Rachel CONCEPCION, et al. vs. AMERICAN INTERNATIONAL KNITTERS CORPORATION, et al.

Civil Action No. 86-0004 District Court NMI

Decided September 30, 1986

1. Civil Procedure - Sanctions Where the Court is left with the inescapable conclusion that removal petition was effected solely to vex and harass plaintiffs. to delay resolution of the lawsuit, and to increase costs of litigation, defendants' actions lacked the good faith required by Rule 11.

2. Civil Procedure - Sanctions A court may impose sanctions, including attorney fees, on its own initiative under Rule 11 or sua sponte under its inherent power. Fed.R.Civ.P. 11. UNITED STATES DISTRICT COURT FOR THE FOR The Northern Mariana isia car NORTHERN MARIANA ISLANDSBy_______ (Description of the state of t

DECISION AND GEDER

FILED Cierk District Court

SEP 3 0 1985

Plaintiffs v. AMERICAN INTERNATIONAL KNILS CORPORATION and WILLIE TAN, Defendants

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THIS MATTER came before the Court on August 14, 1986, for hearing of defendants' motion to reconsider the sanctions imposed by this Court's Decision and Order of June 5, 1986.

A review of the chronology of events leading to the sanctions is warranted. Defendants here are plaintiffs in <u>American</u> <u>International Knitters Corporation, Inc. v. Echon, et al.</u>, Commenwealth Trial Court Civil Action No. 86-113, filed March 27, 1995. Less than an hour after filing their lawsuit, defendants here were named as defendants in <u>Concepcion, et al. v. American International</u> <u>Knitters Corporation and Willie Tan</u>, Commonwealth Trial Court Civil Action No. 86-114. The cases stem from the same fact situation and appear to share the same parties.

On April 21, 1986, defendants filed their petition for removal to this Court of Civil Action No. 86-114. Removal wis based upon 28 U.S.C. \$1441. Defendants cited 29 U.S.C. \$201 er seq. as grounds for removal and verified in their petition that "the above described action is a civil action of which this Court

has original jurisdiction under the provisions of Title 28, United States Code, Section 1331 and is one which may be removed to this Court... in that it appears from plaintiffs' complaint... that this accion... arises under the Fair Labor Standards Act... " Defendants then moved to dismiss the action, claiming this Court lacked jurisdiction because the Fair Labor Standards Act does nct apply to the Northern Mariana Islands.

⁸ Defendants make three arguments in support of their ⁹ motion to reconsider the imposition of sanctions. First, that a ¹⁰ defendant who removes an action to district court has an absolute ¹¹ right to challenge the federal court's jurisdiction. Second, that ¹² a Rule 11 application for attorney fees can only be made by motion. ¹³ And, third, that notice and an opportunity to be heard must be ¹⁴ given the offending party prior to imposition of sanctions.

15 Defendants support their first proposition with a number 15 of case citations, most dating from near the turn of the century. 17 A complete reading of these cases shows that they do not support 18 the claim that a defendant has an absolute right to remove to 19 federal court and then challenge the federal court's jurisdiction. 20 In each case except Heine v. New York Life Insurance Co., 50 F.11 21 382 (9th Cir. 1931), the federal court decided it had no juris-22 diction because the state court from which the case was removed 23 lacked jurisdiction initially. The state courts had either failed 24 to acquire personal jurisdiction over the defendant or the case wis 25 of a type in which jurisdiction was vested exclusively in the 26 federal court. Removal jurisdiction is derivative and, histori-

cally, defects in jurisdiction of the state court could not be cured by removal to the federal court. The federal court was obliged to dismiss, even if it would have had jurisdiction had the case been filed there originally. This result has been much criticized through the years. See e.g., 1A Moore's Federal Practice $\$0.157\{3.-2\}$, pp. 58-62.

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In <u>Heine</u> the federal court declined jurisdiction in order to "protect itself from a deluge of litigation by non-residents, inspired by contingent retainers to avoid or overcome foreign laws and interpretation and application thereof by foreign courts of the country of the situs of the contract." <u>Heine</u>, at 387. Specifically, the court chose not to exercise jurisdiction over cases involving many thousands of insurance policies, issued in Germany to German residents and citizens, written in German, and payable in German currency.

16 Here the argument is made, as it was in the cited cases. 17 that the federal court lacks jurisdiction. But the cited cases are 18 inapposite. They support only an argument that dismissal by the 19 federal court is proper if the state court had no jurisdiction to 20 begin with. That was not defendants' argument. Rather, defendants 21 argued that the FLSA does not apply in the Northern Mariana 22 Islands, whether in the local trial courts or the district court. 23 Removal under these circumstances could have been for one purpose 24 only: delay. Because of this, the Court stands by the reasoning of 25 its prior determination that removal was not warranted by existing 26 law.

Rule 11 states in relevant part:
[T]he signature of an attorney constitutes a certificate by him that he has read the
pleading, motion, or other paper; that to the best of his knowledge, information, and belief
formed after reasonable inquiry it is well grounded in fact and is warranted by existing
law or a good faith argument, and that it is not imposed for any improper pur-
pose, such as to hara∧s or cause unnecessary delay or need.
Sanctions were imposed as well because reasonable inquiry
would have disclosed that the Fair Labor Standards Act does $app L_{\mathcal{F}}$
in the Commonwealth. Section $502(a)(2)$ of the Covenant to Estab-
lish a Commonwealth of the Northern Mariana Islands in Political
Union with the United States of America states:
The following laws of the United States in existence on the effective date of this
Section and subsequent amendments to such laws will apply to the Northern Mariana
Islands, except as otherwise provided in this Covenant:
(2) Those laws not described in paragraph (1) which are applicable to Guam and which
are of general application to the several States as they are applicable to the seve-
ral States
Even a cursory reading of the Covenant reveals this
straightforward test for determining the applicability of United
States laws in the Northern Mariana Islands. The issue is well-
settled. See, e.g., David v. Camacho, Commonwealth Trial Course
Civil Action No. 84-265 (April 19, 1985), aff'd, District Court for
the Northern Mariana Islands, Appellate Division No. 85-9010 (June
13, 1986).

[1] Defendants' actions lacked the good faith required by Rule 11. The Court cannot accept defendants' belated attempt to justify removal as a tool for inspiring plaintiffs to improve their pleadings. The Court is left with the inescapable conclusion that removal was effected solely to vex and harass plaintiffs, to delay resolution of the lawsuit, and to increase costs of litigation.

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Defendants next argue that a Rule 11 application for attorney fees can be made only by motion. That is not the case:

> If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it... an appropriate sanction...

12 121 Clearly, a court may impose sanctions on its own 13 initiative under Rule 11 or sua sponte under its inherent power. 14 In re Securities Litigation, No. 84-1505 (9th Cir. June 3, 1986). 15 should be clarified here that, although plaintiffs sought It 16 sanctions, the Court acted on its own initiative in imposing 17 sanctions and not directly in response to plaintiffs' request. 18 Nevertheless, the Court is of the opinion that defendants were 19 properly put on notice. Plaintiffs made the request in their Mar 20 23. 1986. memorandum. The Court believes this was sufficient == 21 bring the matter within the purview of Local Rule 220-6, which 22 provides that the opponent of a motion may also serve and file any 23 motion related to the subject matter of the original motion.

Finally, defendants argue that they were entitled in hotice and a hearing prior to imposition of sanctions. Defendants did not support this contention with any authority. If sanctions

are imposed at the request of an opponent, the "procedure obviously must comport with due process requirements." Notes of Advisory Committee on Rules, Fed. R. Civ. P. 11 (West Pub. Co. 1986). Because the court levied sanctions on its own initiative, this issue need not be addressed. However, defendants were placed on notice and have had the opportunity to be heard.

For the reasons given above, defendants' motion fc= 8 reconsideration is DENIED. 9

Plaintiffs' counsel have submitted affidavits in support 10 of an award of costs and attorney fees, as directed by this Court'z 11 previous order. The Court has reviewed the affidavits and finds 12 that they reflect a reasonable number of hours spent researching 13 and preparing this issue only, and that a reasonable hourly rate $\pm x$ 14 claimed. Pennsylvania v. Delaware Valley Citizens' Council for 15 Clean Air, 55 U.S.L.W. 1006 (U.S. July 8, 1986). Attorney Bergs 16 is awarded attorney fees of \$830.00 and costs of \$4.33 and attorney 17 Yana is awarded attorney fees of \$230.00. Sanctions are to be 18 borne by defendants' attorney and are to be paid within thirty days 19 of the date of this Order. Plaintiffs' request for attorney fees 20 and costs relative to the motion to reconsider is denied.

IT IS SO ORDERED.

Jud**ge** Alfred Laureta

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FOOTNOTE

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4	1. The Judicial Improvements Act of 1985, a portion of	
5	which is now codified in 28 U.S.C. \$1441, provides in Section 3(e) that a district court to which a civil action has been removed is	
6	no longer precluded from hearing and determining any claim in the action merely because the state court lacked jurisdiction at the	
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