

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

William Hallam Webber v. The Eye Corporation

721 F.2d 1067 (7th Cir. 1983) · No. No. 82-3020 · Decided November 28, 1983

SUMMARY

The Seventh Circuit reversed a district court order dismissing claims arising from the purchase of paintings allegedly misattributed to Arthur Szyk. The court held that dismissal with prejudice for failure to prosecute was an abuse of discretion because the record did not show contumacious conduct or a clear pattern of delay, and lesser sanctions were available. It also held that the plaintiff's claimed lost profits were sufficient to prevent dismissal of the first claim for lack of the amount-in-controversy requirement.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Per Curiam; Wood; Posner; Flaum
JURISDICTION	Federal
DECIDED	November 28, 1983
DOCKET	No. 82-3020
PROCEDURAL POSTURE	Plaintiff appealed the district court's order dismissing two claims with prejudice for failure to prosecute and dismissing a third claim for lack of the amount-in-controversy jurisdictional minimum.
STANDARD OF REVIEW	Abuse of discretion for dismissal for failure to prosecute; the amount-in-controversy dismissal was reviewed under the legal-certainty test.
PARTIES	William Hallam Webber v. The Eye Corporation

QUESTIONS PRESENTED

- Whether the district court abused its discretion by dismissing two claims with prejudice for failure to prosecute when the plaintiff failed to appear for trial after receiving relatively short notice.
- Whether the district court properly dismissed the express-warranty claim for lack of diversity jurisdiction because the amount in controversy was allegedly below the statutory minimum.

HOLDINGS

- The district court abused its discretion by dismissing the second and third claims with prejudice for failure to prosecute because the record did not establish a clear record of delay or contumacious conduct,

and the court did not adequately consider less severe sanctions.

FACTUAL BACKGROUND

Webber purchased ten paintings attributed to Arthur Szyk for \$4,400 and later discovered that they were imitations. He asserted express and implied warranty claims and a misrepresentation claim, seeking \$18,000 on each warranty claim and punitive damages on the misrepresentation claim. The district court scheduled trial on short notice, denied a continuance when Webber was attending a book fair, and dismissed the claims after Webber failed to appear. The court of appeals concluded that the record showed no clear pattern of delay or contumacious conduct and that Webber's first claim was not legally certain to be worth less than the jurisdictional minimum.

PROCEDURAL HISTORY

Webber sued The Eye Corporation over paintings allegedly misrepresented as authentic works by Arthur Szyk. After the case was set for trial on short notice, Webber was unavailable because he was attending a book fair, and his counsel sought a continuance and then a voluntary dismissal without prejudice. The district court denied those requests, dismissed two claims with prejudice for failure to prosecute, and dismissed the first claim for failure to satisfy the diversity jurisdictional amount. The Seventh Circuit reversed and remanded, directing reassignment to a different district judge.