

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3597
Summary Calendar

STANDARD MATERIALS, INC.
ETC., ET AL.,

Plaintiffs,

versus

SAUCIER CONSTRUCTION
COMPANY, ET AL.,

Defendants.

* * *

V.J. SCOGIN, SR.,

Third-Party Plaintiff-Appellant,

versus

ROBERT CHOPIN,

Third-Party Defendant-Appellee.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA 92-3943 N)

(November 25, 1994)

Before POLITZ, Chief Judge, SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Standard Materials, Inc. brought a collection action in Louisiana state court against Saucier Construction Company. Victor Scogin, Sr., sole shareholder of SMI, was substituted as

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

party-plaintiff after an assignment of all rights from SMI. He obtained a default judgment against SCC and sought to execute a writ of *fieri facias* on equipment ostensibly belonging to SCC. John and Catherine Saucier intervened alleging that they, not SCC, owned the equipment. In response, Scogin filed a reconventional demand against Robert B. Chopin, counsel to the Sauciers, alleging negligent failure to investigate the ownership of seized movables and negligent failure to determine the identity of the keeper of the property.

Scogin and Chopin agreed to a settlement of the claims against Chopin whereby Scogin would pay \$625 for Chopin's attorney's fees. The settlement was confirmed in open court, with Scogin present, and subsequently a check for \$625 was tendered from Scogin through his counsel, Patrick Breeden, to Chopin. Scogin, however, refused to perfect the dismissal.

After the settlement SMI removed the parent action against SCC to federal court on the basis of a bankruptcy filing by the Sauciers. Chopin then moved the federal court for dismissal of the malpractice action on the basis that the claims against him had been settled. Scogin opposed the motion *pro se*, filing two memorandums in opposition contending that no settlement was consummated. On July 22, 1993 the district court ruled in favor of Chopin, treating his motion as a motion for summary judgment and awarding costs and attorney's fees as Rule 11 sanctions against Scogin for his continued representations to the court that no settlement had taken place. The district court ordered Chopin to

submit by August 9, 1993 a statement of costs incurred and gave Scogin until August 23, 1993 to file a memorandum in opposition thereto.

Scogin then began a series of dilatory tactics to avoid the imposed sanctions. On July 23, the day after the judgment, Scogin filed a voluntary dismissal of Chopin under Rule 41(a) which the district court rejected as moot. On August 2 Scogin filed a motion for rehearing which the district court denied. On August 19 Scogin filed a notice of appeal of the grant of summary judgment and the ruling that his voluntary dismissal was moot; he filed a second notice of appeal on September 24 after the district court ordered him to pay sanctions of \$3,799.75.

After Scogin notified Chopin and the district court that he never received a statement of costs to which he could respond, Chopin moved this court to remand Scogin's appeal for the limited purpose of having Scogin respond to the fees awarded as sanctions. We granted the motion. Scogin, on remand, filed a motion to dismiss for lack of subject-matter jurisdiction. The district court denied the motion and ordered Scogin to file an opposition to the statement of costs within 15 days. Scogin then filed a motion seeking a stay of the court's order to file an opposition to the statement of costs. The district court, showing remarkable restraint, denied the motion and allowed Scogin 10 more days to file a response.

Seizing upon a typographical error in our remand order, Scogin sought to stay the remand proceedings. We corrected the error and

the district court denied Scogin's motion for stay and ordered the record sent back to this court for review, as Scogin apparently had no intention of filing a response to Chopin's statement of costs.

Scogin argues three points on appeal, none of which have any merit whatsoever. He first contends that the district court erred in denying as moot his motion for voluntary dismissal of Chopin under Fed.R.Civ.P. 41(a) on the grounds that he tendered that motion prior to the district court's grant of summary judgment. The record reflects that the motion was filed the day after the grant of summary judgment and was, as the district court ruled, moot.

Scogin next contends that the district court lacked subject-matter jurisdiction to award sanctions.¹ A district court possesses inherent authority to impose Rule 11 sanctions against the parties before it regardless of the existence of subject-matter jurisdiction.²

Scogin finally asserts a denial of equal protection of the laws because he was not given a reasonable opportunity to respond to Chopin's statement of costs. This claim is patently frivolous; the district court gave Scogin more than ample opportunity to oppose the statement of costs.

We GRANT Scogin's motion for substitution of the estate of

¹Scogin now argues that because his claim was settled in state court prior to removal, the district court lacked subject-matter jurisdiction over the claim because it no longer existed.

²**Willy v. Coastal Corp.**, 915 F.2d 965 (5th Cir. 1990), aff'd, 112 S.Ct. 1076 (1992).

Chopin as the real party-in-interest because of Chopin's death.³
Finding no arguable merit to any of Scogin's claims,⁴ we DISMISS
this appeal as frivolous⁵ and assess double costs.⁶

³Fed.R.App.P. 43(a).

⁴**Buck v. United States**, 967 F.2d 1060 (5th Cir. 1992), cert. denied, 113 S.Ct. 1052 (1993).

⁵5th Cir. R. 42.2.

⁶Fed.R.App.P. 38.