

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1397

THOMAS S. MACKIE,

Plaintiff-Appellant,

versus

RESOLUTION TRUST CORPORATION,
as Receiver for Southwest
Federal Savings Association, ET AL.,

Defendants-Appellees.

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

(CA-88-1406-T)

- - - - -
June 24, 1993

BEFORE JONES, DUHÉ and WIENER, Circuit Judges.

PER CURIAM:*

FACTS AND PROCEEDINGS

Plaintiff-Appellant Thomas S. Mackie has appealed an adverse judgment of the district court for the Northern District of Texas, grounded in res judicata. The basis of the district court's res judicata holding was a prior judgment adverse to Mackie rendered in

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

a parallel case in the United States District Court for the Western District of Texas, No. A-88-CA-387. During the pendency of the instant appeal another panel of this court, which had previously affirmed the judgment of the Western District of Texas, granted a rehearing. In response to a motion by Mackie, this panel issued a stay of the judgment of the district court for the Northern District of Texas pending appeal, to await final determination of the Western District case.

On rehearing, the original opinion in the Western District action was reversed and remanded to the Western District, thereby destroyingSOat least temporarilySOthe res judicata underpinning of the Northern District's holding in this case. On remand, the district court in the Western District action rendered a new judgment, again adverse to Mackie, an appeal of which is now pending in this court.

Meanwhile, the most recent development in the instant case concerns the commercial property which is the subject of this litigation, implicating legal and physical problems and the purported need to appoint management and to provide for the funding of such actions as management may determine to be necessary or desirable. The parties are in apparent agreement that something needs to be done, but they differ on what, how and by whom.

ANALYSIS

The original judgment in the Western District action was the predicate on which the res judicata judgment in the Northern District action was grounded. Inasmuch as the predicate judgment

was reversed and remanded, the res judicata judgment in the Northern District action must fall.

CONCLUSION

We vacate the judgment of the district court and remand this case for further proceedings in light of all relevant developments since the rendering of its res judicata judgment, which we now vacate. Until the mandate in this appeal issues, the stay previously granted by this court shall remain in effect. The judgment of the district court is VACATED, the case is REMANDED, and the stay is CONTINUED in effect until issuance of the mandate in this appeal.