

17 June 1998
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25 of 93 DOCUMENTS ARAB
AMERICAN TELEVISION, Plaintiff-Appellee, v. THE UNION
OF RADIO AND TELEVISION OF THE ARAB
REPUBLIC OF EGYPT'S MINISTRY OF
INFORMATION AND COMMUNICATION,

Defendant-Appellant. NO.
97-55190 UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT 1998 U.S.
App. LEXIS 13150 June 5, 1998, Argued and Submitted,
Pasadena, California June 17, 1998, Filed

NOTICE: [*1] RULES OF THE NINTH CIRCUIT COURT
OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED
OPINIONS. PLEASE REFER TO THE RULES OF THE
UNITED STATES COURT OF APPEALS FOR THIS
CIRCUIT. SUBSEQUENT HISTORY: Reported in Table Case
Format at: 1998 U.S. App. LEXIS 25002. PRIOR HISTORY:
Appeal from the United States District Court for the Central
District of California. D.C. NO. CV-96-08107-DT. Dickran M.
Tevrizian, District Judge, Presiding. PAGE 273

1998 U.S. App. LEXIS 13150, *1 DISPOSITION: District
court's decision to award \$ 2500 in sanctions to AATV REVERSED,
and the sanctions award VACATED. CORE TERMS: removal,
thirty-day, notice, abuse of discretion, case law, existing law
COUNSEL: For ARAB, Arab American Television, Plaintiff -
Appellee: W. Rod Stern, Irvine, CA. For ARAB, Arab American
Television, Plaintiff - Appellee: John W. Hermina, Laurel, MD.
For ARAB, Arab American Television, Plaintiff - Appellee: David
A. Battaglia, Esq., William A. MacArthur, Esq., GIBSON, DUNN
& GRUTCHER, Los Angeles, CA. For THE UNION OF
RADIO AND TELEVISION OF THE ARAB REPUBLIC OF
EGYPT'S MINISTRY OF INFORMATION AND
COMMUNICATION, Defendant - Appellant: Michael F.
McNamara, LAW OFFICES OF MICHAEL MCNAMARA, Santa
Monica, CA. JUDGES: Before: FLETCHER, D.W. NELSON,
and SILVERMAN, Circuit Judges. OPINION:

MEMORANDUM * -----Footnotes-----

* This disposition is not appropriate for
publication and may not be cited to or by the courts of this circuit

except as provided by Ninth Circuit Rule 36-3. -----

-----End Footnotes----- [*2] Appellant Arab Republic of Egypt ("Egypt") challenges the district court's award of sanctions to Appellee Arab American Television ("AATV"), a California corporation. The district court based the sanctions on its finding that Egypt had improperly removed to federal court AATV's action for damages arising from a contract dispute. Determining that Egypt's removal "was not supported by the case law and statute," the court imposed sanctions in the amount of \$ 2500, pursuant to Federal Rule of Civil Procedure 11. We have jurisdiction under 28 U.S.C. @ 1291, and we reverse.

We review "all aspects of a district court's Rule 11 determination" for an abuse of discretion. *Cooter & Gell v. Hartmarx Corp.* 496 U.S. 384, 405, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990). "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Id.* In the instant case, the district court found that there was "no basis for removal of this action." The court observed that 28 U.S.C. @ 1446(b) requires a defendant to file a notice of removal within thirty days of receiving a complaint. Determining that [*3] Egypt was served with the initial complaint in PAGE 274 1998 U.S. App. LEXIS 13150, *3 August 1996 and that it was "well aware of the lawsuit by at least October 10, 1996," the court concluded that Egypt violated section 1446(b) by filing its notice of removal on November 19, 1996, more than thirty days after service. [*2] Egypt argues that section 205 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. @ 205, provides an exception to the thirty-day rule created by section 1446(b). Section 205 provides, in pertinent part: "Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States The procedure for removal of causes otherwise provided by law shall apply" *Id.* (emphasis added). Pointing out that the contract at issue in the action contains a clause requiring that any disputes be resolved through arbitration, Egypt contends that

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1958 New York Convention

content

section 205 authorized it to bring the removal notice at any time before trial. The district [*4] court rejected this argument, stating, without further explanation, that the "thirty-day rule also bars Egypt's ability to remove under 9 U.S.C. @ 205." [3]° We have not had occasion to decide whether the thirty-day rule applies to removal actions brought under section 205. A number of other courts, however, have held that the thirty-day rule is inapplicable to section 205 actions. See *McDermott Int'l, Inc. v. Lloyds Underwriters of London*, 944 F.2d 1199, 1212 (5th Cir. 1991) ("Under section 205, a defendant may remove 'at any time before the trial.' Other cases may be removed only within 30 days after the defendant receives a pleading."); *Acme Brick v. Agrupacion Exportadora de Maquinaria*, 855 F. Supp. 163, 166 (N.D. Tex. 1994) (finding section 1446(b) inapplicable to section 205 cases); *Employers Ins. of Wausau v. Certain Underwriters at Lloyd's, London*, 787 F. Supp. 165, 169 (D. Wis. 1992) (noting that "defendants can remove an action at any time before trial" because "Congress thought it important to make a federal forum freely available for Convention Act cases"); *Dale Metals Corp. v. Kiwa Chem. Indus. Co., Ltd.*, 442 F. Supp. 78, 81 n.1 (S.D.N.Y. 1977) ("Given [the] [*5] explicit time rule contained in @ 205, the notion that the time provision of 28 U.S.C. @ 1446(b) applies is totally without merit."). We need not decide this issue in order to resolve whether the district court abused its discretion in concluding that sanctions were justified because "the removal of this action was not supported by the case law and statute." The district court may have had good reasons for choosing not to follow the approach advocated by Egypt. However, we cannot regard Egypt's claim as frivolous in light of the fact that (1) there is no Ninth Circuit law on the topic and (2) the majority of the courts that have addressed the issue have adopted precisely the position urged by Egypt. Egypt's legal claims in favor of removal therefore are clearly "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law." Fed. R. Civ. P. 11. The district court's decision to impose Rule 11 sanctions consequently constituted an abuse of discretion.

[] AATV argues alternatively that the sanctions may be upheld as an award of attorneys' fees under 28 U.S.C. @ 1447(c), which

15

Reported in
Circuit
1993
pp. 472-76
(US 74-126)

Reported in
the
1993
pp. 560-565
(US 74-137)

Reported in
Circuit
1979
pp. 233-334
(US 74-21)

1/25 Rule 11 of the Federal Rules of Civil Procedure made in relevant part: see print out

provides that "an order remanding the case may require [*6] payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." Id. PAGE 275

1998 U.S. App. LEXIS 13150, *6 There is no indication, however, that the district court imposed the sanctions on Egypt pursuant to section 1447(c). AATV does not cite precedent authorizing an appellate court to impose sanctions on an alternative ground not relied on by the trial court, and we have found none.

6
AATV also argues that sanctions were justified because Egypt's statement in its notice of removal that the two state actions had been "administratively consolidated" was "patently false." AATV contends, moreover, that the removal action was improper because the district court lacked subject matter jurisdiction over the action against Madani, there having been no diversity of citizenship between Madani and AATV. Although the district court, in its discretion, might have cited either of these allegations as a basis for sanctions, the court did not do so. We cannot affirm an award of sanctions on different factual or legal grounds than those upon which the district court relied. See *Pierce v. F.R. Tripler*, 955 F.2d 820, 831 (2d Cir. 1992). For the foregoing reasons, the district court's decision [*7] to award \$ 2500 in sanctions to AATV is REVERSED, and the sanctions award is VACATED.

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