

Juan B. CAMACHO
v.
J.C. TENORIO ENTERPRISES

Appellate No. 88-9019
District Court NMI
Appellate Division

Decided April 15, 1989
Amended August 30, 1989

1. Appeal and Error - Sanctions

The trial court's determination of the facts regarding the allegedly improper conduct leading to an award of sanctions pursuant to rule is reviewed under the clearly erroneous standard; whether conduct violated rule governing sanctions is reviewed de novo, and the sanction imposed is reviewed for abuse of discretion. Com.R.Civ.P. 11.

2. Civil Procedure - Rules - Interpretation

Where the language of a local rule and federal rule appear identical, and both parties cite exclusively federal authority in their briefs, federal law is considered authoritative in interpreting the local rule. Com.R.Civ.P. 11.

3. Civil Procedure - Sanctions - Standard

An attorney's investigation into the facts and law must be objectively reasonable under the circumstances to meet the standards of civil procedure rule governing sanctions. Com.R.Civ.P. 11.

4. Civil Procedure - Sanctions - Standard

Where party: (1) asserted that a bank sold property at a foreclosure sale and attached to the complaint a copy of the certificate of sale; (2) asserted that his demand for redemption was ignored; and (3) did not disclose that he stipulated to the sale of

his property, such statements and omissions were misleading and the sanctions imposed by the trial judge were amply warranted on the ground that the complaint was not well-grounded in fact. Com.R.Civ.P. 11.

5. Appellate Procedure - Sanctions

An award of attorneys' fees on appeal is not appropriate merely because the appellate court affirms the granting of sanctions. NMI Dist.Ct.R.App.Pro. 38.

6. Appellate Procedure - Sanctions

Sanctions are appropriate under appellate rule only if the appeal is frivolous -- whether the underlying sanction award was unquestionably appropriate and the appeal from that award was wholly without merit. NMI Dist.Ct.R.App.Pro. 38.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

APPELLATE DIVISION

JUAN B. CAMACHO,)
)
Plaintiff/Appellant,)
)
v.)
)
J. C. TENORIO ENTERPRISES,)
INC.,)
)
Defendant/Appellee.)

DCA No. 88-9019
CTC No. 88-270

FILED
Clerk
District Court

OPINION

APR 16 1989

For The Northern Mariana Islands
By J. R. Mitchell
(Deputy Clerk)

Attorney for Appellant:

DOUGLAS F. CUSHNIE
Attorney at Law
P.O. Box 949
Saipan, MP 96950
Telephone: (670) 234-6843

Attorney for Appellee:

THEODORE R. MITCHELL
Third Floor, Nauru Building
P.O. Box 2020
Saipan, MP 96950
Telephone: (670) 234-9800

BEFORE: MUNSON, HILL,* and DUENAS,** District Judges.

HILL, District Judge:

This court must determine whether the trial court erred in assessing Rule 11 sanctions against Camacho and his counsel, Cushnie, for filing a frivolous complaint. For the reasons that

* The Honorable Irving Hill, Senior Judge, United States District Court for the Central District of California, sitting by designation.

** The Honorable Cristobal C. Duenas, Senior Judge, United States District Court for the District of Guam, sitting by designation.

proceeds, \$25,832.49 was applied to satisfy the default, and the balance was disbursed to Camacho.

Almost a full year after the auction and sale, on March 16, 1988, Camacho requested in effect that Tenorio treat the auction sale as having been a foreclosure, and that Tenorio should therefore calculate the amount necessary for redemption, pursuant to 2 C.M.C. § 4542. One week later, on March 23, 1988, Camacho filed the present suit against Tenorio seeking a net redemption amount and an accounting. That complaint asserts in paragraph 3 that the property was sold pursuant to a foreclosure sale.

Almost immediately after answering the complaint, Tenorio sought summary judgment on the ground that redemption was not an available remedy. Tenorio alleged that redemption is available only after a mortgage foreclosure, and that the auction at which Tenorio purchased the property was not a mortgage foreclosure, but was a "stipulated execution of judgment." Summary judgment was granted on April 26, 1988 on the ground that no right of redemption exists outside a foreclosure sale.

On April 27, 1988, Tenorio moved for the imposition of sanctions pursuant to Com. R. Civ. Pro. 11. After full briefing and a hearing, the court granted the motion and imposed sanctions against both Camacho and his attorney, Cushnie. The total award was for \$3,318.90, and Camacho and Cushnie were each to pay half. Camacho and Cushnie appeal the imposition of sanctions.

B. Camacho's Complaint Was Not Well-Founded

[3] Rule 11 mandates the imposition of sanctions if an attorney signs and files a pleading that is not well-founded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Fed. R. Civ. P. 11. The attorney's investigation into the facts and law must be objectively reasonable under the circumstances. Id.; Zaldivar v. City of Los Angeles, 780 F.2d 823, 830 (9th Cir. 1986). The Ninth Circuit has stated the standard as follows:

[r]ule 11 sanctions shall be assessed if the paper filed in district court and signed by an attorney or an unrepresented party is frivolous, legally unreasonable, or without factual foundation, even though the paper was not filed in subjective bad faith.

Id. at 831. The trial court's award of sanctions should be affirmed if Camacho's complaint satisfies any of these three elements.

Camacho's complaint alleges that the Bank sold the property to Tenorio at a foreclosure sale and that Camacho made a timely demand for redemption that Tenorio ignored. Tenorio asserts that Camacho's complaint was without factual foundation because the records of the 1983 action clearly indicated that the March 1987 sale was not a foreclosure sale, but was an execution to which Camacho had stipulated.

[4] Tenorio is correct. Camacho's bold assertion that the Bank sold the property to Tenorio at a foreclosure sale and his attaching to the complaint a copy of the certificate of sale are misleading. Additionally, his assertion that Tenorio ignored

Camacho's demand for redemption implies that Camacho was entitled to redeem the property. Such an implication is not supported by the facts. Finally, Camacho's complaint withholds and does not disclose that Camacho stipulated to the sale of his property. In light of the factual misstatements, such omissions are also misleading. The sanctions imposed by the trial judge are amply warranted on the ground that the complaint was not well-grounded in fact.

C. Tenorio's Request for Fees on Appeal

Rule 38 of the Commonwealth Rules of Appellate Procedure, like Rule 38 of the federal rules, permits an appellate court to award "just damages" and single or double costs to the appellee if the court finds the appeal to be frivolous. Com. R. App. Pro. 38. Tenorio seeks such sanctions here but has not submitted any detail or specific request as to attorney's fees.

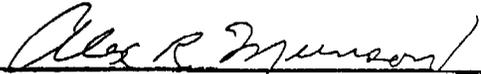
[5,6] An award of attorneys' fees on appeal is not appropriate merely because the appellate court affirms the granting of sanctions. See Orange Prod. Credit Ass'n v. Frontline Ventures Ltd., 801 F.2d 1581, 1583 (9th Cir. 1986). Sanctions are appropriate under appellate Rule 38 only if the appeal is frivolous--whether the underlying sanction award was unquestionably appropriate and the appeal from that award was wholly without merit. Id. (quoting Hewitt v. City of Stanton, 798 F.2d 1230, 1233 (9th Cir. 1986)).

We find this appeal to have been wholly without merit and clearly frivolous. We therefore order sanctions of \$2500 plus double costs to be paid equally by attorney Cushnie and his client Camacho.

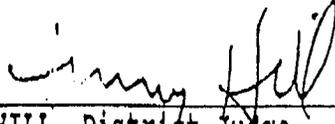
The judgment below is

AFFIRMED.

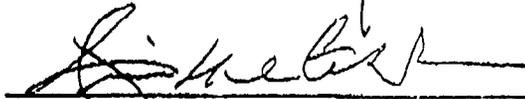
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ALEX R. MUNSON, District Judge



IRVING HILL, District Judge

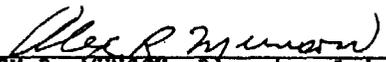


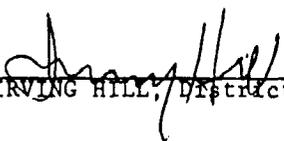
CRISTOBAL C. DUENAS, District Judge

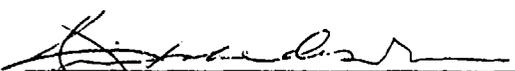
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IT IS HEREBY ORDERED that lines 22 through 26 of page two, and lines 1 through 10 of page three, be stricken from the text of the April 21, 1989 DECISION.

Dated this 30th day of August, 1989.


ALEX R. MUNSON, District Judge


IRVING HILL, District Judge


CRISTOBAL C. DUENAS,
Senior District Judge

FILED
Clerk
District Court

Aug. 30 1989
SEP 13 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

For The Northern Mariana Islands

By _____
(Deputy Clerk)

APPELLATE DIVISION

JUAN S. CAMACHO,)
) DCA NO. 88-9019
)
Plaintiff-Appellant,)
)
vs.)
) ORDER AMENDING OPINION
) OF APRIL 16, 1989
J.C. TENORIO ENTERPRISES, INC.,)
)
)
Defendants-Appellees.)
)

THIS MATTER came before the Court on Appellee's April 24, 1989, Petition for Rehearing, filed pursuant to Local Rule of Appellate Procedure 40(a). Appellee by its motion seeks clarification of the Court's April 16, 1989, Opinion, which included the following language:

We find this appeal to have been wholly without merit and clearly frivolous. We therefore order sanctions of \$2,500 plus double costs to be paid equally by attorney Cushnie and his client Camacho.

The panel finds that no response or oral argument of this motion is necessary, since only clarification of the language in the Opinion is sought. LRAP 40(a).

Local Rule of Appellate Procedure 38 provides that:

If this Court shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee, including attorney's fees.

The appellate panel, in its Opinion of April 16, 1989, intended to award Appellee double costs and double attorney's fees

incurred by appellee up to the date of the Opinion as just damages. The \$2,500 sanction is hereby withdrawn.

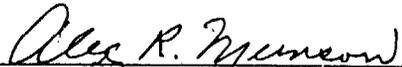
Therefore, the Opinion of April 16, 1989, is hereby amended by striking lines 1-4, page seven (7), and substituting in their place the following language:

The appellee is therefore awarded double costs and double attorney's fees. Attorney Cushnie and his client, Juan B. Camacho, shall be jointly and severally liable for the costs and fees awarded. A bill for costs and an affidavit for fees shall be submitted by Appellee and settled by the Presiding Judge.

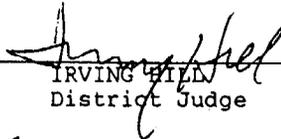
Appellee shall submit its cost bill and fees affidavit within fourteen (14) days of the date this Order is filed.

IT IS SO ORDERED.

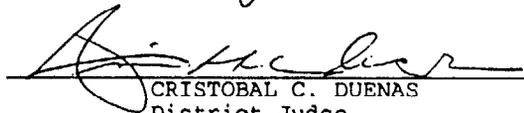
DATED this 30th day of August, 1989.



ALEX R. MUNSON
District Judge



IRVING HILL
District Judge



CRISTOBAL C. DUENAS
District Judge