

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-3537

Summary Calendar

PETROEX TRADING, LTD., ET AL.,

Plaintiffs-Appellants,

v.

HORACE CLINTON PRAY, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(Misc. 1724)

(September 21, 1993)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Appellant Petroex Trading, Ltd. ("Petroex"), obtained a judgment in the amount of \$33,250,000.00 against appellee Superport Oil Corp. ("Superport") on August 5, 1985, from the United States District Court for the Central District of California. That court then issued a Certification of Judgment for Registration in Another District. The clerk for the

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

California district court, however, listed Horace Clinton Pray ("Pray") rather than Superport as the defendant in the certification caption. The judgment was registered in the United States District Court for the Eastern District of Louisiana pursuant to 28 U.S.C. § 1963 for collection purposes. On July 12, 1989, that district court issued an order which read "IT IS ORDERED that the attached erroneous in caption title certification of judgment form be disregarded and voided." Petroex appealed this order, requesting this court to clarify that the order voids only the incorrect caption of the certification rather than the entire certification. Petroex also appeals the district court's denial of sanctions under Federal Rule of Civil Procedure 11 against Pray.

I.

Petroex won an arbitration award of \$33,250,000.00 against Superport on April 8, 1985. The United States District Court for the Central District of California issued an order confirming the award and entering judgment in that amount against Superport on August 5, 1985. Petroex obtained a Certification of Judgment for Registration in Another District from the clerk of the California district court in order to register the judgment in Louisiana, where Pray, the sole shareholder and president of Superport, resided. The clerk for the California district court, however, did not list Superport as the defendant in the caption for the certification, but rather "Horace Clinton Pray, et al." The judgment, which correctly listed Superport as the judgment

debtor, was registered in the United States District Court for the Eastern District of Louisiana on December 19, 1985, and Petroex engaged in extended collection efforts against Superport.

On May 26, 1989, Pray filed a "motion for contempt" against Harry Hoskins ("Hoskins"), counsel for Petroex, alleging that Hoskins had violated a court order directing him to seek relief from the U.S. Bankruptcy Court hearing Superport's Chapter 11 petition before further attempting to discover or seize Pray's assets. In response, Petroex filed a motion for sanctions against Pray on June 27, 1989. Despite repeated requests by Hoskins that Pray withdraw his motion for contempt, Pray did not do so. With respect to the discrepancy between the defendant caption on the certification of judgment and the judgment debtor listed in the judgment, the district judge entered an order "that the attached erroneous in caption title certification of judgment form be disregarded and voided" on July 12, 1989. The judge also dismissed Pray's motion for contempt and Petroex's motion for sanctions. Petroex appealed both orders.

Careful examination of the record reveals that the same day Petroex filed its notice of appeal from the district court's order, August 11, 1989, it also filed a motion requesting permission to file a new Certification of Judgment for Registration in Another District with the district court in Louisiana. This certification was also issued by the United States District Court for the Central District of California, and it correctly listed Superport as the defendant. The attached

judgment was the same as the one registered in December 1985. The Louisiana district judge granted leave to file the new certification and judgment into the record. Although Petroex's brief does not mention this second certification, it appears that Petroex has continued its appeal from the order voiding the original certification for fear that the order rendered illegal all its collection efforts undertaken pursuant to the original certification.

The appeal was stayed by a panel of this court after Superport filed for Chapter 7 bankruptcy on December 29, 1989. The bankruptcy proceeding closed in April 1991, so we now proceed to the merits of the appeal.

II.

Petroex argues that the erroneous listing of Pray as the defendant in the original certification of judgment is a harmless typographical error which the district court should have disregarded. Fed. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."). Petroex submits that the order of the district court is vague and could be read to void the entire certification of judgment rather than just the erroneous defendant caption. Therefore, Petroex asks this court to modify the order, clarifying that the certification is not void and substituting "Superport Oil Corporation" for "Horace Clinton Pray, et al."

We agree with Petroex that the order of the district was not a model of clarity, but we do not agree that it is so ambiguous as to require reversal. Rather, we construe the order as an order to all interested parties that the erroneous defendant caption on the certification of judgment is to be disregarded, rather than an order to disregard the entire certification form. It is undisputed that the judgment itself was correct, and no one contends that anyone was misled by the clerical error in the caption of the certification. Thus, the district court's order is properly read as carrying out the mandate of Federal Rule of Civil Procedure 61 that insubstantial errors or defects are to be disregarded. Although Petroex's fear that the entire certification was voided by the order is not wholly groundless, Petroex's argument is ultimately without merit in light of our conclusion that the district court correctly ordered that the erroneous caption should be disregarded. Accordingly, we affirm the order of the district court.

Petroex next requests this court to reverse the ruling of the district court denying Petroex's motion for Rule 11 sanctions against Pray. Rule 11 determinations by the district courts are to be reviewed under the deferential abuse of discretion standard. Cooter & Gell v. Hartmax Corp., 496 U.S. 384, 405 (1990). In this case the district court dismissed Petroex's motion without findings of fact or conclusions of law. Although this court does not routinely require such findings and conclusions in Rule 11 cases, the record must reflect some reason

for the court's denial of sanctions when the face of the record appears to warrant the application of the Rule. Corpus Christi Taxpayer's Ass'n v. City of Corpus Christi, 858 F.2d 973, 977 (5th Cir. 1988) (citing Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866, 883 (5th Cir. 1988) (en banc)), cert. denied, 490 U.S. 1065 (1989).

The face of the record does not so clearly warrant application of the Rule as to require reversal of the district judge's order. Although Petroex now alleges on appeal that Pray was guilty of an improper purpose in pressing his motion for contempt, these allegations were not made in the motion for sanctions. Instead, Petroex's motion for sanctions primarily refers to Petroex's requests to Pray that he dismiss his motion for contempt as evidence of Pray's bad faith. The motion also alleges that Pray made secretive and apparently ineffectual efforts to dismiss his motion for contempt voluntarily. These facts, even if taken as true, do not demonstrate that the district court committed an abuse of discretion in denying the motion for sanctions. Although the motion for sanctions alleges that Pray continued to press his motion for contempt after being told by the district judge that his position was without merit, we find no unequivocal evidence of this in the record.

Because the face of the record does not dictate application of the Rule, we find no abuse of discretion by the district court in dismissing Petroex's motion for sanctions against Pray.

IV.

For the foregoing reasons we AFFIRM the district court's order to disregard the defendant caption in the certification of judgment and the court's denial of Rule 11 sanctions. Because the parties in this protracted litigation have consistently engaged in excessive motion practice, we also ORDER the Clerk of this court not to accept any further motions or filings from either party except for a petition for rehearing as permitted by Federal Rule of Appellate Procedure 40.¹

¹ Pray has also filed motions in this court to substitute counsel, for leave to file a supplemental brief, for sanctions against Petroex and its attorney of record, and for discovery. The motion to substitute counsel is GRANTED. The motions for leave to file a supplemental brief, for sanctions, and for discovery are DENIED.