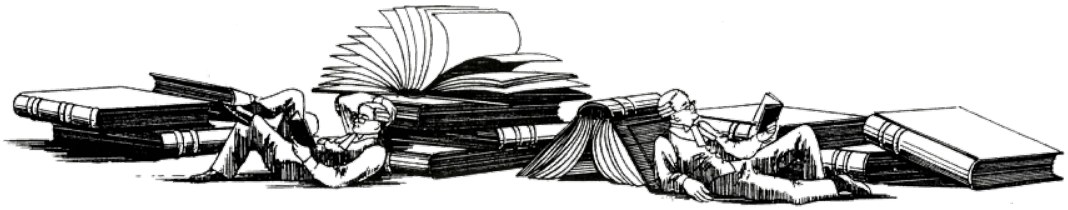

NOTES ON THE STYLE OF THE LAW

Some Illinois smacking down

by

ELIJAH Z GRANET

smackdowns judicial USA sanctions art law

PREVIOUSLY this publication has considered the topic of judicial smackdowns.[1] This brief post will consider an excellent example of judicial smacking down which occurred at the end of December, but was only recently reported in the press.[2] The case in question, *Fletcher v Doig*,[3] is truly bizarre.

The plaintiff, Mr Robert Fletcher, insisted that a painting in his possession had been made by the famous artist Mr Peter Doig, because it was signed 'Pete Doige'. Mr Fletcher had acquired the painting via contact with Mr 'Doige' in a Canadian prison, where Mr Fletcher was working in an arts education programme and Mr 'Doige' was an inmate. Mr Fletcher further alleged he had originally met Mr 'Doige' at Lakehead University where they were both students. In fact, as Mr Doig's lawyers quickly showed, the artist had never been enrolled at Lakehead, and the Royal Canadian Mounted Police confirmed that Mr Doig had no criminal record in Canada. A mountain of evidence demonstrated that Mr Doig could not possibly be the Mr 'Doige' who authored the painting. Yet, Mr Fletcher persisted, via his counsel, William F Zieske, Esq., and brought the utterly hopeless lawsuit seeking a declaration that the painting was by Mr Doig. This, naturally, completely failed. Mr Doig then quite justly sought sanctions against Mr Fletcher *et al* for the enormous expense and damage caused by this completely baseless legal proceedings. Notably, Mr Doig pursued sanctions against Mr Zieske, seeking to use the inherent authority of the court (as well as the civil procedure rules)[4] to hold the lawyer liable for pressing the meretricious claim. I now propose to quote at length the glorious smacking which District Judge Gary Feinerman laid down (internal citations omitted):

1 See 'Top Ten Judicial Smackdowns of 2022'

2 G Bowley, 'Painter Awarded $2.5 Million in Dispute Over Work He Denied', *New York Times*, 17 January 2023

3 № 13 C 3270 (ND Ill., 30 December 2022)

4 See 28 USC § 1927

All that said, Plaintiffs should have known by May 2014 that their primary evidence— Fletcher's recollections, at that point—was irreparably shaky and, in fact, wrong. Given the evidence that Defendants had marshaled by that date—much of it from neutral sources in Canada, showing that it was Doige, not Doig, whom Fletcher knew in Thunder Bay and who created the painting—Fletcher could not reasonably have believed that his identification of Doig as the painter was accurate, Bartlow could not reasonably have believed that his analysis of the painting (later entered as expert testimony) as Doig's was sound, and Zieske could not reasonably have believed either of those things.

Zieske suggests that sanctions may be imposed for claims surviving summary judgment only where a plaintiff's only evidence was a 'self-serving and unsupported affidavit with no independent evidence.' The court can discern no rule in governing precedent that sanctions are warranted for cases surviving summary judgment only in such circumstances. And even if that were the rule, this case would fit the bill. Plaintiffs' primary evidence came from Bartlow and Fletcher, whose testimony was necessarily self-serving given their stake in the case. The remainder of Plaintiffs' case consisted largely of attempts to poke holes in Doig's story as to his whereabouts in the 1970s. Even if Plaintiffs succeeded in poking some such holes—which is entirely expected for events occurring some forty years earlier—those holes could not reasonably imply that Doig, not Doige, was the painting's author. To be clear, the court does not suggest that there is anything inherently wrong with Bartlow and Fletcher offering 'self-serving' testimony. The point is that no reasonably objective person—viewing the case as a trier of fact—could have expected as of May 2014 that Plaintiffs' story would prevail over Doig's. A further and perhaps more important point is that the evidence adduced by Defendants by that point would have led any reasonable person in Fletcher's and Bartlow's shoes to reconsider what at the case's inception might have been a sincere belief that Doig authored the painting and to recognize that the author surely was Doige, not Doig.

Defendants ask the court to sanction Plaintiffs and Zieske for conduct other than failing to withdraw their claims, including Plaintiffs' pre-litigation attempts to (in Defendants' view) extort Doig and his family, Plaintiffs' and Zieske's alleged failure to adequately investigate prior to filing suit, Plaintiffs' alleged alterations to their claims after receiving evidence from Defendants, and Zieske's alleged discovery abuses. The cited conduct present non-frivolous bases for sanctions, but it is not the conduct for which the court imposes sanctions. Rather, the court imposes sanctions specifically for Plaintiffs' and Zieske's decision to continue this litigation past May 7, 2014, by which time it should have been absolutely clear to them that their claims were factually meritless and stood no chance of success. Still, the other conduct cited by Defendants underscores the conduct for which Plaintiffs and Zieske are sanctioned, and it is consistent with the court's determination that they either ignored or turned a blind eye to the fact that their claims were meritless.

> In sum, Plaintiffs and Zieske either knew or should have known by May 7, 2014, that they had no objectively reasonable basis for their claims and that it was unreasonable for them to continue with the suit. Sanctions are proper under Rule 11 (as to Plaintiffs) and Rule 11 and § 1927 (as to Plaintiffs and Zieske).

It thus comes as no surprise that Judge Feinerman awarded US$2,525,958.35 in sanctions, for which the plaintiff and Mr Zieske are jointly and severally liable.

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Published in the

City of Westminster
by

GRANET PRESS
LIMITED