

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20161
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM E. JONES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-99-CV-3202

December 13, 2000

Before DAVIS, JONES, and DeMOSS, Circuit Judges.

PER CURIAM:*

Defendant-Appellant William E. Jones ("Jones"), appeals a judgment in favor of Plaintiff-Appellee United States ("the Government"), entered by the district court as a "Judgment Nihil Dicit." This matter arose from the Government's attempt to collect certain defaulted student loans from Jones.

After Jones filed an answer generally denying the allegations against him, the Government moved for summary judgment. Several days later, the district court entered a judgment nihil dicit, later explaining that Jones had failed "to articulate in his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

answers a legally recognizable defense to a promissory note [and failed to plead] a fact that if true would impede the government's claim on the promissory note."

"Judgment nihil dicit," a form of default under common law, is rarely (if ever) utilized in federal cases anymore. Default proceedings now are covered by Rule 55 of the Federal Rules of Civil Procedure.

Apparently recognizing the questionable status of judgment nihil dicit in the federal system, the Government suggests the district court actually awarded judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), but styled as a judgment nihil dicit. However, even accepting this interpretation, the district court erred by so ruling.

In deciding a motion for judgment on the pleadings under Rule 12(c), a court should grant the judgment only if it appears from the admitted facts that the moving party is clearly entitled to judgment. See Voest-Alpine Trading USA Corp. v. Bank of China, 142 F.3d 887, 891 (5th Cir. 1998).

However, by entering a general denial, Jones put every fact in the Government's case at issue. In his amended answer, Jones also asserted affirmative defenses of payment and accord and satisfaction. Although Jones may not have been able to provide evidence to support his denial of each and every allegation, the proper procedure to test his ability to do so is a motion for summary judgment under Fed. R. Civ. P. 56, not a motion for judgment on the pleadings under Rule 12(c). Had the court proceeded to hear the summary judgment motion filed by the

Government, and assuming the Government could properly support the motion, Jones would not have been able to rest on his denials but would have been required to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

Therefore, the Judgment Nihil Dicit of the district court is VACATED, and this case is REMANDED for further proceedings in accordance with the Federal Rules of Civil Procedure.