since it came before any second trial had occurred—was not merely "draconian," or a particularly harsh exercise of discretion (as Plaintiffs in our case would concede), it was unlawful—an abuse of discretion." (Analysis, § I)

"There is nothing inherently unreasonable about a client having multiple attorneys. For that reason, a reduction for redundant hours is warranted only if the attorneys are unreasonably doing the same work." (Analysis, § II)

"Plaintiffs are ordered to pay \$36,976.31 to Defendant as a compensatory sanction for Plaintiffs' conduct that resulted in the mistrial." (Order)

FACTUAL BACKGROUND

The action involved competing claims for breach of contract and bad-faith conduct. During cross-examination on the third day of a jury trial, Timothy Johnson made an unsolicited and prejudicial reference to Jeremy Sullivan's former employment with the Vermont State Police, despite a pretrial agreement that the subject would not be raised. The court determined that the statement substantially prejudiced Sullivan, could not be cured by instruction, and declared a mistrial. Sullivan sought recovery of mistrial-related costs and attorneys' fees, supported in part by expert testimony regarding the reasonableness and reuse of trial-preparation work.

PROCEDURAL HISTORY

During the third day of a jury trial on competing breach-of-contract and bad-faith claims, the court granted Defendant's motion for a mistrial after Plaintiff Timothy Johnson referred before the jury to Defendant's former employment with the Vermont State Police, contrary to a pretrial agreement. Defendant then moved for sanctions to recover mistrial-related costs and expenses. After briefing and an evidentiary hearing on attorneys' fees, the court granted the sanctions motion in part, denied it in part, awarded \$36,976.31, and required payment within 30 days.

DISPOSITION

other

CASES CITED

- In re Gould, 77 F. App'x 155, 163-64 (4th Cir. 2003) (per curiam; unpub.)
- Turner v. Roman Catholic Diocese of Burlington, Vt., 2009 VT 101, ¶ 16, 186 Vt. 396
- Bat v. A.G. Edwards & Sons, Inc., Civil Case No. 04-cv-02225-REB-BNB, 2007 WL 2320539, at *3 (D. Colo. Aug. 9, 2007)
- Ferguson v. Valero Energy Corp., Civil Action No. 06-540, 2010 WL 2164493, at *8 (E.D. Pa. May 27, 2010)
- Gierlinger v. Gleason, 160 F.3d 858, 878-79 (2d Cir. 1998)
- O'Rourke v. City of Providence, 235 F.3d 713, 737 (1st Cir. 2001)
- Abner v. Kansas City S. Ry. Co., 541 F.3d 372 (5th Cir. 2008)
- Van Epps v. Johnston, 150 Vt. 324, 329
- Mason v. Me. Dep't of Corr., 387 F. Supp. 2d 57, 62 (D. Me. 2005)
- Morris v. Eversley, 343 F. Supp. 2d 234, 247 (S.D.N.Y. 2004)
- Oden v. Vilsack, Civil Action No. 10-00212-KD-M, 2013 WL 4046456, at *10 (S.D. Ala. Aug. 9, 2013)
- ACLU of Ga. v. Barnes, 168 F.3d 423, 432 (11th Cir. 1999)
- Cote v. White, 127 Vt. 210 (1968) (per curiam)
- Swanson v. Am. Consumer Indus., Inc., 517 F.2d 555, 560-61 (7th Cir. 1975)
- Cunningham v. Hamilton Cnty., Ohio, 527 U.S. 198, 208-09 (1999)
- Management Registry, Inc. v. A.W. Cos., Inc., No. 17-5009 (JRT/KMM), 2020 WL 6264467, at *2 (D. Minn. Oct. 23, 2020)
- Blemaster v. Sabo, No. 2:16-cv-04557 JWS, 2018 WL 10322071, at *2 (D. Ariz. Mar. 1, 2018)

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