

SUPREME COURT OF NORTH DAKOTA

Zink v. Enzminger Steel, LLC

2011 ND 122 (N.D. 2011) · No. 20100359 · Decided June 21, 2011

SUMMARY

The North Dakota Supreme Court reversed the dismissal of Doug Zink’s complaint because he was not given adequate notice or an opportunity to respond before the district court demanded proof of an alleged partnership and dismissed the action. The court held that dismissal of Ted Keller’s complaint was proper but had to be without prejudice because the court could not conclude that it was impossible to prove the partnership. The court also reversed the award of attorney’s fees and costs to Enzminger Steel. Justice Crothers concurred in part and dissented from the unconditional modification of Keller’s dismissal.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom, Justice; Carol Ronning Kapsner, Justice; Mary Muehlen Maring, Justice; Gerald W. VandeWalle, Chief Justice; Daniel J. Crothers, Justice
JURISDICTION	North Dakota
DECIDED	June 21, 2011
DOCKET	20100359
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from a district court judgment dismissing their breach-of-contract complaint with prejudice, denying pending motions, and awarding the defendant attorney's fees and costs.
STANDARD OF REVIEW	The court reviewed the dismissal under the summary-judgment standard because the district court required consideration of evidence outside the pleadings. Summary judgment is reviewed de novo as a question of law; the evidence is viewed in the light most favorable to the opposing party, and summary judgment is proper only when no genuine issue of material fact exists. The district court's conduct of courtroom proceedings is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential, with a partial dissent.

PARTIES

Doug Zink, Ted Keller v. Enzminger Steel, LLC

TOPICS

summary judgment

motions to dismiss

civil procedure

appellate procedure

attorney fees

PRACTICE AREAS

civil procedure

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commercial litigation

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QUESTIONS PRESENTED

1. Whether a district court may sua sponte require plaintiffs to produce evidence outside the pleadings and dismiss their complaint without first providing adequate notice and an opportunity to respond.
2. Whether the dismissal as to Doug Zink was proper when he was absent from the hearing and received no notice that the court intended to require partnership proof or dismiss the complaint.
3. Whether Keller's complaint should have been dismissed with prejudice after he failed to produce evidence of the alleged partnership.
4. Whether the award of attorney's fees and costs was proper after the district court found that the pleadings were made in bad faith.

HOLDINGS

1. A district court may dismiss a civil action without a party's motion, but it must give the parties adequate notice of its intent to dismiss and an opportunity to respond.
2. The dismissal with prejudice as to Doug Zink was improper because he did not receive adequate notice or an opportunity to respond to the court's demand for partnership proof.
3. Keller's complaint could properly be dismissed for failure to produce evidence establishing the alleged partnership, but the dismissal had to be without prejudice rather than with prejudice.
4. The award of attorney's fees and costs to Enzminger Steel was improper and had to be reversed.

KEY QUOTATIONS

“when a court dismisses an action sua sponte, it is still required to give the parties notice of its intent to do so and an opportunity to respond.” (§ 17)

“The district court has the power to dismiss a case in the absence of a party’s motion, but must provide the parties with adequate notice and an opportunity to respond.” (§ 30)

“Additionally, a case may be dismissed only when the court is certain that it will be impossible for the parties to state a valid claim.” (§ 30)

FACTUAL BACKGROUND

Enzminger Steel contracted with Doug Zink to supply components for a new grain-drying site. Zink and Keller alleged that they had formed an unwritten partnership to construct and operate the site and that the partnership, rather than the individual Zinks, was the contracting party. After discovering allegedly unsuitable components, they refused further payment and brought a breach-of-contract action. At a hearing on procedural motions, the district court questioned whether the partnership was fictitious and being used to permit Keller's unauthorized practice of law, then required proof of the partnership and dismissed the action when no proof was produced.

PROCEDURAL HISTORY

Zink and Keller sued Enzminger Steel after refusing further payments under a contract for components used in a grain-drying site. During a hearing on various motions, the district court sua sponte required them to produce proof of an alleged partnership within four days and stated that failure to do so would result in dismissal. Neither produced the requested proof, and the district court dismissed the complaint with prejudice and awarded fees and costs. The Supreme Court of North Dakota reversed and remanded, reversing the dismissal as to Zink, modifying Keller's dismissal to be without prejudice, and reversing the fee and cost award.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion. The dismissal as to Doug Zink is reversed. Keller's complaint is dismissed without prejudice, preserving the possibility of later proof of the partnership, joinder under N.D.R.Civ.P. 19(a), or amendment under N.D.R.Civ.P. 15. The attorney's-fee and cost award is reversed.

CASES CITED

- Ennis v. Dasovick, 506 N.W.2d 386 (N.D. 1993)
- Albrecht v. First Federal Savings & Loan Ass'n, 372 N.W.2d 893 (N.D. 1985)
- Skogen v. Hemen Township Board, 2010 ND 92, 782 N.W.2d 638
- Davidson v. State, 2010 ND 68, 781 N.W.2d 72
- Livingood v. Meece, 477 N.W.2d 183 (N.D. 1991)
- Minn-Kota Ag Products, Inc. v. Carlson, 2004 ND 145, 684 N.W.2d 60
- Beckler v. Bismarck Pub. Sch. Dist., 2006 ND 58, 711 N.W.2d 172
- City of Jamestown v. Snellman, 1998 ND 200, 586 N.W.2d 494
- Anderson v. Shelton, 92 N.W.2d 166 (N.D. 1958)
- Ward v. Shipp, 340 N.W.2d 14 (N.D. 1983)
- Wetzel v. Schlenvogt, 2005 ND 190, 705 N.W.2d 836
- State v. Niska, 380 N.W.2d 646 (N.D. 1986)
- Chief War Eagle Ass'n & Treaty of 1837 & 1917 Reinstatement v. United States, 81 Fed. Cl. 234 (2007)
- Black v. Abex Corp., 1999 ND 236, 603 N.W.2d 182

- Berlin v. State, 2005 ND 110, 698 N.W.2d 266
- Isaac v. State Farm Mut. Auto. Ins. Co., 547 N.W.2d 548 (N.D. 1996)
- Gullickson v. Kline, 2004 ND 76, 678 N.W.2d 138
- State v. Vivone, 63 S.W.3d 654 (Mo. Ct. App. 1999)
- In re S.L.W., 2010 ND 172, 788 N.W.2d 328

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