

September 5, 2007

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 07-40228
Summary Calendar

CARL CLAXTON,

Plaintiff-Appellant,

v.

C. LARRY YARBROUGH; ROGER STRIMPEL,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Texas, Sherman
(4:06-CV-37)

Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant Carl Claxton appeals from an adverse summary judgment dismissing his claim for breach of fiduciary duty and shareholder oppression. Appellees Larry Yarbrough and Roger Strimpel insist that the district court which adopted the magistrate judge's report and recommendation correctly dismissed Claxton's claims based on res judicata. We agree.

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Claxton had previously brought suit against Transcontinental Management & Marketing Group, Inc. ("TMMG"), a Texas corporation in which the parties to the case sub judice were 1/3 shareholders of the stock of TMMG. TMMG filed a counterclaim based on a promissory note signed by Claxton. Shortly before trial in state court, Claxton non-suited his untimely asserted claim for minority oppression. He did not non-suit his lawsuit, only his claim for minority oppression. The state court proceeding resulted in a judgment against Claxton as to his claims and in favor of TMMG on its promissory note claim against Claxton. The claims docketed in the state court lawsuit and the action sub judice are based on the same nucleus of operative facts and could have been litigated in the first state lawsuit and there is clearly privity between the appellees herein and the defendant in the state suit, TMMG, which was solely owned by the parties to this action.

We have reviewed the briefs and record and having considered the arguments and authorities cited therein, we see no reason to write further inasmuch as the magistrate's report carefully and correctly addresses the issues presented. Any additional writing would be superfluous. Accordingly, we affirm the judgment of the district court essentially for the same reasons set out in the Report and Recommendation of the United States Magistrate dated December 7, 2006.