

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-30730
Conference Calendar

VOYD B. BURGER,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA, Owner of the U.S.N.S.
Bellatrix; BAY SHIP MANAGEMENT, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 03-MC-1538-F

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Voyd B. Burger appeals the district court's denial of permission to file a complaint for unpaid seaman's wages. Burger previously had been sanctioned by the district court and barred from filing any pleadings on the issue of his seaman's wages unless the filing was justified by a compelling showing of new evidence previously unavailable.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Burger argues on appeal that his present claim is not barred by the statute of limitations and that the district court in a prior case erred in determining that his claim was barred by res judicata. Although his factual statement indicates that he obtained an affidavit and discovered a relevant statute, Burger's argument contains no showing, much less a compelling showing, of new evidence previously unavailable. Accordingly, Burger has abandoned any argument that the district court erred in denying him permission to file a complaint for unpaid wages. See Hughes v. Johnson, 191 F.3d 607, 612-13 (5th Cir. 1999); Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

The appeal is frivolous and it is DISMISSED as such. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. Burger is WARNED that sanctions will be imposed if he files frivolous appeals in the future.

APPEAL DISMISSED; SANCTION WARNING ISSUED.