

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40882
Summary Calendar

STATISTICAL DATA SERVICES, INC.,
and P J K, INC.,

Plaintiffs-Appellees-
Cross-Appellants,

VERSUS

FARM CREDIT BANK OF TEXAS,

Defendant-Appellant-
Cross-Appellee.

P J K, INC.,

Plaintiff-Counter Defendant-
Appellee,

VERSUS

FARM CREDIT BANK OF TEXAS,

Defendant-Counter Plaintiff-
Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(92-1112 c/w 92-1113)

(February 21, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

¹ 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

The obligors on two promissory notes, Statistical Data Services (SDS) and PJK, challenge an order directing them, as sanctions, to pay reasonable attorney's fees and costs incurred by the Farm Credit Bank of Texas (FCB) in defending against their action against it because, during the course of this action, they failed to inform expeditiously FCB and the court that they had sold their interest in the property underlying the subject matter of the litigation and, thus, no longer had standing to pursue the relief they sought. We **AFFIRM**.

On its counterclaim against SDS and PJK, FCB, as the owner of the notes, appeals the summary judgment that SDS's and PJK's tender of the principal and interest due on the notes satisfied completely their obligations to FCB, notwithstanding a provision in the notes which made them liable for the attorney's fees FCB incurred in its collection action. We **AFFIRM** in part, **REVERSE** in part, and **REMAND**.

I.

This appeal involves a dispute between successors in interest to immovable property sales transactions. FCB succeeded to an ownership interest of promissory notes secured by mortgages on two tracts of land in Louisiana. SDS and PJK each acquired one of the tracts by way of assumption deeds wherein they assumed the indebtedness of their respective predecessor in interest under the terms of the notes.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

After the notes went into default, FCB initiated collection efforts against SDS's and PJK's predecessor in title. These efforts resulted in SDS and PJK filing suit against FCB alleging, *inter alia*, defective title and wrongful eviction. FCB counter-claimed against both, as successors to the notes, seeking judgment for the amount due, and attorney's fees incurred in collecting the indebtedness. Ultimately, SDS and PJK paid into the court's registry the principal and interest due; they then obtained summary judgment on FCB's counterclaim, the district court reasoning that the payment into the registry satisfied completely SDS's and PJK's obligations under the notes.

Later, the district court dismissed, with prejudice, SDS's and PJK's action against FCB because, during the course of the proceedings, SDS and PJK sold their interests in the land; in addition, it required SDS and PJK to pay the reasonable attorney's fees and costs incurred by FCB (\$3,749.64) as a result of their failure to inform expeditiously FCB and the court of that transfer.²

² SDS and PJK initiated the motion to dismiss their claims against FCB because they "no longer have standing to pursue the relief sought". FCB urged the district court to grant the motion, but only upon payment by SDS and PJK of its attorney's fees and costs. Initially, the district court ordered SDS and PJK to pay \$5,487.14 in attorney's fees and costs. Pursuant to Rule 59(e), SDS and PJK sought reconsideration of this order. It was only at this point that SDS and PJK maintained that, despite their earlier stipulation that they no longer had standing, they technically still had standing to pursue their claims; that they sought dismissal only in order to avoid protracted litigation, and to preserve judicial and economic resources. The district court still considered requiring payment of costs and attorney's fees justified under its inherent power and Rule 41(a)(2) ("an action shall not be dismissed at the plaintiff's instance save upon order of the court

II.

FCB challenges the summary judgment, contending that the tendering of the principal and interest failed to completely satisfy SDS's and PJK's obligations under the note; specifically, it maintains that the summary judgment was improper because, pursuant to the terms of the notes, SDS and PJK are still liable to it for the reasonable attorney's fees that it incurred in pursuing its counterclaim. On cross-appeal, SDS and PJK challenge the order requiring them to pay the reasonable attorney's fees and costs incurred by FCB in defending against their complaint.

A.

It goes without saying that we review the district court's summary judgment *de novo*. The parties do not contend, nor do we find, a dispute of material fact; rather, we must determine, notwithstanding a provision in the promissory notes that SDS and PJK would be liable for the attorney's fees incurred in a recovery action, whether FCB had a right, under Louisiana law, to recover those fees. We hold that it did.

In *Walker v. Investment Properties, Ltd.*, 507 So. 2d 850, 853 (La. App. 5th), *writ denied* 513 So.2d 293 (La. 1987), the court held that, notwithstanding any contractual provision obligating an obligor to pay attorney's fees, tendering the principal and interest due constituted the proper amount owed on the notes. The court reasoned that the stipulated fees accrued to the attorney,

and upon such terms and conditions as the court deems proper" (emphasis added)); but, the award was lowered to \$3,749.64.

not the obligee. *Id.*; accord **Fourchon Docks, Inc. v. Milchem Inc.**, 849 F.2d 1561, 1568 (5th Cir. 1988); **General Inv., Inc. v. Thomas**, 422 So. 2d 1279, 1281 (La. App. 5th 1982).³ The **Walker** court then proceeded to affirm the trial court's holding that a properly executed tender "produced all of the effects of performance, including termination of interest and costs, pursuant to La. Civ. Code, art. 1869." **Walker**, 507 So. 2d at 853.⁴ Thus, when SDS and PJK tendered the principal and interest due, accrual of interest on the note halted.

But, whether this tender foreclosed FCB from obtaining a judgment for its attorney's fees is a separate question. SDS and PJK contend that it did, thus entitling them to summary judgment; FCB maintains that they are still obligated to pay the attorney's fees provided for in the note. In support of their contention, SDS

³ The **Walker** court found support for this proposition in **Central Progressive Bank v. Bradley**, 502 So. 2d 1017, 1017 (La. 1987). As discussed *infra*, the proposition that attorney's fees belong to the attorney, not the client, is not designed to procedurally limit the action of the client; rather, based on the courts' inherent power to supervise attorneys, the rule permits courts to inquire into the reasonableness of the attorney's fees, notwithstanding any statutory provision to the contrary.

⁴ Article 1869 provides:

When the object of the performance is the delivery of a thing or a sum of money and the obligee, without justification, fails to accept the performance tendered by the obligor, the tender, followed by deposit to the order of the court, produces all the effects of a performance from the time the tender was made if declared valid by the court.

A valid tender is an offer to perform according to the nature of the obligation.

and PJK rely upon the above cited rule of Louisiana law: stipulated attorney's fees accrue to the attorney, not the obligee. SDS's and PJK's reliance is misplaced. Although Louisiana courts have provided clearly that the right to the fees accrues to the attorney, the obligee can still seek judgment for the attorney's fees incurred in the underlying action.

In **Foundation Finance Co. v. Robbins**, 153 So. 833 (La. 1934), the Louisiana Supreme Court reversed the lower court's holding that the attorney's fees stipulated in a note belonged to the client-noteholder, not his attorney. In its ruling, the **Robbins** court stated:

The only sense in which it can be said that the attorney's fee stipulated in a promissory note belongs to the owner of the note is that the owner of the note may sue for and recover the fee in his own name when he sues on the note. But that is only one of the many instances where a plaintiff may, nominally, maintain an action for the benefit of another party.

Id. at 836. Later, the Louisiana Supreme Court relied upon **Robbins** for the proposition that

[t]he holder of an instrument in which the maker promises to pay a stipulated sum or percentage for the attorney's fee if an attorney is employed to collect the instrument has the right to collect the whole amount, including the attorney's fee, but must pay the fee to the attorney employed to collect the debt.

Police Jury of Tangipahoa Parish v. Begnaud, 9 So. 2d 399, 401 (La. 1942).

SDS and PJK claim erroneously that **Robbins** and **Begnaud** are inconsistent with recent jurisprudence, such as **Walker**, which has held that stipulated attorney's fees accrue to the attorney, not

the client. In 1982, the same court that decided **Walker** relied upon, *inter alia*, **Robbins** and **Begnaud** as making it "clear that once a claim is placed in the hands of an attorney and the attorney obtains a judgment in favor of his client, the attorney's fees stated in the judgment belong to the attorney *whether sued for procedurally by his client or by him.*" **General Inv.**, 422 So. 2d at 1282 (emphasis added).⁵

Thus, under Louisiana law, an obligee may sue to recover stipulated attorney's fees provided for in a written contract. La. Civ. Code art. 2000.⁶ Because those fees belong to the attorney, and in order to enforce an attorney's ethical obligation not to accept a clearly excessive fee, Louisiana courts may inquire into the reasonableness of those fees. **Central Progressive Bank v. Bradley**, 502 So. 2d 1017, 1017 (La. 1987); accord **Fourchon Docks**, 849 F.2d at 1567. The authority of the courts to inquire into the reasonableness of stipulated attorney's fees, however, has not changed the right of a client to seek recovery of those fees.

Accordingly, FCB could seek to obtain a judgment for the attorney's fees it incurred in its recovery action. Accordingly, we **REVERSE** the summary judgment with respect to the denial of FCB's

⁵ The **General Investment** court also recognized that "the law is somewhat confusing with regard to an attorney's right to sue in his own name for a contractual or statutory attorney's fee[]" **General Inv.**, 422 So. 2d at 1282.

⁶ Article 2000 provides, in pertinent part, that "[i]f the parties, by written contract, have expressly agreed that the obligor shall also be liable for the obligee's attorney fees in a fixed or determinable amount, the obligee is entitled to that amount"

right to recovery attorney's fees, and **REMAND** the case for further proceedings. Because the accrual of interest halts whenever the obligor tenders properly the principal and interest due, we **AFFIRM** the summary judgment with respect to that part.

B.

In imposing sanctions against SDS and PJK, the district court relied upon Fed. R. Civ. P. 41(a)(2) and its inherent power to impose sanctions. See note 2, *supra*. We need consider only the court's inherent power.

We review for abuse of discretion a district court's decision to impose sanctions under its inherent powers, keeping in mind that the threshold for the use of that inherent power is high. **Reed v. Iowa Marine & Repair Corp.**, 16 F.3d 82, 84 (5th Cir. 1994). "There are ample grounds for recognizing ... that in narrowly defined circumstances federal courts have inherent power to assess attorney's fees against counsel." **Roadway Express, Inc. v. Piper**, 447 U.S. 752, 765 (1980). One of the circumstances in which a court may exercise its inherent power is when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons". **Alyeska Pipeline Serv. Co. v. Wilderness Soc'y**, 421 U.S. 240, 258-59 (1975) (quoting **F.D. Rich Co. v. United States ex rel. Indus. Lumber Co.**, 417 U.S. 116, 129 (1974)). This inherent power, however, "must be exercised with restraint and discretion". **Chambers v. NASCO, Inc.** 501 U.S. 32, 44 (1991).

SDS and PJK assert that there is no evidence to support any malfeasance in its conduct; it claims it never made any

misrepresentation concerning the ownership of the property. It was well within the district court's discretion to determine that SDS's and PJK's malfeasance was not in its conduct, but, rather, in its omission. Specifically, upon the sale of the property in the spring of 1993, SDS and PJK failed to disclose this material change of circumstances. During a deposition a year later, FCB discovered the sale. If, as SDS and PJK declared in their motion to dismiss, the sale caused them to "no longer have standing to pursue the relief sought herein," their attorneys, as officers of the court, should have informed the court and opposing counsel of this.⁷ Additionally, a pretrial conference was held in April 1994; again, no mention of this sale was made to the court. The failure to do so could easily be viewed by the district court as vexatiously multiplying the proceedings and undertaken in bad faith. Needless to say, we do not find an abuse of discretion in imposing costs and attorney's fees.

III.

For the foregoing reasons, the adverse summary judgment on FCB's counterclaim against SDS and PJK is **AFFIRMED** in part,

⁷ As discussed in note 2, *supra*, subsequently and on appeal, SDS and PJK claim they were of the opinion that they still had standing in the litigation, but employed this language to facilitate disposal of this action based on economical and practical considerations. Despite these assertions, SDS and PJK needed to be upfront with the district court concerning the reasons for their action. When they stated they "no longer have standing", the district court must act based upon this stipulation. Even considering the true situation and reasons, we cannot say the district court abused its discretion, especially in light of the fact that SDS and PJK were given an oral hearing on their 59(e) motion.

REVERSED in part, and **REMANDED**; the imposition of costs and attorney's fees as related to SDS's and PJK's claim against FCB is **AFFIRMED**.

AFFIRMED in part, **REVERSED** in part, and **REMANDED**