

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MICHAEL M. BRADY,

Plaintiff,

vs.

HALLMARK DEVELOPMENT
COMPANY, L.C.,

Defendant.

No. 4:04-cv-40079

**ORDER
ON SANCTIONS**

This matter comes before the Court on Plaintiff's Motion for Sanctions (Clerk's No. 5). The Motion for Sanctions was filed on February 11, 2004, contemporaneously with the filing of the Plaintiff's Motion to Dismiss Removal.¹ The Motion for Sanctions was scheduled for hearing on March 18, 2004, along with the motion to remand; however, counsel for the Defendant indicated they had not received the order setting the motion for sanctions at that time. Accordingly, the Court allowed additional time for filing a resistance to the motion. A resistance has now been filed, and the matter is ready for determination by the Court.

On March 19, 2004, this Court entered an order remanding this case to the state court, having found the removal was untimely and there was no underlying basis for federal jurisdiction. In resistance to the Motion for Sanctions, Defendant attempts to

¹ Plaintiff's Motion to Dismiss Removal was apparently intended as, and was treated as, a motion to remand.

argue there was a good faith basis for federal jurisdiction. However, the circumstances of this case demonstrate there was patently no factual or legal basis for the removal action.² Basic legal research would have revealed the absence of federal jurisdiction in this instance. While the removal of the state action may have served some strategic goal of the Defendant, it was a waste of time and resources for the Plaintiff and this Court.

Defendant primarily attacks the Motion for Sanctions with a procedural argument that the Plaintiff failed to comply with the safe harbor provisions of Fed. R. Civ. P. 11(c)(1)(A). Clearly the Defendant and counsel were not provided with the opportunity to correct the error, as contemplated by the rule. It is, however, an ironic argument to assert when no effort was ever made to agree to a remand without the need for resistance and hearing, and Defendant and counsel continue to argue in resistance to sanctions that their removal was proper. Still, the Court recognizes the value of the safe harbor provisions in Rule 11, even under the pressing circumstances created by removal and the desire to obtain a prompt remand of a case wrongfully removed.

Sanctions may also be imposed on the Court's initiative. Fed. R. Civ. P. 11(c)(1)(B). That procedure normally requires an order setting forth the nature of the

² The Court will not repeat the analysis provided in the March 19, 2004, order. It is sufficient herein to note that, while alleging issues related to an alleged non-party to the state proceeding, Walter Schroeder, it was Defendant Hallmark Development Company, L.C., that removed this entire case to federal court. The contempt proceedings in the state action were obviously ancillary to that contract lawsuit as the state court endeavored to obtain compliance with its orders.

specific conduct and directing an attorney or party to show cause why they have not violated Rule 11(b). That specific procedure was not employed in this case, though the motion for sanctions, the Court's order of March 19, and the opportunity for Defendant and counsel to provide an additional resistance to the motion for sanctions reasonably tracked that process. And, apart from the provisions of Rule 11, there is inherent power to regulate practice before the Court. See Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991); Greiner v. City of Champlin, 152 F.3d 787, 789 (8th Cir. 1998).

However, in the matter now before the Court it would seem unnecessary to reach the kind of conclusions necessary to support an order of sanctions, or to promote the potential collateral consequences of such an order. The wrong that requires a remedy is the undue expense required of the Plaintiff, and that may be addressed by less strident means. "An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c).

At the time of the hearing on remand, Plaintiff provided the Court with an Affidavit of Attorney Fees and Expenses, which was received as an exhibit. In resistance, Defendant does not challenge the amount of the claimed fees and expenses but generally states "a review of the bill submitted by Plaintiff's attorney does not provide justification for the sanctions requested by her." The Court has reviewed the Affidavit and attached billing information. While that document is somewhat vague and confusing, it provides an adequate basis upon which to determine the amount of fees and expenses unduly

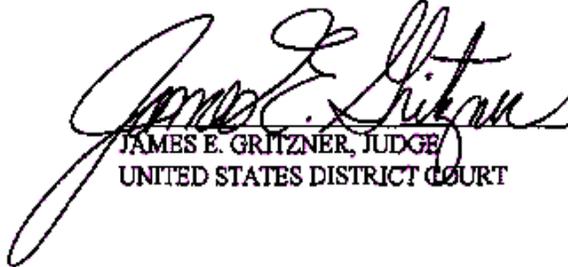
required of the Plaintiff. The Court finds the Plaintiff has been harmed by additional attorney fees in the amount of \$750.00 and expenses in the amount of \$89.39.

IT IS ORDERED that this Court's prior order of March 19, 2004 (Clerk's No. 13), is hereby supplemented pursuant to 28 U.S.C. § 1447(c) to provide for expenses and attorney fees in favor of the Plaintiff, and against Defendant Hallmark Development Company, L.C. and its attorney James J. Beery, in the amount of \$839.39.

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment in favor of Plaintiff, Michael M. Brady, and against Defendant, Hallmark Development Company, L.C. and its attorney James J. Beery, in the amount of \$839.39.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Sanctions (Clerk's No. 5) is **denied** as moot.

DATED this 12th day of April, 2004.



JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT