

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Montrell Carr, et al., )  
Plaintiffs, ) No. 17-cv-7135  
(Judge Pacold)  
-vs- )  
)  
Sheriff of Cook County and Cook )  
County, Illinois, )  
)  
Defendants. )

## **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR RULE 11 SANCTIONS**

In response to plaintiffs' Motion for Sanctions, defendants now claim that "zealous advocacy" required them to make new arguments about the issues resolved by the Seventh Circuit lest those issues be waived for further appellate review. (ECF No. 240 at 6.) The Court should reject defendants' attempt to excuse the filing of a frivolous motion to dismiss.

First, defendants do not have the right to litigate *ad infinitum* issues resolved by the Court of Appeals. As this Court explained in denying defendants' post-remand motion to dismiss, the "law of the case doctrine applies when a party makes 'new arguments' regarding the 'same issue' previously decided." (ECF No. 242 at 3, *citing Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 234 (7th Cir. 1988).) Defendants were aware of *Parts & Elec. Motors*, but instead of distinguishing the case or arguing for

its modification, defendants sought to rely on a misreading of this binding precedent. (ECF No. 240 at 9.)

Second, defendants are unable to “make[] a rational argument,” *Smith v. National Health Care Services of Peoria*, 934 F.2d 95, 99 (7th Cir. 1991), that any rule or case law required them to raise their new arguments in order to preserve a challenge to the correctness of the Seventh Circuit’s opinion in this case that “Scott has standing based on the prospect of an incentive award.” (ECF No. 242 at 3, footnote omitted). As the Court ruled on the motion to dismiss, the mandate rule bars defendants from making their new arguments on remand.

Defendants could have indicated in their motion to dismiss that they were filing the motion to preserve their arguments for future appellate review and acknowledged that the mandate rule required the Court to deny the motion. *See, e.g., United States v. Williams*, 410 F.3d 397, 400 (7th Cir. 2005) (“As Williams himself acknowledges, our precedents foreclose his argument; indeed, Williams indicates that he is making the argument solely to preserve it for Supreme Court review.”)

Defendants did not take this approach. Instead, defendants wasted attorney time and the Court’s time even after plaintiffs complied with the

safe harbor provision of Rule 11 and put defendants on notice that their motion was frivolous.

The Court should grant plaintiffs' motion for sanctions. The appropriate sanction is for defense counsel to repay Cook County for the time it billed in connection with the motion to dismiss as well as defending this motion and to pay plaintiff's counsel a reasonable fee for responding to the motion and filing the Rule 11 motion and supporting memoranda.

Respectfully submitted,

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