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Appendix A

Date Filed: February 28, 2024

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AFFORDABLE AERIAL PHOTOGRAPHY, INC.,

*Plaintiff-Counter
Defendant-Appellee,*

v.

TRENDS REALTY USA CORP,
JOHN ABDELSAYED,

*Defendants-Counter
Claimants-Appellants,*

CORNELIUS MCGINNIS, ET AL.,

*Third Party Defendants-
Counter Defendants.*

No. 23-11662

Non-Argument Calendar

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cv-81331-AMC

Before ROSENBAUM, GRANT, and
ANDERSON, Circuit Judges.

PER CURIAM:

Affordable Aerial Photography, Inc. (“AAP”), filed a complaint alleging that John Abdelsayed and Trends Realty USA Corporation (“Defendants”) committed copyright infringement by displaying AAP’s copyrighted photograph on their website. More than a year later, with litigation ongoing, AAP filed a motion to voluntarily dismiss the case without prejudice under Federal Rule of Civil Procedure 41(a)(2), and without being ordered to pay attorney’s fees to Defendants. After a hearing, and over Defendants’ objections, the district court granted the motion and entered an order dismissing the case without prejudice, imposing taxable costs, and attaching a condition that AAP, if it refiled its case, must pay Defendants’ reasonable attorney’s fees incurred defending this case.

Nearly two months after the dismissal order, Defendants filed a motion claiming that, notwithstanding the district court’s order, they were entitled to immediate recovery of their reasonable attorney’s fees on two grounds. First, they argued that Rule 68, Fed. R. Civ. P., mandated attorney’s fees because AAP did not accept Defendants’ December 2021 offer to settle the case, and that offer was more favorable than the “judgment obtained.” And second, they maintained that they were “prevailing party[s]” under the Copyright Act’s cost-shifting provisions, *see* 17 U.S.C. §§ 505, 1203(b)(5).

The district court denied the motion for attorney’s fees. The court reasoned that Defendants should have raised these arguments in connection with the motion to voluntarily dismiss, and that Defendants had not established any prejudice. As a result, the court declined to “comment on the merits of Defendants’ untimely raised theories.” The court then rejected

Defendants’ motion for reconsideration, reasoning that “by continuing to seek an entitlement to attorneys’ fees, Defendants are in essence requesting the Court to change the conditions of its Order granting Plaintiff leave to voluntarily dismiss this action.”

Defendants appeal, raising procedural and substantive arguments. We conclude that, even assuming they properly raised their arguments for attorney’s fees in the district court, Defendants are not entitled to fees under Rule 68 or as a “prevailing party” under the Copyright Act. So we affirm the district court’s denial of their motion. *See Waldman v. Conway*, 871 F.3d 1283, 1289 (11th Cir. 2017) (“We may affirm on any ground supported by the record, regardless of whether that ground was relied upon or even considered below.”).

I.

The proper interpretation of Rule 68 presents a legal question, so we review it *de novo*. *Jordan v. Time, Inc.*, 111 F.3d 102, 105 (11th Cir. 1997). We review any underlying factual findings for clear error. *Id.*

Rule 68 of the Federal Rules of Civil Procedure provides that if a timely pretrial offer of settlement is not accepted and “the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.” Fed. R. Civ. P. 68(a), (d). “The plain purpose of Rule 68 is to encourage settlement and avoid litigation.” *Marek v. Chesny*, 473 U.S. 1, 5 (1985). Recoverable “costs” under Rule 68 include “all costs properly awardable under the relevant substantive statute or other authority,” including attorney’s fees. *Id.* at 9. “When a proper Rule 68 offer is made and the other requirements of the rule are met, the district

court *must* award costs measured from the time the offer was served.” *Jordan*, 111 F.3d at 105 (emphasis added).

By its plain terms, according to the Supreme Court, Rule 68 applies only where the plaintiff “has obtained a judgment for an amount less favorable than the defendant’s settlement offer.” *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 351 (1981).¹ Because the judgment must be “obtain[ed]” by the “offeree” following an offer to have “judgment . . . taken against [the defendant],” the Court reasoned, “it follows that a judgment ‘obtained’ by the plaintiff is also a favorable one.” *Id.* at 351–52. Thus, the effect of Rule 68 is to reduce “some of the benefits of victory if [the plaintiff’s] recovery is less than the offer.” *Id.* at 352.

But Rule 68(d) is “simply inapplicable” in cases where “it was the defendant that obtained the judgment.” *Id.*; *id.* at 354 (Rule 68 “does not apply to judgments in favor of the defendant”); *see La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 333 (5th Cir. 1995) (“If a plaintiff takes nothing . . . Rule 68 does not apply.”). Thus, “a non-settling plaintiff does not run the risk of suffering additional burdens that do not ordinarily attend a defeat.” *Delta Air Lines*, 450 U.S. at 352. Rather, when a plaintiff loses, “the trial judge retains his [or her] Rule 54(d) discretion” to award costs to the prevailing party. *Id.* at 354; *see Fed. R. Civ. P. 54(d)*.

¹ Defendants’ briefing parses the key words in Rule 68(d)—“judgment,” “obtain,” and “favorable”—as if they were matters of first impression, but fails to account for or even address the Supreme Court’s controlling decision in *Delta Air Lines, Inc. v. August*, 450 U.S. 346 (1981).

Here, Rule 68 does not apply because AAP did not obtain a judgment in its favor. *See Delta Air Lines*, 450 U.S. at 351–52. A voluntary dismissal without prejudice does not alter the legal relationship between the parties or award the plaintiff any relief. It simply permits the “moving party to file those claims again.” *Mesa v. United States*, 61 F.3d 20, 22 (11th Cir. 1995). As Defendants note, “AAP secured no affirmative relief whatever.” In fact, Defendants view themselves as prevailing parties. But even assuming the judgment was effectively in Defendants’ favor, Rule 68 “does not apply to judgments in favor of the defendant.” *Delta Air Lines*, 450 U.S. at 354. Because the district court’s dismissal without prejudice was not a judgment in AAP’s favor “for an amount less favorable than the defendant’s settlement offer,” Rule 68 does not authorize or mandate Defendants’ recovery of reasonable attorney’s fees. *Id.* at 351–52.

Defendants warn that Rule 41 will be “used as an escape hatch by abusive litigants to circumvent Rule 68’s consequences” by seeking a “late-stage” dismissal in the face of an impending adverse ruling. But their premise is misguided because an adverse judgment against the plaintiff does not trigger Rule 68, as the Supreme Court has made clear. *See Delta Air Lines*, 450 U.S. at 352, 354. Besides that, a plaintiff cannot act unilaterally after the opposing party has served an answer or a motion for summary judgment, but instead must obtain a dismissal order from the district court. *See Fed. R. Civ. P.* 41(a)(2). And the court, after “weigh[ing] the relevant equities,” may deny the request, if the defendant would suffer clear legal prejudice, or it may dismiss the case, “imposing such costs and attaching such conditions to the dismissal as are

deemed appropriate.” *Unites States v. \$70,670.00 in U.S. Currency*, 929 F.3d 1293, 1300 (11th Cir. 2019) (quotation marks omitted); *see* Fed. R. Civ. P. 41(d) (authorizing the imposition of costs where a plaintiff refiles an action previously dismissed voluntarily).

Here, the district court, following briefing and a hearing, found that Defendants would suffer no legal prejudice from a dismissal without prejudice because their counsel was *pro bono* or on a contingency arrangement, and that the other factors favored granting the motion, subject to certain conditions. Defendants have not timely appealed that ruling, or otherwise plainly or prominently argued on appeal that the district court erred in granting AAP’s motion for voluntary dismissal.² So they have abandoned any arguments in that regard. *See Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1313 (11th Cir. 2023) (“A party abandons an issue when she makes only passing references to it, references it as mere background to main arguments, or buries it within other arguments.”).

² Defendants’ notice of appeal, dated May 16, 2023, is not timely to appeal the order administratively closing the case, entered January 6, 2023. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007) (“[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.”). While the 30-day time limit may be extended by the timely filing of certain post-judgment motions, *see* Fed. R. App. P. 4(a)(1)(A), (4)(A), motions for attorney’s fees under Rule 54 qualify only “if the district court extends the time to appeal under Rule 58,” Fed. R. App. P. 4(a)(4)(A)(iii). Because Defendants never requested, and the district court never granted, such an extension under Rule 58, any appeal of the underlying order of dismissal is untimely.

II.

We review *de novo* the legal question whether a given set of facts “suffice[s] to render a party a ‘prevailing party.’” *Royal Palm Props., LLC v. Pink Palm Props., LLC*, 38 F.4th 1372, 1375 (11th Cir. 2022). The Copyright Act permits courts to award “reasonable attorney’s fee[s] to the prevailing party.” 17 U.S.C. §§ 505, 1203(b)(5). “Prevailing party” is a “legal term of art” that “retains its legal meaning across different fee-shifting statutes.” *Royal Palm*, 38 F.4th at 1377.

The “prevailing party determination” is different for plaintiffs and defendants, in recognition of their differing litigation objectives. *Beach Blitz Co. v. City of Miami Beach, Fla.*, 13 F.4th 1289, 1297 (11th Cir. 2021). “A plaintiff seeks a material alteration in the legal relationship between the parties. A defendant seeks to prevent this alteration to the extent it is in the plaintiff’s favor.” *CRST Van Expedited, Inc. v. E.E.O.C.*, 578 U.S. 419, 431 (2016); *see id.* at 422. (“The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties.” (quotation marks omitted)). Thus, a defendant may obtain prevailing-party status “whenever the plaintiff’s challenge is rebuffed, irrespective of the precise reason for the court’s decision.” *Id.* Importantly, though, “the rejection of the plaintiff’s attempt to alter the parties’ legal relationship must be marked by judicial imprimatur.” *Beach Blitz*, 13 F.4th at 1298 (quotation marks omitted).

Here, Defendants cannot show that they were prevailing parties because “a dismissal without prejudice places no judicial imprimatur on the legal relationship of the parties, which is the touchstone of the pre-

vailing party inquiry.” *\$70,670.00 in U.S. Currency*, 929 F.3d at 1303 (quotation marks omitted). That’s because “[a] voluntary dismissal without prejudice renders the proceedings a nullity and leaves the parties as if the action had never been brought.” *Id.* (quotation marks omitted). The order of dismissal does not prevent AAP from refiling its claims. And even assuming future action by AAP may be unlikely or now barred by the statute of limitations, those facts are irrelevant because the *court* did not rebuff or reject AAP’s claims on any grounds. *See Beach Blitz*, 13 F.4th at 1298 (“[T]he rejection of the plaintiff’s attempt to alter the parties’ legal relationship must be marked by judicial imprimatur.”); *\$70,670.00 in U.S. Currency*, 929 F.3d at 1303 (stating that, even if refiling was unlikely after a voluntary dismissal without prejudice, “[w]hat matters is that the claimants have not obtained a final judgment rejecting the government’s claim” (cleaned up)).

CRST did not “abrogate the requirement of ‘judicial imprimatur’ for prevailing defendants,” as Defendants claim. While *CRST* abrogated any requirement that judicial action be “on the merits” for a defendant to prevail, 578 U.S. at 421, 431–32, our post-*CRST* precedent makes clear that “the rejection of the plaintiff’s attempt to alter the parties’ legal relationship must be marked by judicial imprimatur.” *Beach Blitz*, 13 F.4th at 1298 (quotation marks omitted). And because a voluntary dismissal without prejudice under Rule 41(a)(2) “places no judicial imprimatur on the legal relationship of the parties,” Defendants do not qualify as prevailing parties.³ *\$70,670.00 in U.S. Currency*, 929 F.3d at 1303.

³ We decline to consider Defendants’ argument, raised for the first

III.

In sum, and for the foregoing reasons, we affirm the denial of Defendants' motion for attorney's fees.

AFFIRMED.

time in its reply brief, that the costs and conditions imposed in the order of dismissal sufficed to render them prevailing parties. *Herring v. Sec'y, Dep't of Corr.*, 397 F.3d 1338, 1342 (11th Cir. 2005) ("As we repeatedly have admonished, arguments raised for the first time in a reply brief are not properly before a reviewing court." (cleaned up)).

Appendix B

Date Filed: May 8, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

AFFORDABLE AERIAL PHOTOGRAPHY, INC.,

Plaintiff,

v.

JOHN ABDELSAYED AND
TRENDS REALTY USA CORP.,

Defendants.

Case No. 21-81331-CIV-CANNON/Matthewman
Before Aileen M. CANNON, U.S. District Judge.

**ORDER DENYING MOTION FOR
ENTITLEMENT TO ATTORNEYS' FEES**

THIS CAUSE comes before the Court upon Defendants' Motion for Entitlement to Attorneys' Fees (the "Motion"), filed on March 3, 2023 [ECF No. 176]. Plaintiff filed a Response in Opposition [ECF No. 177], and Defendants filed a Reply [ECF No. 178]. The Court has reviewed the entire record and is otherwise fully advised. For the reasons set forth below, Defendants' Motion [ECF No. 176] is **DENIED**.

RELEVANT BACKGROUND

This case involved allegations that Defendants committed copyright infringement by displaying Plaintiff's copyrighted photograph on their website [ECF No. 1]. Counsel for Defendants agreed to take the case on a pro bono basis pursuant to the Volunteer Attorney Program [ECF Nos. 17, 18]. After lengthy litigation—including an abandoned third-party complaint and counterclaim [ECF Nos. 19, 30, 63], multiple dispositive Motions [ECF Nos. 25, 34, 43, 48, 109, 110, 138], motions for sanctions [ECF Nos. 47, 65], and requests to reopen discovery and amend pleadings [ECF Nos. 37, 86, 139]—Plaintiff filed a Motion seeking leave of Court to Voluntarily Dismiss its Complaint Without Prejudice contingent on not paying Defendants' attorneys' fees [ECF No. 155]. Although Defendants identified no specific prejudice to themselves associated with Plaintiff's request for conditional dismissal, Defendants opposed Plaintiff's Motion, arguing that any dismissal should be with prejudice, and that any voluntary dismissal should be contingent upon Plaintiff paying Defendants' attorneys' fees [ECF Nos. 158, 162]. Defendants made no argument related to Rule 68 of the Federal Rules of Civil Procedure or entitlement to attorneys' fees as a prevailing party under the Copyright Act [ECF No. 158].

On January 3, 2023, the Court held a hearing on Plaintiff's Motion to Voluntarily Dismiss, ultimately granting Plaintiff's Motion for the reasons stated on the record [ECF No. 169]. Plaintiff then filed a compliant Notice of Voluntary Dismissal with two conditions in accordance with the Court's ruling—that Plaintiff would compensate Defendants for their taxable costs and pay Defendants' reasonable attorneys' fees if

Plaintiff refiled the complaint [ECF No. 171]. At that point, the Court entered an Order dismissing the suit without prejudice subject to those conditions and closing the case [ECF No. 172]. The Order Closing Case was entered on January 6, 2023. Defendants did not raise any argument related to Rule 68 or prevailing-party status at the hearing. Nor did Defendants attempt to appeal the Court's order.

Two months after the Court granted Plaintiff's heavily litigated Motion seeking dismissal without payment of attorneys' fees, Defendants filed the instant Motion seeking a ruling entitling them to such fees [ECF No. 176]. In the Motion, Defendants for the first time argue that they are entitled to attorneys' fees pursuant to Rule 68 of the Federal Rules of Civil Procedure, or alternatively, that they qualify as the prevailing party in this case and thus are entitled to attorneys' fees under the Copyright Act, 17 U.S.C. §§ 505 and 1203(b)(5) [ECF No. 176]. Plaintiff opposes the Motion, describing Defendants' request as a baseless request for a "second bite" at the attorneys' fee apple [ECF No. 177 p. 1].

The instant Motion for Entitlement to Fees [ECF No. 176] is due to be denied. As the procedural history of this case makes clear, Defendants effectively seek reconsideration of the Court's Order Granting Plaintiff's Motion to Voluntarily Dismiss on the contested condition of no fees [ECF No. 170]. Reconsideration is not warranted.

LEGAL STANDARD

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Z.K. Marine, Inc. v. M/V*

Archigetis, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992) (quoting *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir.1985)). Motions to reconsider are appropriate where, for example, the Court has patently misunderstood a party, where there is an intervening change in controlling law or the facts of a case, or where there is manifest injustice. See *id.*; *Rampersad v. Primeco Pers. Commc'ns, L.P.*, No. 01-6640-CIV, 2001 WL 34872572, at *1 (S.D. Fla. Oct. 16, 2001). “Motions to reconsider are disfavored in federal court and are granted only in narrowly circumscribed circumstances.” *Iberiabank v. Case Constr., LLC*, No. 15-0226, 2015 WL 5457889, at *2 (S.D. Ala. Sept. 16, 2015). The grant or denial of a motion to reconsider is left to the discretion of the district court. See *Chapman v. AI Transp.*, 229 F.3d 1012, 1023–24 (11th Cir. 2000).

DISCUSSION

Two months after the Court’s ruling that Plaintiff could dismiss the suit without prejudice on the condition of not paying Defendants’ attorney’s fees, Defense counsel re-raises the issue of entitlement to attorneys’ fees through the lens of a new theory that Defense counsel could have raised, but never did, in connection with Plaintiff’s heavily litigated Motion to Voluntarily Dismiss [ECF No. 155]. This new theory, in summary form, is that Defense counsel is entitled to fees because Defendants made a Rule 68 offer of judgment to Plaintiff, and Plaintiff’s Voluntary Dismissal constitutes a “judgment” which Plaintiff “obtained” that is less favorable than Defendants’ initial offer [ECF No. 176 pp. 8–13]. Defendants also argue, again for the first time, that under the circumstances presented in this case, Plaintiff’s voluntary dismissal

without prejudice constitutes a judgment in favor of Defendants such that Defendants are the prevailing party, entitling them to attorneys' fees under 17 U.S.C. §§ 505 and 1203(b)(5) [ECF No. 176 pp. 13–24].

Defendants should have raised these arguments when the Defendants' entitlement to attorneys' fee issue was directly before the Court on Plaintiff's Motion to Voluntarily Dismiss [ECF No. 155]. Indeed, the crux of that entire Motion, and the hearing that followed, was to discuss the contested issue of attorneys' fees. Yet Defendants never referenced the novel theories they seek to raise now. Nor is the Court persuaded by Defendants' conclusory suggestion that they were not procedurally authorized to raise these theories at that time [ECF No. 178 p. 5]. What is more, Defendants have not pointed to any new evidence which precluded them from making such arguments at that juncture, nor have they pointed to any intervening change in controlling law that would support reconsideration [ECF No. 178 p. 6 n.2 (noting that, "[t]o the defendants' knowledge, these issues are questions of first impression")].

All of this leaves Defendants' baseless insinuation that manifest injustice or clear error will result absent entitlement to attorneys' fees [*see* ECF No. 176]. Defendants do not identify any clear error in the Court's prior Order. Moreover, as the Court stated at the hearing, allowing Plaintiff to voluntarily dismiss this suit without being required to pay Defendants' attorneys' fees did not prejudice Defendants because, in accordance with Defense counsel's pro bono status, Defendants had not paid any attorneys' fees. And, in the event Plaintiff decides to re-file this suit, Plaintiff would be in the position of paying Defendants' reason-

able attorneys' fees associated with this action [ECF Nos. 170, 171, 172]. In sum, although incentivizing vigorous representation in copyright cases is worthwhile, that laudable principle in theory simply does not support any finding of manifest injustice or clear error on this record.

CONCLUSION

Defendants have failed to provide any justification for the Court to reconsider its prior Order [ECF No. 170]. Accordingly, Defendants' Motion for Entitlement to Attorneys' Fees [ECF No. 176] is **DENIED**. The Court makes no comment on the merits of Defendants' untimely raised theories.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 14th day of April 2023.

/s/ Aileen M. Cannon

Aileen M. Cannon

United States District Judge

cc: counsel of record

Appendix C

Date Filed: January 6, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

AFFORDABLE AERIAL PHOTOGRAPHY, INC.,

Plaintiff,

v.

JOHN ABDELSAYED AND
TRENDS REALTY USA CORP,

Defendants.

Case No. 21-81331-CIV-CANNON/Matthewman
Before Aileen M. CANNON, U.S. District Judge

ORDER CLOSING CASE

THIS CAUSE comes before the Court upon Plaintiff's Notice of Voluntary Dismissal Without Prejudice [ECF No. 171], filed on January 4, 2023. The Court granted Plaintiff's Motion to File a Notice of Voluntary Dismissal Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure [ECF No. 170] subject to the conditions that (1) Plaintiff will compensate Defendants for their taxable costs in this matter; and (2) if Plaintiff refiles this complaint, Plaintiff will pay Defendants' reasonable attorneys' fees associated with this action. Plaintiff's Notice of Voluntary Dismissal

[ECF No. 171] incorporates those two conditions. Accordingly, this case is **DISMISSED WITHOUT PREJUDICE**, effective January 5, 2023, the date on which Plaintiff filed the Notice of Voluntary Dismissal [ECF No. 171].

The Clerk of Court shall **CLOSE** this case. All deadlines and hearings are **TERMINATED**.

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 6th day of January 2023.

.

/s/ Aileen M. Cannon
Aileen M. Cannon
United States District Judge

cc: counsel of record

Appendix D

Date Filed: January 3, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

AFFORDABLE AERIAL PHOTOGRAPHY, INC.,

Plaintiff,

v.

JOHN ABDELSAYED AND
TRENDS REALTY USA CORP,

Defendants.

Case No. 21-81331-CIV-CANNON/Matthewman
Before Aileen M. CANNON, U.S. District Judge.

ORDER FOLLOWING MOTION HEARING

THIS CAUSE comes before the Court following a Hearing on January 3, 2023 [ECF No. 169], to discuss Plaintiff's Motion to Voluntarily Dismiss the Amended Complaint [ECF No. 155]. The Court has reviewed the Motion and the full record in this case. For the reasons stated in open court, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion under Rule 41(a)(2) to Voluntarily Dismiss the Amended Complaint [ECF No. 155] is **GRANTED**.

2. **On or before January 6, 2023**, Plaintiff shall file a Notice of Voluntary Dismissal Without Prejudice subject to the following conditions:

- a. Plaintiff will compensate Defendants for their taxable costs in this matter. *See* 28 U.S.C. § 1920.
- b. If Plaintiff refiles this complaint, Plaintiff will pay Defendants' reasonable attorneys' fees associated with this action.

3. In light of Plaintiff's forthcoming Notice of Voluntary Dismissal, Defendants' Motion for Summary Judgment [ECF No. 164] is **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 3rd day of January 2023.

/s/ Aileen M. Cannon

Aileen M. Cannon

United States District Judge

cc: counsel of record

Appendix E

Date Filed: May 8, 2024

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AFFORDABLE AERIAL PHOTOGRAPHY, INC.,

*Plaintiff-Counter
Defendant-Appellee,*

v.

TRENDS REALTY USA CORP,
JOHN ABDELSAYED,

*Defendants-Counter
Claimants-Appellants,*

CORNELIUS MCGINNIS, ET AL.,

*Third Party
Defendants-Counter
Defendants.*

No. 23-11662

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cv-81331-AMC

Before ROSENBAUM, GRANT, and
ANDERSON, Circuit Judges.

**ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC
PER CURIAM:**

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

Appendix F

Date Filed: May 16, 2023

U.S. District Court

Southern District of Florida

Notice of Electronic Filing

The following transaction was entered on 5/16/2023 at 8:58 AM EDT and filed on 5/16/2023

Case Name: Affordable Aerial Photography, Inc. v.
Abdelsayed et al

Case Number: 9:21-cv-81331-AMC

Filer:

WARNING: CASE CLOSED on 01/06/2023

Document Number: 182 (No document attached)

Docket Text:

PAPERLESS ORDER denying [181] Defendants' Motion for Reconsideration of the Court's Order Denying Defendants' Motion for Entitlement to Attorneys' Fees. As discussed in the Court's Order Denying Defendants' Motion for Entitlement for Attorneys' Fees [180], the issue of Defendants' entitlement to attorneys' fees was squarely before the Court on Plaintiff's Motion for Voluntary Dismissal. Indeed, Plaintiff sought a voluntary dismissal on the condition that it not pay Defendants' attorneys fees [155]. The arguments raised by Defendants in its Motion for Entitlement to Attorneys' Fees [176] were available to Defendants prior to the Court ruling on Plaintiff's Motion seeking permission to voluntarily dismiss this action. The Court granted Plaintiff permission to voluntarily dismiss this action contingent upon Plaintiff paying Defendants' attorneys' fees for this action should Plain-

tiff refile its complaint [170]. Despite Defendants' unconvincing argument to the contrary, by continuing to seek an entitlement to attorneys' fees, Defendants are in essence requesting the Court to change the conditions of its Order granting Plaintiff leave to voluntarily dismiss this action [170]. It has been over four months since the Court allowed Plaintiff to voluntarily dismiss this action and Defendants have failed to show good cause for the Court to change the conditions of that dismissal. Signed by Judge Aileen M. Cannon on 5/16/2023. (sj00)

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9:21-cv-81331-AMC Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.: