

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

Brathwaite v. Francois

2023 NY Slip Op 02171 (App. Div. 2023) · No. Case No. 2022-03560; Appeal No. 123; Index No. 654162/20 ·
Decided April 27, 2023

SUMMARY

The Appellate Division, First Department reversed an order awarding plaintiffs \$62,310 in attorney's fees and \$395 in costs. The court held that no agreement, statute, or court rule authorized the award, and rejected plaintiffs' argument that fees were justified by benefits allegedly conferred on other union members through the litigation.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Renwick, A.P.J.; Moulton, J.; González, J.; Higgitt, J.
JURISDICTION	New York
DECIDED	April 27, 2023
DOCKET	Case No. 2022-03560; Appeal No. 123; Index No. 654162/20
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting their motion for an award of reasonable attorney's fees and costs after the parties reached an agreement concerning the conduct of a union election.
STANDARD OF REVIEW	Review on the law
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Shaun Francois, etc., et al. v. Paul Brathwaite et al.

TOPICS

- attorney fees
- election law
- remedies
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- attorney fees
- election law
- remedies

QUESTIONS PRESENTED

1. Whether plaintiffs were entitled to recover attorney's fees after obtaining a temporary election stay and reaching an agreement concerning the election's conduct.
2. Whether the substantial-benefit theory justified an award of attorney's fees where the alleged benefits were available through internal administrative remedies and defendants had not violated applicable constitutional or election-code provisions.

HOLDINGS

1. Plaintiffs were not entitled to attorney's fees because there was no agreement, statute, or court rule authorizing an award.
2. The substantial-benefit theory did not support an award of attorney's fees because the alleged benefits were available through internal administrative remedies without filing suit.
3. Defendants did not violate the constitutional or election-code provisions governing the election, particularly in light of the COVID-19 pandemic.

KEY QUOTATIONS

"Under the general rule, attorney's fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule"
(*1)

FACTUAL BACKGROUND

Plaintiffs brought an action to stay an election conducted by defendants. The motion court temporarily stayed the election, and the parties subsequently reached an agreement regarding the election's procedure, which was documented in an order. Plaintiffs sought attorney's fees based on the alleged substantial benefit that other Local 372 union members received from the litigation, but the court found that the claimed benefits could have been obtained through internal administrative remedies and that defendants had not violated applicable constitutional or election-code provisions.

PROCEDURAL HISTORY

Plaintiffs commenced an action seeking to stay an election by defendants. Supreme Court granted a temporary stay, after which the parties agreed on how the election would proceed and memorialized that agreement in an order. Supreme Court later granted plaintiffs' motion for \$62,310 in attorney's fees and \$395 in costs. The Appellate Division unanimously reversed and denied the fee motion.

DISPOSITION

reversed

CASES CITED

- Hooper Assoc. v AGS Computers, 74 NY2d 487, 491 [1989]

- Seinfeld v Robinson, 246 AD2d 291 [1st Dept 1998]
- Ital Assoc. v Axon, 167 AD3d 537, 538 [1st Dept 2018]
- Matter of Noe v Local 983, 213 AD3d 460, 460 [1st Dept 2023]

OPINION

PER CURIAM.

Brathwaite v Francois (2023 NY Slip Op 02171) Brathwaite v Francois 2023 NY Slip Op 02171 Decided on April 27, 2023 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: April 27, 2023 Before: Renwick, A.P.J., Moulton, González, Higgitt, JJ. Index No. 654162/20 Appeal No. 123 Case No. 2022-03560 [*1]Paul Brathwaite et al., Plaintiffs-Respondents, vShaun Francois, etc., et al., Defendants-Appellants.

Roger V. Archibald, PLLC, Brooklyn (Roger V. Archibald of counsel), for appellants. Advocates For Justice, Chartered Attorneys, New York (Arthur Z. Schwartz of counsel), for respondents. Order, Supreme Court, New York County (Louis L. Nock, J.), entered on or about July 20, 2022, which granted plaintiffs' motion for an award of reasonable attorney's fees in the principal sum of \$62,310.00 plus costs in the sum of \$395.00, unanimously reversed, on the law, without costs, and the motion denied.

Plaintiffs brought this action to stay an election by defendants. The motion court granted a temporary stay, and the parties ultimately reached an agreement on how to proceed with the election, documented in an order. Plaintiffs now seek an award for attorney's fees. "Under the general rule, attorney's fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule" (Hooper Assoc. v AGS Computers, 74 NY2d 487, 491 [1989]).

Here, there is no written agreement for payment of attorney's fees between the parties, no applicable statutory provision, or any court rule authorizing such award. Rather, plaintiffs argue that fees should be awarded because of the substantial benefit other union members received from this litigation (see Seinfeld v Robinson, 246 AD2d 291 [1st Dept 1998]; see also Ital Assoc. v Axon, 167 AD3d 537, 538 [1st Dept 2018]).

We disagree with plaintiffs, as each of the alleged acquired benefits were provided to the members of Local 372 without the need for filing a lawsuit since the constitutions and election code provided plaintiffs with internal administrative remedies (see Matter of Noe v Local 983, 213 AD3d 460, 460 [1st Dept 2023]).

Moreover, considering the COVID-19 pandemic, defendants have not violated any of the constitutional or election code provisions related to the conduct of the election. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: April 27, 2023

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