

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2007

No. 07-50387
Summary Calendar

Charles R. Fulbruge III
Clerk

ROBROY INDUSTRIES INCORPORATED,

Plaintiff - Appellant,

v.

JOSEPH SCHWALBACH; CL SYSTEMS CORPORATION,

Defendants - Appellees.

Appeal from the United States District Court
for the Western District of Texas
No. 7:06-CV-40

Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:*

After the notice of appeal in this case was filed and docketed, the appellant Robroy Industries filed a motion in the district court for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b). On the consent of the parties, this court remands for the limited purpose of asking the district court to consider the merits of the Rule 60(b) motion. This court does so without expressing any opinion on the merits of that motion and without ruling at this time on the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

appeal. The appeal is held in abeyance pending the resolution of the Rule 60(b) motion. If the district court finds the Rule 60(b) motion meritless, the appeal from that denial can be consolidated with this appeal. If the district court determines that it is inclined to grant the Rule 60(b) motion, it should issue a short memorandum so stating. Robroy Industries can then move this court for a limited remand so that the district court can grant the Rule 60(b) relief, vacating the judgment and reopening the record. Once that has been accomplished, the parties can appeal to this court from any final order. See *Karaha Bodas Co., L.L.C. v. Perusahaan Perambangan Minyak Dan Gas Bumi Negara*, No. 02-20042, 2003 WL 21027134, at *5 (5th Cir. March 5, 2003).

This court retains jurisdiction over the cause appealed except for the limited REMAND to permit the district court to state, in writing, whether it is inclined to deny or grant the Rule 60(b) motion.