

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Szabo Food Service, Inc. v. Canteen Corporation

823 F.2d 1073 (7th Cir. 1987) · No. No. 86-3093 · Decided August 25, 1987

SUMMARY

The Seventh Circuit vacated and remanded a district court order denying a motion for attorney-fee sanctions without adequate explanation. The court held that a voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(i) barred an award under 42 U.S.C. § 1988 because the defendant was not a prevailing party, but did not eliminate the court’s authority to impose Rule 11 sanctions. The court also discussed the alleged due process and racial-discrimination theories underlying the plaintiff’s challenge to a Cook County food-service contract.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Easterbrook; Cudahy; Posner
JURISDICTION	Federal
DECIDED	August 25, 1987
DOCKET	No. 86-3093
DISPOSITION	affirmed_in_part_vacated_in_part_remanded
PROCEDURAL POSTURE	Appeal from the district court's denial of a motion for attorney's fees and sanctions under Rule 11 and 42 U.S.C. § 1988 after the plaintiff voluntarily dismissed the federal action.
STANDARD OF REVIEW	Abuse of discretion for Rule 11 sanctions; de novo for legal questions regarding jurisdiction and statutory interpretation.
PRECEDENTIAL VALUE	Published
PARTIES	Canteen Corporation v. Szabo Food Service, Inc., et al.

TOPICS

- sanctions
- attorney fees
- civil procedure
- due process
- section 1983
- government contracts
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a voluntary dismissal under Rule 41(a)(1)(i) deprives the district court of jurisdiction to award attorney's fees under 42 U.S.C. § 1988 or sanctions under Rule 11.
2. Whether the district court erred in denying Canteen's Rule 11 motion without explanation.
3. Whether Szabo-Digby's due process claim was objectively frivolous and warranted Rule 11 sanctions.
4. Whether the racial discrimination claim required further fact-finding before determining Rule 11 sanctions.

HOLDINGS

1. A defendant is not a 'prevailing party' when the plaintiff voluntarily dismisses without prejudice under Rule 41(a)(1)(i), and because § 1988 fees are treated as costs, which cannot be awarded after such a dismissal, the court lacks authority to award § 1988 fees.
2. A voluntary dismissal under Rule 41(a)(1)(i) does not deprive the district court of jurisdiction to award Rule 11 sanctions for violations that occurred before the dismissal.
3. Szabo-Digby's due process claim was objectively frivolous because it lacked a property interest in the contract or in the bidding procedures, and the claim was not a good faith argument for extension of law. Therefore, Rule 11 sanctions are mandatory.
4. The racial discrimination claim was sufficient in form, but the district court must make findings on whether it was well-grounded in fact and whether reasonable inquiry was made before filing. The record was insufficient to resolve these issues.
5. When a serious Rule 11 motion is denied without explanation, the appellate court cannot review the decision, and remand is required for the district court to provide reasons.

KEY QUOTATIONS

"I have reviewed the motion. I am well aware of the case. I reviewed the materials that were previously filed in connection with the case. I don't believe, under the circumstances of the case, that a Rule 11 violation has occurred, nor do I believe that Section 1988 fees should be awarded, and so the motion, upon my review of the entire record in this case, is denied." (1076)

"[P]laintiffs demonstrated that they had been deprived of a substantive constitutional right, i.e., the right to be free from having established bidding procedures applied in an arbitrary and capricious manner." (1081)

"The County reserves the right to accept or reject any or all proposals and to negotiate with any qualified source or to cancel in part or in its entirety this Request for Proposal. It may accept the proposal that it considers to be in the best interest of the County." (1080)

"The ostrich-like tactic of pretending that potentially dispositive authority against a litigant's contention does not exist." (1082)

FACTUAL BACKGROUND

Szabo Food Service, a large caterer, held a contract to supply food at the Cook County Jail. Cook County had a minority set-aside ordinance requiring 30% of contract work to go to minority-owned firms. Szabo formed a joint venture with Catfish Digby's, a black-owned restaurant chain, to bid on the next contract. Canteen Corporation, a competing caterer, bid lower by over \$1 million. An evaluation committee rated Szabo-Digby's bid superior, but the County Board awarded the contract to Canteen. Szabo-Digby filed a federal suit alleging racial discrimination and due process violations, then voluntarily dismissed it under Rule 41(a)(1)(i) and refiled in state court, where it lost. Canteen sought Rule 11 sanctions and § 1988 fees in the federal action, but the district court denied the motion without explanation.

PROCEDURAL HISTORY

Szabo-Digby filed a federal suit against Canteen and Cook County officials alleging racial discrimination and due process violations. After the district court denied a TRO, Szabo-Digby voluntarily dismissed the federal action under Rule 41(a)(1)(i) and refiled in state court, where it lost. Canteen then moved for sanctions in the federal district court, which denied the motion without explanation. Canteen appealed.

DISPOSITION

affirmed_in_part_vacated_in_part_remanded

REMAND INSTRUCTIONS

On remand, the court shall fix the sanction for the pursuit of the objectively frivolous due process claim. The court shall take such evidence and make such findings as are appropriate with respect to the pursuit of the racial discrimination claim. Circuit Rule 36 shall apply on remand.

CASES CITED

- Shrock v. Altru Nurses Registry, 810 F.2d 658 (7th Cir. 1987)
- Dreis & Krump Manufacturing Co. v. Machinists & Aerospace Workers, 802 F.2d 247 (7th Cir. 1986)
- Thomas v. Capital Security Services, Inc., 812 F.2d 984 (5th Cir. 1987)
- Jackman v. WMAC Investment Corp., 809 F.2d 377 (7th Cir. 1987)
- Lieb v. Topstone Industries, Inc., 788 F.2d 151 (3d Cir. 1986)
- Santiago v. Victim Services Agency, 753 F.2d 219 (2d Cir. 1985)
- Williams v. Ezell, 531 F.2d 1261 (5th Cir. 1976)
- Corcoran v. Columbia Broadcasting System, Inc., 121 F.2d 575 (9th Cir. 1941)
- Scam Instrument Corp. v. Control Data Corp., 458 F.2d 885 (7th Cir. 1972)
- Maher v. Gagne, 448 U.S. 122 (1980)
- Palmer v. City of Chicago, 806 F.2d 1316 (7th Cir. 1986)
- Marek v. Chesny, 473 U.S. 1 (1985)
- Brown v. National Board of Medical Examiners, 800 F.2d 168 (7th Cir. 1986)

- *Weinstein v. University of Illinois*, 811 F.2d 1091 (7th Cir. 1987)
- *Unioil, Inc. v. E.F. Hutton & Co.*, 809 F.2d 548 (9th Cir. 1986)
- *Westmoreland v. CBS, Inc.*, 770 F.2d 1168 (D.C. Cir. 1985)
- *Eastway Construction Corp. v. City of New York*, 762 F.2d 243 (2d Cir. 1985)
- *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 809 F.2d 584 (9th Cir. 1987)
- *Pantry Queen Foods, Inc. v. Lifschultz Fast Freight, Inc.*, 809 F.2d 451 (7th Cir. 1987)
- *Hagans v. Lavine*, 415 U.S. 528 (1974)
- *Cronson v. Clark*, 810 F.2d 662 (7th Cir. 1987)
- *Dozier v. Loop College*, 776 F.2d 752 (7th Cir. 1985)
- *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980)
- *In re TCI Ltd.*, 769 F.2d 441 (7th Cir. 1985)
- *Bailey v. Sharp*, 782 F.2d 1366 (7th Cir. 1986)
- *Exchange National Bank v. Daniels*, 763 F.2d 286 (7th Cir. 1985)
- *Patzer v. Board of Regents*, 763 F.2d 851 (7th Cir. 1985)
- *Winterland Concessions Co. v. Smith*, 706 F.2d 793 (7th Cir. 1983)
- *Bryan v. Smith*, 174 F.2d 212 (7th Cir. 1949)
- *Harvey Aluminum, Inc. v. American Cyanamid Co.*, 203 F.2d 105 (2d Cir. 1953)
- *In re International Business Machines Corp.*, 687 F.2d 591 (2d Cir. 1982)
- *White v. New Hampshire Department of Employment Security*, 455 U.S. 445 (1982)
- *Montgomery & Associates, Inc. v. CFTC*, 816 F.2d 783 (D.C. Cir. 1987)
- *Board of Regents v. Roth*, 408 U.S. 564 (1972)
- *Perry v. Sindermann*, 408 U.S. 593 (1972)
- *O'Bannon v. Town Court Nursing Center*, 447 U.S. 773 (1980)
- *Miller v. Henman*, 804 F.2d 421 (7th Cir. 1986)
- *Polyvend, Inc. v. Puckorius*, 77 Ill. 2d 287 (1979)
- *Coyne-Delany Co. v. Capital Development Board*, 616 F.2d 341 (7th Cir. 1980)
- *Mandel v. Bradley*, 432 U.S. 173 (1977)
- *Parratt v. Taylor*, 451 U.S. 527 (1981)
- *Hudson v. Palmer*, 468 U.S. 517 (1984)
- *Gumz v. Morrisette*, 772 F.2d 1395 (7th Cir. 1985)
- *Olim v. Wakinekona*, 461 U.S. 238 (1983)
- *Hewitt v. Helms*, 459 U.S. 460 (1983)
- *Schwartz v. Mayor's Committee on the Judiciary*, 816 F.2d 54 (2d Cir. 1987)
- *Bishop v. Wood*, 426 U.S. 341 (1976)
- *University of Michigan v. Ewing*, 474 U.S. 214 (1985)
- *L & H Sanitation, Inc. v. Lake City Sanitation, Inc.*, 769 F.2d 517 (8th Cir. 1985)
- *Three Rivers Cablevision, Inc. v. City of Pittsburgh*, 502 F. Supp. 1118 (W.D. Pa. 1980)

- Hill v. Norfolk & Western Ry., 814 F.2d 1192 (7th Cir. 1987)
- Bonds v. Coca-Cola Co., 806 F.2d 1324 (7th Cir. 1986)
- Thornton v. Wahl, 787 F.2d 1151 (7th Cir. 1986)
- Bailey v. Bicknell Minerals, Inc., 819 F.2d 690 (7th Cir. 1987)
- Premier Electrical Construction Co. v. National Electrical Contractors Association, Inc., 814 F.2d 358 (7th Cir. 1987)
- Rogers v. Lincoln Towing Service, Inc., 771 F.2d 194 (7th Cir. 1985)
- FDIC v. Elephant, 790 F.2d 661 (7th Cir. 1986)
- Knorr Brake Corp. v. Harbil, Inc., 738 F.2d 223 (7th Cir. 1984)
- Fullilove v. Klutznick, 448 U.S. 448 (1980)
- Associated General Contractors of California, Inc. v. San Francisco, 813 F.2d 922 (9th Cir. 1987)
- Kasper v. Board of Election Commissioners, 814 F.2d 332 (7th Cir. 1987)
- Gramenos v. Jewel Companies, Inc., 797 F.2d 432 (7th Cir. 1986)