

IN THE IOWA SUPREME COURT

NO. 16-0624

FIRST AMERICAN BANK AND C.J. LAND, L.L.C.,
Appellees,

V.

FOBIAN FARMS, INC.; HOOVER HIGHWAY BUSINESS PARK, INC.;
AND GATEWAY, LTD.,
Appellants.

APPEAL FROM THE IOWA DISTRICT COURT FOR
JOHNSON COUNTY
THE HONORABLE IAN K. THORNHILL
NO. EQCV074310

APPELLEES' BRIEF

MARK A. ROBERTS
LYNN W. HARTMAN
DAWN M. GIBSON
SIMMONS PERRINE MOYER BERGMAN PLC
115 THIRD STREET SE, SUITE 1200
CEDAR RAPIDS, IA 52401-1266
TELEPHONE: 319-366-7641
FACSIMILE: 319-366-1917
MROBERTS@SIMMONSPERRINE.COM
LHARTMAN@SIMMONSPERRINE.COM
DGIBSON@SIMMONSPERRINE.COM

ATTORNEYS FOR APPELLEES FIRST
AMERICAN BANK AND C.J. LAND, L.L.C.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT PROPERLY ASSESSED SANCTIONS AGAINST THE FOBIAN DEFENDANTS ON REMAND

Mathias v. Glandon, 448 N.W.2d 443 (Iowa 1989)

Barnhill v. Iowa Dist. Court for Polk Cnty., 765 N.W.2d 267 (Iowa 2009)

French v. Iowa Dist. Ct., 546 N.W.2d 911 (Iowa 1996)

Landals v. George A. Rolfes Co., 454 N.W.2d 891 (Iowa 1990)

Green v. Iowa Dist. Court for Mills Cty., 415 N.W.2d 606 (Iowa 1987)

Security State Bank, Hartley, Iowa v. Ziegeldorf, 554 N.W.2d 884 (Iowa 1996)

Gabelmann v. NFO, Inc., 606 N.W.2d 339 (Iowa 2000)

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Everly v. Knoxville Cmty. Sch. Dist., 774 N.W.2d 488 (Iowa 2009)

Hills Bank & Trust Co. v. Converse, 772 N.W.2d 764 (Iowa 2009)

Iowa R. Civ. P. 1.413

First Am. Bank v. Fobian Farms, Inc., 868 N.W.2d 201, 2015 WL 3613379 (Iowa Ct. App. June 10, 2015) (tabled)

Hearity v. Iowa Dist. Court for Fayette Cty., 440 N.W.2d 860 (Iowa 1989)

Cady, Curbing Litigation Abuse and Misuse: A Judicial Approach, 36 Drake L. Rev. 483 (1986-87)

Cohen v. Iowa Dist. Court for Des Moines Cty., 508 N.W.2d 78 (Iowa Ct. App. 1993)

Rowedder v. Anderson, 814 N.W.2d 585 (Iowa 2012)

Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866 (5th Cir. 1988)

Fed. R. Civ. P. 11

In re Kunstler, 914 F.2d 505 (4th Cir. 1990)

White v. Gen. Motors Corp., 908 F.2d 675 (10th Cir. 1990)

ROUTING STATEMENT

This case involves the application of existing legal principles and thus should be routed to the Iowa Court of Appeals for consideration. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

This is the second appeal regarding a quiet title action brought by Plaintiffs/Appellees C.J. Land, L.L.C. (“CJ Land”) as owner and First American Bank (“FAB”) as lender (collectively “Plaintiffs”) regarding property where CJ Land built a restaurant near West Branch, Iowa. Plaintiffs’ claims are adverse to Defendant Hoover Highway Business Park, Inc., as successor in interest to Defendant Fobian Farms, Inc. (collectively Defendants or “Fobian Farms”).¹

Following a bench trial before Judge Ian K. Thornhill on February 5-7, 2013, the district court quieted title in favor of CJ Land, subject to FAB’s mortgage, ordered reformation of various related legal instruments, awarded Defendants damages for certain encroachments by CJ Land’s building and assessed attorney fees and expenses against Fobian Farms to sanction its conduct. Fobian Farms’ motion to expand or modify the ruling was denied.

¹ Both Defendants are owned or controlled by Carl Fobian (“Fobian”), who is President of Fobian Farms. Fobian Farms deeded its interest in the property in question to Hoover Highway Business Park, Inc.

August 28, 2013 Ruling; App. 69. In the first appeal, Fobian Farms appealed the equitable remedy and the assessment of sanctions.

On June 10, 2015, the Court of Appeals affirmed the district court's ruling regarding reformation, modified the district court's ruling to grant an easement, and most importantly for the purposes of this appeal, determined the district court did not abuse its discretion in assessing sanctions. *First American Bank v. Fobian Farms, Inc.*, 868 N.W.2d 201, 2015 WL 3613379 (Iowa Ct. App. June 10, 2015) (tabled).

The Court of Appeals remanded to the district court to make specific findings regarding the amount of sanctions. On June 25, 2015, Fobian Farms filed an Application for Further Review with this Court as to four issues including, "Whether a titleholder who is in the business of selling real estate should be subject to sanctions under Iowa Rule of Civil Procedure 1.413 if he asserts a counterclaim for interference with prospective business advantage against a nontitleholder who has constructed a building and otherwise encroached on the counterclaimant's real property." Application for Further Review; App. 303. On July 31, 2015 the Iowa Supreme Court denied further review. Order Denying Further Review; App. 356.

On August 21, 2015, Mr. Fobian filed a letter with the Iowa Supreme Court containing a number of accusations against the district court, Court of Appeals, and Iowa Supreme Court couched as “issues”:

I have three separate issues concerning Johnson County, the State, and our court operation or lack of it. This concerns an action we should never have been allowed to be named in as “defendants”. We have lost in a bench court, an appeals court rubber-stamped it, and the Supreme Court has denied the review of the case or suggests any solution. We expected a decision on legal terms we did not get and asked it to be reviewed on this basis by the Supreme Court. They have refused.

Can a determination by a lower court be allowed to stand on totally false facts, easily disapproved by available recorded data, then the Supreme Court denying it to be heard? Can a surveyed document, since recorded, approved by all seven offices in the county, after being requested and presented by the then owner and developer of same when thus recorded, then being used and accepted as security on a properly recorded mortgage be ignored and disposed of by a judge? I can’t believe it can. The judge used false facts of record...

Can a court get by with, as it seems to me, assisting a person in creating a scam, using a shell-game, replacing, moving, removing, and selling recorded mortgaged property, not released, encroaching, ruining the value there of?

Is this America? We positively did nothing wrong, yet we now face the loss of money we borrowed, loaned out, lawyer fees, receiving no damage awarded for a ruined lot, a life destroyed all with the assistance of the court.

Mr. Fobian’s August 21, 2015 letter, App. 445 (emphasis in original).

On September 11, 2015, Plaintiffs filed a motion to dismiss or strike the August 21, 2015 filing. Motion to Strike; App. 359. On December 18, 2015, the Iowa Supreme Court granted Plaintiffs' motion to strike and directed the clerk to issue *procedendo* immediately. Order Granting Motion to Strike; App. 447.

On January 15, 2016, the district court entered an Order directing the parties to submit briefs addressing the issues of the minimum sanction necessary to deter and of Fobian Farms' ability to pay the award previously ordered by this Court. Order Re: Briefing on Remand; App. 450. On March 30, 2016, the district court entered its Ruling on Remand with the requested factual findings supporting an award of sanctions and gave the parties an opportunity to brief their positions as to bond distribution. Ruling on Remand; App. 451. On April 11, 2016, Fobian Farms filed its Notice of Appeal. Notice of Appeal; App. 458.

STATEMENT OF THE FACTS

Although Fobian Farms claims that it “in no way seeks to reargue the reformation issue,” Fobian Farms' brief contains a lengthy recitation of its version of the facts regarding the same. *See* Fobian Farms' Brief, pp. 6-12. Plaintiffs state that the facts as detailed in the Court of Appeals opinion are accurate.

Plaintiffs focus their briefing on the narrow issue presented to this Court regarding the assessment of sanctions pursuant to Iowa Rule of Civil Procedure 1.413. For the reasons set forth below and previously, this Court should affirm the district court's assessment of sanctions on remand.

ARGUMENT

I. THE DISTRICT COURT PROPERLY ASSESSED SANCTIONS AGAINST FOBIAN.

Fobian Farms claims error on remand as to the amount of sanctions awarded, challenges the factual findings by the district court on remand in support of sanctions, states the district court erroneously calculated the amount necessary for deterrence, and contends that the district court improperly considered a letter written by Mr. Fobian. *See* Fobian Farms' Brief.

As set forth herein, this Court should affirm the amount of sanctions awarded Plaintiffs in light of Fobian Farms' obstructive and egregious conduct in bringing claims and pursuing unfounded defenses not well-grounded in fact and for an improper purpose.

A. Standard of Review and Issue Preservation.

Application for issuance of a writ of certiorari is the proper method for review of the imposition of sanctions. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). "Relief through certiorari is strictly limited to

questions of jurisdiction or illegality of the challenged acts.” *Barnhill v. Iowa Dist. Court for Polk Cty.*, 765 N.W.2d 267, 272 (Iowa 2009), *as corrected* (May 14, 2009) (quoting *French v. Iowa Dist. Ct.*, 546 N.W.2d 911, 913 (Iowa 1996)).

The reviewing court applies an abuse of discretion standard to a district court’s award of attorney fees. *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990) (recognizing that “the district court is an expert on the issue of reasonable attorney fees”) (citing *Green v. Iowa Dist. Court for Mills Cty.*, 415 N.W.2d 606, 608 (Iowa 1987)); *Security State Bank, Hartley, Iowa v. Ziegeldorf*, 554 N.W.2d 884, 893-4 (Iowa 1996) (holding that the amount of a fee award is also reviewed solely for an abuse of discretion).

Reversal of such an award is warranted “only when the court rests its discretionary ruling on grounds that are clearly unreasonable or untenable.” *See Gabelmann v. NFO, Inc.*, 606 N.W.2d 339, 342 (Iowa 2000). Where supported by substantial evidence, the district court’s findings of fact are binding upon appeal. *Barnhill*, 765 N.W.2d at 272 (citing *Zimmermann v. Iowa Dist. Ct.*, 480 N.W.2d 70, 74 (Iowa 1992)).

On remand, the district court addressed the minimum amount to deter and the parties’ ability to pay, as specifically ordered by the Court of

Appeals. *See* Ruling on Remand, p. 2; App. 452. In its brief, Fobian Farms improperly raises issues decided against it on appeal and denied further review by the Iowa Supreme Court. *See* Application for Further Review and Order Denying Further Review; App. 303; 356; *Everly v. Knoxville Cmty. Sch. Dist.*, 774 N.W.2d 488, 492 (Iowa 2009) (issues the Iowa Supreme Court declines to review upon application of further review “stand as the final decision of this court”) (citing *Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764, 770 (Iowa 2009)).

As to issue preservation, the specific issue preserved on remand, and addressed by the parties in briefing requested by the district court, regards the appropriate amount of sanctions. Any other issue raised by Fobian Farms exceeds the scope of review as it has already been decided. *Everly*, 774 N.W.2d 488 at 492.

B. The District Court Assessed An Appropriate Sanction On Remand.

Fobian Farms contends that “[t]he Trial Court erred in concluding that the entire amount of CJ Land's and First American Bank's litigation expenses was recoverable.” Fobian Farms’ Brief, p. 13. To support this claim, Fobian Farms states that Plaintiffs “would have incurred significant legal expenses regardless of the counterclaim filed by Fobian Farms which was found to be sanctionable.” *Id.*, p. 14. In essence, Fobian Farms

inaccurately attempts to narrow its sanctionable conduct to simply that of raising a frivolous counterclaim. The district court, as affirmed by the Court of Appeals and denied further review by the Iowa Supreme Court, held otherwise.

As noted by the Court of Appeals and the district court, Rule 1.413 contains three independent duties: the reading, inquiry, and purpose elements. *First Am. Bank*, 2015 WL 3613379 at *10 (citing *Barnhill*, 765 N.W.2d at 273) (internal citation omitted). “Each duty is independent of the others, and a breach of one duty is a violation of the rule.” *Id.* The purpose of sanctions based on the “improper purpose” clause is to “eliminate tactics that divert attention from the relevant issues, waste time, and serve to trivialize the adjudicatory process.” *Barnhill*, 765 N.W.2d at 273 (citing *Hearity v. Iowa Dist. Court for Fayette Cty.*, 440 N.W.2d 860, 866 (Iowa 1989) (quoting Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 489-507 (1986-87))).

1. Fobian Farms brought frivolous claims and engaged in a frivolous defense.

The Court of Appeals emphasized the following findings from the district court’s ruling on attorney fees regarding Fobian Farms’ bringing of frivolous claims as well as its frivolous defense:

It is clear to the Court, especially considering the testimony of Mr. Fobian and Attorney Keele, that the actions of the Fobian Parties *in defending against Plaintiff's claims and asserting [sic] Fobian Parties' [sic] claims were of the type that Rule 1.413 was intended to address.* Based on the Court's assessment of the testimony offered at trial, there is a high likelihood that the Fobian Defendants saw the mistake in the property descriptions as an opportunity to get a free restaurant. Rather than work with the Plaintiffs to rectify the mistake before this litigation was filed, the Fobian Defendants instead chose to pursue improper claims that delayed this process and wasted the resources and times of the parties, and required the use of extensive resources by the Court to resolve the issues presented by this action.

*First Am. Bank, 2015 WL 3613379 at * 11* (emphasis added).

The Court of Appeals further affirmed as sanctionable Mr. Fobian's conduct, stating as follows:

In support of sanctions, we note after the mistake was discovered, Eyman asked the surveyors to correct the scrivener's error and they complied by filing an affidavit correcting the mistake, but Fobian bullied the surveyors with litigation until they recanted their affidavit. Additionally, Fobian asked Eyman to help him with his improper plan of claiming ownership of the restaurant and offered to reduce Eyman's outstanding debt if he did so. Fobian then tried to "make someone pay" by the initiation of his claims after this action was initiated.

Id.

The Court of Appeals found no error in the district court's determination that Fobian Farms' claims and defenses were made for improper purpose and were not well grounded in fact. *First Am. Bank, 2015*

WL 3613379 at *11. The district court was well within its discretion to assess sanctions for bringing frivolous claims and/or frivolous defenses. *See Cohen v. Iowa Dist. Court for Des Moines Cty.*, 508 N.W.2d 78, 82 (Iowa Ct. App. 1993) (“It can be said that in its ‘objective sense’ a claim or defense is frivolous if the proponents can present no rational argument based upon evidence or law in support of that claim or defense.”) (citations omitted). As noted previously, the Iowa Supreme Court denied further review on this issue and thus the district court’s determination stands as the final decision; Fobian Farms’ arguments on this point exceed scope of review on appeal.

2. The district court considered appropriate factors on remand and made the requested factual findings.

Fobian Farms protests that the district court “failed to consider all of the ABA factors discussed in *Barnhill*.” Fobian Farms’ Brief, p. 17. However, the Court of Appeals directed the district court to address the *Rowedder* factors, specifically finding that the district court did not consider the minimum to deter and the parties’ ability to pay. *First Am. Bank*, 2015 WL 3613379 at *12 (citing *Rowedder v. Anderson*, 814 N.W.2d 585, 590 (Iowa 2012)). Consideration of the ABA factors set forth in *Barnhill*, is encouraged but not required. *See Rowedder*, 814 N.W.2d at 590 (citing

Barnhill, 765 N.W.2d at 277). In its Ruling on Remand, the district court addressed all four *Rowedder* factors. Ruling on Remand; App. 451.

Reasonableness of Plaintiff’s Attorney Fees. On remand, the district court reiterated its previous findings.

The Court has reviewed the Non-Redacted Attorney Fees submitted by Plaintiff on November 13, 2013, in support of the Application. The Court concludes all of the fees sought by Plaintiff are reasonable. This was a contentious matter that Plaintiffs made every effort to resolve before bringing this action. The Fobian Parties went on to file numerous claims of their own. A number of parties were required to be brought into this case. The hourly rates and fees charged by Plaintiffs’ attorneys are reasonable in light of their experience and quality of the work product they have developed on behalf of their clients. Therefore, Plaintiffs are entitled to attorney fees in the amount of \$135,696.50, plus expenses in the amount of \$7,094.53, and expert expenses in the amount of \$2,636.44. The Court will deduct from the total of these amounts the fee for taxes owed by C.J. Land to the Fobian Parties, which is \$36,643.00.

Ruling on Remand, p. 4; App. 454.

The district court determined the first *Rowedder* factor was satisfied as there was “nothing in the record that persuades or requires the Court to alter its findings as to the reasonableness of Plaintiffs’ attorney’s fees.”

Ruling on Remand, p. 5; App. 455.

Minimum to Deter. Fobian Farms claims the district court erroneously calculated the amount needed to deter, arguing that the sanction was “a massive sanction and is far in excess of what C.J. Land spent in

obtaining a dismissal of the sanctionable counterclaim.” Fobian Farms’ Brief, p. 26. Fobian Farms argues that it was in excess of sanctions awarded in other cases and that there is no claim that Fobian Farms has a history of filing unfounded claims.” *Id.* Last, Fobian Farms contends that the district court did not consider the \$36,000 in property taxes paid by Fobian Farms. *Id.*

First, as to the property taxes, the district court deducted this amount from the award. *See* Order Granting Attorney Fees, p. 5; App. 136. (“The Court will deduct from the total of these amounts the fee for taxes owed by C.J. Land to the Fobian Parties, which is \$36,643.00.”) As to the second *Rowedder* factor regarding minimum to deter, the district court began with reiterating and adopting findings and conclusions made in its February 10, 2014 Ruling:

It is clear to the Court, especially considering the testimony of Mr. Fobian and Attorney Keele, that the actions of the Fobian Parties in defending against Plaintiffs’ claims and asserting the Fobian Parties’ own claims were of the type that Rule 1.413 was intended to address. Based on the Court’s assessment of the testimony offered at trial, there is a high likelihood that the Fobian Defendants saw the mistake in the property descriptions as an opportunity to get a free restaurant. Rather than work with Plaintiffs to rectify the mistake before this litigation was filed, the Fobian Defendants instead chose to pursue improper claims that delayed this process and wasted the resources and time of

the parties, and required the use of extensive resources by the Court to resolve the issues presented by this action.

Ruling on Remand, p. 5; App. 455 (citing February 10, 2014 Ruling, p. 5; App. 136).

The district court next outlined the conduct recognized by the Court of Appeals as inequitable:

The Fobian Parties either knew that C.J. Land began constructing the restaurant on a parcel owned by Fobian Parties and said nothing, or later discovered the mistake and seek what would amount to a free restaurant. It is undisputed that Mr. Fobian saw the restaurant construction and made no objection during the construction. At best, Mr. Fobian's conduct could be characterized as inequitable and unfair, and his failure to act at the time the restaurant was being constructed estops him and his business entities from complaining about any resulting encroachment.

Ruling on Remand, p. 5; App. 455 (citing *First Am. Bank*, 2015 WL 3613379 at *4). The Court of Appeals further held that “Fobian Farms maintains it was its intent to take advantage of the mistake to its financial gain.” *Id.* at *8. The district court further noted,

The Court of Appeals also described Mr. Fobian’s behavior as follows:

In support of sanctions, we note after the mistake was discovered, Eyman asked the surveyors to correct the scrivener's error and they complied by filing an affidavit correcting the mistake, **but Fobian bullied the surveyors with litigation until they recanted their affidavit.** Additionally, Fobian asked Eyman to help him with his improper

plan of claiming ownership of the restaurant and offered to reduce Eyman's outstanding debt if he did so. **Fobian then tried to “make someone pay” by the initiation of his claims after this action was initiated.**

Ruling on Remand, p. 5; App. 455 (citing *First Am. Bank*, 2015 WL 3613379 at *11) (emphasis added by the district court).

Regarding the amount of sanctions assessed, the district court properly found that Fobian Farms’ claims were founded, from the very beginning, on what it knew to be a mistake. In other words, the full amount of sanctions awarded is a product of the district court’s reasonable conclusion that Fobian Farms’ scheme to obtain a free restaurant was frivolous from the beginning. Each pleading Fobian Farms filed was, therefore, not filed in a good faith belief that the matters contained therein were true. The Iowa Supreme Court has examined the imposition of sanctions involving such a pattern of conduct:

Although the rule and statute focus upon the event of signing, we recognize that in most cases there will be a series of filings. They may indicate a pattern of conduct. The provisions of our rule and statute would apply to each paper signed and would require that each filing reflect a reasonable inquiry. Other sanctions are available to address abusive tactics not related to the signing of pleadings, motions, and other papers.

Mathias, 448 N.W.2d at 447 (citations omitted); *see also Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 875 (5th Cir. 1988) (“In any event, Rule 11

applies to each and every paper signed during the course of the proceedings and requires that each filing reflect a reasonable inquiry.”).

Fobian Farms’ sanction is the product of its persistence in pursuing claims known to be false. Mr. Fobian knew from the time he first asserted a claim to the restaurant site until the time he testified in court that his claims were asserted for an improper purpose and not grounded on the facts. Fobian Farms persisted in the pursuit of a manufactured defense to the quiet title action contrary to the facts known to Fobian Farms and obvious to the court.

The district court’s Ruling supported the inexorable conclusion that the defenses pursued by Fobian Farms – not just through the pleading and discovery stage but through trial and into post-trial argument – were not interposed for a proper purpose, well-grounded in fact and based on a good faith argument for extension, modification, or reversal of existing law. The Court of Appeals determined that the district court properly exercised its discretion when it found sanctionable Fobian Farms’ conduct. Fobian Farms’ reference to the sanctions imposed in other cases is inapplicable to the present case. Fobian Farms’ pleadings, testimony and arguments before the court clearly showed an intention to waste the court’s time and the Plaintiffs’ money resisting improper claims.

Ability to Pay. The district court ordered briefing from the parties on this issue. *See* Order re Briefing; App. 450. After review of the parties' briefing the district court was "convinced that the Fobian Defendants have the ability to pay the sanctions amount previously awarded by the Court." Ruling on Remand, p. 6; App. 456.

As Plaintiffs point out, Mr. Fobian testified at trial that he was able to bid \$525,000 to purchase the Hills Bank interest in the property. See Plaintiffs' Exhibit B. It is also the Court's recollection that Mr. Fobian testified at trial as to other substantial real estate purchases he has made. Further, the Fobian Defendants were able to post a bond in the amount of \$119,662.92, which is 110% of the judgment amount of \$108,784.47.

Ruling on Remand, p. 6; App. 456.

Fobian Farms bore the burden of proof regarding their ability to pay. By not producing evidence of ability to pay, parties against whom sanctions are sought take the risk that they will not have the ability to pay. *Rowedder*, 814 N.W.2d at 59 (citing *In re Kunstler*, 914 F.2d 505, 524 (4th Cir. 1990) ("Inability to pay what the court would otherwise regard as an appropriate sanction should be treated as reasonably akin to an affirmative defense, with the burden upon the parties being sanctioned to come forward with evidence of their financial status.") (quoting *White v. Gen. Motors Corp.*, 908 F.2d 675, 685 (10th Cir. 1990)) (citation omitted). Turning to Fobian Farms' evidence, the district court determined:

The Fobian Defendants have shown no specific facts as to what portion of their investment in the Gateway project they will lose, or how their general description of a decline in Iowa's agricultural economy has affected them. While the Court has collectively referred to Fobian Farms, Hoover Highway Business Park, Inc. and Gateway, Ltd. as the Fobian Defendants and has assessed the sanctions against all three entities, the Court notes that the Fobian Defendants have made no attempt to distinguish one entity from the other, and the Court is convinced that Mr. Fobian is the driving force behind the decisions made by all three entities.

Ruling on Remand, p. 6; App. 456.

The district court thus held that “[t]he Fobian Defendants have the ability to pay the full sanctions amount, and the third Rowedder factor has been satisfied.” Ruling on Remand, p. 6; App. 456. This Court should uphold the district court’s finding.

Severity of the Violation. While not required on remand, the district court referenced its discussion of the second *Rowedder* factor, determining that “[b]ased on said discussion, the fourth Rowedder factor has been satisfied.” Fobian Farms protests that Mr. Fobian’s August 21, 2015 letter was improperly considered. However, this was simply one of the factors considered by the district court when it made specific findings as to the minimum to deter and the severity of the violations.

It is clear to the Court, particularly in light of the August 21, 2015 letter that Mr. Fobian wrote to the Iowa Supreme Court, that Mr. Fobian (acting for the Fobian Defendants) views himself as being above the law and outside of the applicability

of well-founded legal principles. If severe sanctions are not imposed on the Fobian Defendants, the Court has no doubt Mr. Fobian and entities on whose behalf he acts will continue to engage in such behavior in attempts to pursue financial gain.

Ruling on Remand, p. 6; App. 456.

Mr. Fobian's letter delayed *procedendo* and Plaintiffs were forced to file a motion to strike before *procedendo* issued. Motion to Strike; App. 359; Order granting Motion to Strike; App. 447. Contrary to Fobian Farms' assertions that the district court improperly considered Mr. Fobian's letter, the Iowa Supreme Court treated it as a pleading.

This matter comes before the court upon a letter filed by Carl Fobian and a motion to strike the letter filed by the appellees. Upon due consideration, the court determines it will take no action on the letter filed on August 21, 2015 by Carl Fobian and the motion to strike is granted. The clerk shall issue *procedendo* immediately.

Order granting Motion to Strike; App. 447-448.

The district court properly considered Mr. Fobian's letter in the context of the second and fourth *Rowedder* factors. As set forth in the district court's original ruling and supplemented on remand, substantial evidence supported the district court's findings regarding *objective* misconduct. As such, an award of fees against Fobian Farms under Rule 1.413 was warranted. In consideration of the totality of Fobian Farms'

sanctionable conduct, the district court assessed an appropriate amount of fees.

CONCLUSION

WHEREFORE, Plaintiffs/Appellees respectfully request that this Court determine that the district court assessed the appropriate amount of sanctions against the Fobian Parties in light of their inequitable conduct. Plaintiffs further request that all fees and costs associated with this appeal, including reasonable appellate attorneys' fees, be taxed to the Fobian Parties.

REQUEST FOR ORAL ARGUMENT

Plaintiffs/Appellees respectfully request to be heard in oral argument for this appeal.

Respectfully submitted,

/s/ Mark A. Roberts

MARK A. ROBERTS AT0006579

LYNN W. HARTMAN AT0003365

DAWN M. GIBSON AT0009413

SIMMONS PERRINE MOYER BERGMAN PLC

115 Third Street SE, Suite 1200

Cedar Rapids, Iowa 52401-1266

Phone: 319-366-7641

Fax: 319-366-1917

mroberts@simmonsperrine.com

lhartman@simmonsperrine.com

dgibson@simmonsperrine.com

ATTORNEYS FOR APPELLEES FIRST

AMERICAN BANK AND C.J. LAND, L.L.C.

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I certify that, on September 23, 2016 I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System, which will send notification of electronic filing to the following opposing counsel. Per Iowa Rule 16.317(1)(a)(2), this constitutes service of the document for the purposes of the Iowa Court Rules.

Gregg Geerdes

/s/ Mark A. Roberts
Mark A. Roberts

CERTIFICATE OF COMPLIANCE WITH TYPE REQUIREMENTS

This brief complies with the limitation on the volume of type set forth in Iowa R. App. P. 6.903(1)(g)(1). It contains 4,349 words, excluding parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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