

DISTRICT OF COLUMBIA COURT OF APPEALS

Goldschmidt v. Paley Rothman Goldstein Rosenberg & Cooper,
Chartered

935 A.2d 362 (D.C. 2007) · No. Nos. 03-CV-1367, 04-CV-240, 04-CV-241, 04-CV-1118 · Decided November 8,
2007

SUMMARY

The District of Columbia Court of Appeals reviewed consolidated appeals arising from bad-faith litigation, attorney sanctions, and efforts to collect judgments. The court affirmed the denial of relief under Rule 60(b)(6) and the imposition of Rule 11 sanctions, but held that D.C. Code § 16-579 does not require proof that uncompensated services were arranged to defraud or impede creditors. The court remanded for further proceedings concerning the writ of attachment and the reasonable value of services rendered to the debtor's corporation.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Fisher, Associate Judge; Ruiz, Associate Judge; Nebeker, Senior Judge
JURISDICTION	District of Columbia
DECIDED	November 8, 2007
DOCKET	Nos. 03-CV-1367, 04-CV-240, 04-CV-241, 04-CV-1118
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from orders denying Fischer's Rule 60(b)(6) motion to vacate judgments, denying enforcement of a writ of attachment against Montgomery Bakers, Inc., and imposing Rule 11 sanctions on Fischer's attorneys.
STANDARD OF REVIEW	Abuse of discretion for the Rule 60(b)(6) ruling and Rule 11 violation and sanction amount; statutory interpretation of D.C. Code § 16-579 reviewed as a legal issue, with discretion required to be exercised under correct legal principles.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Stanley H. Goldschmidt, et al., Fischer Brewing Co., Inc., et al., Arthur G. Kahn, Paley Rothman Goldstein Rosenberg & Cooper Chartered, et al. v. Paley Rothman Goldstein Rosenberg & Cooper,

TOPICS

sanctions statutory interpretation appellate procedure civil procedure remedies

PRACTICE AREAS

civil procedure appellate procedure statutory interpretation judgment enforcement attorney sanctions
commercial litigation torts

QUESTIONS PRESENTED

1. Whether extraordinary circumstances under Superior Court Civil Rule 60(b)(6) warranted vacating the judgments because Fischer's attorney allegedly suffered from mental illness and failed to defend the counterclaims.
2. Whether D.C. Code § 16-579 permits a court to require an employer-garnishee to make payments toward a judgment when the judgment debtor renders services without salary or compensation, without proof that the arrangement was designed to defraud or impede creditors.
3. Whether the trial court properly found that Goldschmidt and Kahn violated Rule 11 and properly imposed \$50,000 sanctions on each attorney.
4. Whether the Rule 11 safe-harbor requirement was satisfied when the sanctions motion was served before judgment, initially denied as premature, and later renewed after judgment.

HOLDINGS

1. The trial court did not abuse its discretion by denying Fischer's motion to vacate the judgments. A party seeking Rule 60(b)(6) relief based on an attorney's illness must establish extraordinary circumstances, including a causal nexus between the illness and the adverse ruling; Fischer failed to make that showing and was generally bound by his attorney's acts and omissions.
2. D.C. Code § 16-579 does not require a judgment creditor to prove that an arrangement was designed to defraud or impede creditors when the judgment debtor is rendering services to a corporation without salary or compensation. The qualifying phrase concerning fraud or impediment modifies inadequate compensation, not the separate circumstance of uncompensated services.
3. The trial court properly imposed Rule 11 sanctions on Goldschmidt and Kahn because they lacked evidentiary support for claims against Mark and Paley Rothman and continued to advocate those claims after discovery rendered them untenable. The trial court also acted within its discretion in setting sanctions at \$50,000 against each attorney.
4. The Rule 11 safe-harbor requirement was satisfied because Paley Rothman served the proposed sanctions motion while the challenged claims remained pending and gave the attorneys more than twenty-one days and multiple opportunities to withdraw or correct them before summary judgment.

KEY QUOTATIONS

“We conclude, in sum, that the plain language of the statute does not require Paley Rothman to prove that the financial arrangements between MBI and Fischer were “designed to defraud or impede” his creditors.” (at 374)

“The “1993 amendment to [federal] Rule 11 [adopted by the Superior Court in 1995] emphasizes an attorney’s continuing obligation to make inquiries, and thus the rule allows sanctions when an attorney continues `insisting upon a position after it is no longer tenable.” (at 377)

“Both Mr. Goldschmidt and Mr. Kahn received the “safe harbor” protections of Rule 11(c)(1)(A).” (at 380)

“We vacate the decision denying enforcement of the writ of attachment and remand for further proceedings consistent with this opinion.” (at 383)

FACTUAL BACKGROUND

Fischer sued Flax, Flax’s attorney Alan Mark, and Paley Rothman for allegedly interfering with a proposed financing transaction involving Fischer Brewing Company. The underlying claims failed, and judgments totaling approximately \$930,000 in attorney fees and costs, plus punitive damages, were entered against Fischer for bad-faith litigation; Flax also received a quantum meruit award. To collect the unpaid judgment, Paley Rothman served a writ of attachment on Montgomery Bakers, Inc., a corporation owned by Fischer and family members, where Fischer performed substantial services without a conventional salary while receiving monthly payments characterized as loan repayments. Fischer’s attorneys also continued to pursue claims against Mark and Paley Rothman despite discovery allegedly revealing no factual basis for those claims.

PROCEDURAL HISTORY

Benson Fischer’s tortious-interference claims against Howard Flax, Paley Rothman, and Alan Mark were resolved below by summary judgment and trial judgments, including damages on counterclaims for bad-faith litigation and quantum meruit. The appellate court affirmed those underlying judgments in *Fischer v. Estate of Flax*, 816 A.2d 1 (D.C. 2003). The trial court later denied Fischer’s motion to vacate, denied enforcement of a writ of attachment served on Montgomery Bakers, Inc., and imposed \$50,000 Rule 11 sanctions each against Stanley Goldschmidt and Arthur Kahn. The District of Columbia Court of Appeals affirmed the Rule 60(b)(6) and Rule 11 rulings, vacated the attachment ruling, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the decision denying enforcement of the writ of attachment and conduct further proceedings under the correct interpretation of D.C. Code § 16-579, including determining the reasonable value of Fischer’s services to MBI from October 8, 2001, to the present. The Rule 60(b)(6) and Rule 11 judgments are affirmed.

CASES CITED

- Fischer v. Estate of Flax, 816 A.2d 1 (D.C. 2003)
- Starling v. Jephunneh Lawrence & Associates, 495 A.2d 1157, 1161 (D.C. 1985)
- Clement v. District of Columbia Department of Human Services, 629 A.2d 1215, 1219 (D.C. 1993)
- Puckrein v. Jenkins, 884 A.2d 46, 60 (D.C. 2005)
- Johnson v. Marcheta Investors Ltd. Partnership, 711 A.2d 109, 111 (D.C. 1998)
- Firemen's Insurance Co. of Washington, D.C. v. Belts, 455 A.2d 908, 909 (D.C. 1983)
- Moorehead v. District of Columbia, 747 A.2d 138, 157-58 (D.C. 2000)
- Profitt v. Smith, 513 A.2d 216, 218 (D.C. 1986)
- Railway Express Agency, Inc. v. Hill, 250 A.2d 923, 925-27 (D.C. 1969)
- Douglas v. Kemp, 721 F. Supp. 358, 360 & n.4 (D.D.C. 1989)
- Link v. Wabash Railroad Co., 370 U.S. 626, 633-34 (1962)
- Molovinsky v. Monterey Cooperative, Inc., 689 A.2d 531, 534 n.7 (D.C. 1996)
- Clark v. Moler, 418 A.2d 1039, 1042 (D.C. 1980)
- Bond v. Wilson, 398 A.2d 21, 24-25 (D.C. 1979)
- Newsome v. District of Columbia, 859 A.2d 630, 631 (D.C. 2004)
- Joseph v. Parekh, 351 A.2d 204, 205-06 (D.C. 1976)
- Evans v. Medical Inter-Insurance Exchange, 856 A.2d 609, 613 (D.C. 2004)
- Perkins v. District of Columbia Board of Zoning Adjustment, 813 A.2d 206, 209 n.5 (D.C. 2002)
- District of Columbia v. Smith, 329 A.2d 128, 130 (D.C. 1974)
- United States v. Pritchett, 152 U.S. App. D.C. 307, 311, 470 F.2d 455, 459 (1972)
- MacFarland v. Elverson, 32 App. D.C. 81, 87 (1908)
- In re Rosen, 570 A.2d 728, 729 (D.C. 1989)
- IBF Corp. v. Alpern, 487 A.2d 593, 596-97 (D.C. 1985)
- In re Schneiderman, 251 B.R. 757, 766 (Bankr. D.D.C. 2000)
- Phillips v. Sugrue, 886 F. Supp. 63, 64-65 (D.D.C. 1995)
- Marvins Credit, Inc. v. General Motors Corp., 119 A.2d 447, 448 (D.C. 1956)
- In re J.D.C., 594 A.2d 70, 75 (D.C. 1991)
- Cunningham v. Bathon, 719 A.2d 497, 499, 502 (D.C. 1998)
- Williams v. Board of Trustees of Mount Jezreel Baptist Church, 589 A.2d 901, 910 & n.12 (D.C. 1991)
- Breezevale Ltd. v. Dickinson, 879 A.2d 957, 963 n.6 (D.C. 2005)
- Kleiman v. Kleiman, 633 A.2d 1378, 1382-83 (D.C. 1993)
- Johnson v. United States, 398 A.2d 354, 362 (D.C. 1979)
- Bredehoft v. Alexander, 686 A.2d 586, 593-94 (D.C. 1996)
- Park v. Sandwich Chef, Inc., 651 A.2d 798, 803 (D.C. 1995)
- Battles v. City of Fort Myers, 127 F.3d 1298, 1300 (11th Cir. 1997)
- Morris v. Wachovia Securities, Inc., 448 F.3d 268, 279 (4th Cir. 2006)
- Ridder v. City of Springfield, 109 F.3d 288, 293, 297 (6th Cir. 1997)

- *Goldberg, Marchesano, Kohlman, Inc. v. Old Republic Surety Co.*, 727 A.2d 858, 864 (D.C. 1999)
- *In re Jumper*, 909 A.2d 173, 175 (D.C. 2006)
- *Divane v. Krull Electric Co.*, 200 F.3d 1020, 1027 (7th Cir. 1999)
- *Holgate v. Baldwin*, 425 F.3d 671, 677-78 (9th Cir. 2005)
- *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 400-02, 405 (1990)
- *Fraidin v. Weitzman*, 93 Md. App. 168, 611 A.2d 1046, 1079-80 (1992)
- *Ammerman v. Newman*, 384 A.2d 637, 641 (D.C. 1978)
- *Majeska v. District of Columbia*, 812 A.2d 948, 950 (D.C. 2002)
- *Newburger, Loeb & Co. v. Gross*, 563 F.2d 1057, 1080 (2d Cir. 1977)
- *McElhanon v. Hing*, 151 Ariz. 386, 728 P.2d 256, 264 (Ct. App. 1985)
- *Miller v. Ortman*, 235 Ind. 641, 136 N.E.2d 17, 41 (1956)
- *Strid v. Converse*, 111 Wis. 2d 418, 331 N.W.2d 350, 356 (1983)

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