

July 21, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 04-20963
Summary Calendar

KEN FLORY, Derivatively on behalf
of Dynacq International, Inc.,

Plaintiff-Appellant,

versus

CHIU MOON CHAN; PHILIP S. CHAN;
STEPHEN L. HUBER; EARL R. VOTAW;
DYNACQ INTERNATIONAL, INC. a
Nevada Corporation,

Defendant-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:02-CV-3123

Before REAVLEY, JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

The judgment of the district court is affirmed. The appellant raises no objection to the reasons for that judgment and only maintains that he was denied an opportunity to amend his pleadings and that appellee argued res judicata in a supplemental presentation to the court in support of its original motion to

* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

dismiss. Appellant filed no motion to amend during the months it could have done so and after having only stated in response to the motion to dismiss that he intended to amend. The res judicata issue was properly presented to the court and appellant suggests no prejudice.

AFFIRMED.