

Attorney's fees

8/5 (1985)

UL v. Carteret

memo re: recovery of attorney's fees

under Civil Rights Attorney's fees Awards Act
or Civil Rights Act

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From: Joan Beyer

Memo to Mount Laurel File re Recovery of Attorney's Fees Under Either the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C.A. §1988, or the Civil Rights Act of 1968, 42 U.S.C.A. §3612(c), of the Fair Housing Act.

It will not be possible to recover attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976, §1988, in this action, but there might be ^{but probably is not} a possibility of recovery under the Civil Rights Act of 1968, §3612(c).

In order to recover attorney's fees under §1988, a plaintiff must have a valid claim for violation of the Civil Rights Act Sections 1981, 1982, 1983, 1985, or 1986 of Title 42, Section 1681 et seq. of Title 20, or Title VI of the Civil Rights Act of 1964, 2000d et seq. of Title 42. (See copy of §1988 attached.) Considerable research and preliminary drafting has been done on the issue of recovery of fees under this section on the assumption that the Urban League and the individual plaintiffs in this action had claims under 42 U.S.C.A. 1981 and 1982 even though these claims were known not to have been pursued.

However, a careful reading of Judge Antell's opinion reveals that he would allow the plaintiffs to pursue their claims under the Civil Rights Act of 1968, 42 U.S.C.A. §§3601 et seq of the Fair Housing Act, since a finding of racial discrimination under this Act does not require a discriminatory intent but merely a discriminatory effect. Urban League v. Carteret, 170 N.J. Super 461, 469, 406 A.2d 1322 (App.Div. 1979).

Judge Antell did not reinstate the plaintiffs' claims, earlier rejected by Judge Furman of the Chancery Division, under §§1981 and 1982. These sections of the Civil Rights Act do require a discriminatory motive on the part of the defendants.

Without valid claims under these two sections, there can be no recovery under §1988. Therefore, some research will have to be conducted to determine whether there is a likelihood of recovery under the Fair Housing Act, §§3601 et seq.

Section 3612(c) of this Act allows for recovery of attorney's fees as well as actual damages and punitive damages of not more than \$1,000. It is narrower, nevertheless, in its requirement that the plaintiff be financially unable to assume the expense of attorney's fees. This section reads as follows:

The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

Preliminary Research on Recovery Under Section 3612(c)

I have conducted a slight amount of research on this point but have reached no conclusion.

The narrower requirement of Section 3612(c) that the plaintiff be financially unable to assume attorney's fees can probably be met by the plaintiffs in this action. The annotations to this section list several cases which will be of interest to read, but they seem to hold that the plaintiff need not be indigent and also that a charitable organization can

receive attorney's fees. This point needs considerable inspection.

Both Sections 1988 and 3612(c) require that in order for a plaintiff to recover he or she must be a "prevailing" party. Since the wording of the two sections are similar, it is likely that the requirements for "prevailing" will be similar.

One of the main reasons for pursuing a recovery of fees under §1988 has been Peter Liguori's finding that "A Favorable Judgement on an Enumerated Section of the Civil Rights Act is Not Necessary to an Award Under §1988." Since the claims under the Fair Housing Act were not pursued after they were reinstated, it will be necessary to ascertain whether the same lack of a favorable judgement has been extended to §3612(c) of this Act. If it has not, the argument that the Urban League is a prevailing party under the Fair Housing Act becomes extremely tenuous.

In order for plaintiffs to receive damages and/or attorney's fees under §3612(c), the court must find racial discrimination. A black citizen brought suit against the city of Harvey, Illinois, and its city officials alleging that their refusal to permit building of federally subsidized housing within city limits constituted racial discrimination. He had entered into a contract to purchase a house federally financial under §235, but the city refused to allow the building of any more of these homes within the city limits. The District Court for the Northern District of Illinois found financial discrimination and determined that it was, therefore, unnecessary to decide whether the refusal to build the §235 homes was in any way motivated by a desire to

exclude blacks or to control racial balance. Morales v. Haines, 349 F.Supp. 684, 686-687 (N.D.Ill., 19). When the issue of denial of attorney's fees was appealed, the Seventh Circuit Court remanded for findings on racial discrimination and for a determination of actual and punitive damages and attorney's fees in light of the lower court's findings on remand. Morales v. Haines, 486 F.2d 880, 882 (7th Cir, 1973). As the Fair Housing Act does not require a finding of intentional discrimination but only a discriminatory effect, presumably, the Court of Appeals remanded to determine whether there was a discriminatory effect on racial minorities and not whether there was a "desire" to exclude blacks or control racial balance.

Although §3612(c) requires a finding of racial discrimination, suit can be brought under this section by whites and blacks. One white and one black suing on behalf of themselves and others similarly situated were able to recover attorney's fees in a suit against a landlord for racial discrimination and the loss of the benefits of interracial housing. Fort v. White, 530 F.2d 1113 (2nd Cir, 1976). Therefore, there should be no question of standing but there may well be a problem with recovery. Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 93 S.Ct. 364, 34 L. Ed.2d 415 (1972).

Urban League v. Carteret and all other Mt. Laurel cases were decided on the basis of financial discrimination. It may well be that this holding of financial and not racial discrimination would preclude any recovery under the Fair Housing Act.

Conclusion

There can be no recovery under the Civil Rights Attorney's Fees Awards Act of 1976 since there were no valid claims under the seven sections of the Civil Rights Acts covered by that Act, 42 U.S.C.A. §1988.

Since the Mount Laurel cases have been determined on the basis of financial and not racial discrimination, there probably will not be a claim for attorney's fees under the Fair Housing Act, 42 U.S.C.A. §3612(c).

§ 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

R.S. § 722; Pub.L. 94-559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub.L. 96-481, Title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330.

Historical Note

References in Text. This Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," referred to in text, mean titles XIII, XXIV, and LXX of the Revised Statutes, which comprise sections 530 to 1093, 1077 to 1091, and 5323 to 5550, respectively. For complete classification of these titles to the Code, see Tables volume.

Title IX of Public Law 92-318, referred to in text, is Title IX of Pub.L. 92-318, June 23, 1972, 86 Stat. 373, popularly known as the Education Amendments of 1972, which is classified principally to chapter 83 (section 1681 et seq.) of title 20, Education. For complete classification of this Act to the Code, see Tables volume.

The United States Internal Revenue Code, referred to in text, is classified, generally to Title 26, Internal Revenue Code.

The Civil Rights Act of 1964, referred to in text, is Pub.L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (section 2000d et seq.) of this

chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables volume.

Codification. R.S. § 722 is from Acts Apr. 9, 1800, c. 31, § 3, 14 Stat. 27; May 31, 1870, c. 114, § 18, 16 Stat. 144.

Section was formerly classified to section 729 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by Act June 25, 1948, c. 646, § 1, 62 Stat. 860.

1980 Amendment. Pub.L. 96-481 substituted "Pub.L. 92-318, or title VI of the Civil Rights Act of 1964" for "Pub.L. 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964".

1976 Amendment. Pub.L. 94-559 authorized the court, in its discretion, to allow a reasonable attorney's fee as part of the prevailing party's costs.

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-481 effective Oct. 1, 1981, and applicable to adversary adjudication as defined in section 504 (b)(1)(C) of Title 5, Government Organization and Employees, and to civil actions and adversary adjudications described in section 2412 of Title 28, Judiciary and Judicial Procedure, which are pending on, or commenced on or after

Oct. 1, 1981, see section 208 of Pub.L. 96-481, set out as an Effective Date of 1980 Amendment note under section 504 of Title 5.

Legislative History. For legislative history and purpose of Pub.L. 94-550, see 1976 U.S. Code Cong. and Adm. News, p. 5008.

Cross References

Equal employment opportunities, enforcement proceedings; attorney fees, see section 2000e-5 of this title.
Federal government equal employment opportunities, enforcement proceedings; attorney fees, see section 2000e-16 of this title.
Institutionalized persons, enforcement proceedings; attorney fees, see section 1097a of this title.

Federal Rules of Civil Procedure

Effect of rule 69 on this section, see note by Advisory Committee under rule 69, Title 28, Judiciary and Judicial Procedure.
Execution, see rule 69.

Federal Rules of Criminal Procedure

Scope and application, see rules 1 and 54, Title 18, Crimes and Criminal Procedure.

Library References

Civil Rights §123.
Federal Courts §411.
C.J.S. Civil Rights § 87.
C.J.S. Federal Courts §§ 100(1) et seq., 180, 187, 180(1) et seq.

West's Federal Forms

Complaint, see § 1851.5.
Executions and supplementary proceedings, see § 5501 et seq.
Taxation of costs, see §§ 4612 to 4632.

Notes of Decisions

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