

January 13, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 04-11030

RICHARD SCHWARTZ, Etc.; ET AL.,

Plaintiffs,

versus

TXU CORP.; ET AL.,

Defendants,

TXU CORP.; ERLE NYE;
MICHAEL J. MCNALLY,

Defendants - Appellees,

versus

MARK L. ROTH, Individually, and as Trustee of the Mark L. Roth, CPA, Money Purchase Plan & Trust, and Trustee of the Mark Lawrence Roth Trust; JOCELYN K. ROTH, Individually, and as Trustee of the Mark L. Roth, CPA, Money Purchase Plan & Trust,

Appellants.

Appeal from the United States District Court
for the Northern District of Texas, Dallas

Before JOLLY, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Currently before us is an interlocutory appeal involving the validity of an injunctive order issued by the district court. This appeal was argued before the above panel on May 12, 2005. 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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

panel was advised, however, that the parties had reached a settlement that had been presented to the district court for approval. Because that settlement would probably moot this interlocutory appeal, we have, with the understanding of the parties, held opinion pending approval of the settlement by the district court. The district court, however, did not approve the settlement of the federal action until November 8, 2005. See Findings of Fact and Conclusions of Law, No. 3:02-CV-2243, Nov. 8, 2005 (approving settlement and dismissing the action with prejudice). This final judgment has been appealed.

In view of these changed circumstances, particularly that the case has terminated in the district court, we REMAND to the district court for the limited purpose of further consideration of its injunctive order in the light of the changed circumstances. The parties should address whether there is any further necessity for the injunctive relief. The district court should determine whether the injunction now should be dismissed, reinstated, or modified under these changed circumstances and enter an order as it determines appropriate, with some explanation for its order.

This panel retains control over any appeal that may result from the injunctive order of the district court. We hereby notify the parties that should appeal from the district court order be deemed necessary, a new notice of appeal should be filed, which will then be consolidated with this appeal.

Furthermore, we request that, once the district court has entered its new order, it forward a copy of the same to the clerk of this court.

The case is REMANDED for the limited and specific purpose stated.