IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 92-2608
(Summary Calendar)

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FEDERAL DEPOSIT INSURANCE CORP.,
as receiver of WESTERN BANK -
WESTHEIMER,

Plaintiff-Appellee,

versus

FRED E. RIZK CONSTRUCTION CO.,
and FRED E. RIZK,

Defendants-Appellants.

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Appeal from the United States District Court
for the Southern District of Texas
(CA-H-91-3122)

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(December 22, 1992)

Before KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM*:

In this suit on a promissory note, Defendant-Appellants Fred E. Rizk Construction Co. and Fred E. Rizk (collectively, "Rizk") appeal the district court's grant of summary judgment in favor of Plaintiff-Appellee Federal Deposit Insurance Corp. (FDIC). Finding no reversible error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

The construction company was the maker of a promissory note that was held by the FDIC's predecessor, Western Bank))Westheimer, and Fred Rizk guaranteed it. The note was defaulted on in November 1987, just after the FDIC had been appointed as receiver of the bank.[1]

In 1991, the FDIC sued Rizk on the note. Several months after the initiation of the lawsuit, the FDIC filed a motion for summary judgment to which Rizk did not reply. The district court found that the FDIC had made out a prima facie case on the note, and, as there was no opposition, the court granted the FDIC's motion. Rizk timely filed a notice of appeal.

II

In reviewing the district court's grant of a motion for summary judgment, we subject the grant to de novo review, applying the same standards used by the district court.[2] Summary judgment is proper when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law."[3] We have stated that "[s]uits to enforce promissory notes

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[1]See 12 U.S.C. § 1821(d)(2).

[2]Walker v. Sears, Roebuck & Co., 853 F.2d 355, 358 (5th Cir. 1988).

[3]FED. R. CIV. P. 56(c); see Resolution Trust Corp. v. Marshall, 939 F.2d 274, 276 (5th Cir. 1991).

are especially appropriate for disposition by summary judgment.[4]

As noted above, Rizk did not oppose the FDIC's motion for summary judgment. A district court acts properly in granting an unopposed summary judgment motion when the "[movant]'s submittals ma[ke] a prima facie showing of its entitlement to judgment."[5]

To prevail on a summary judgment motion on the promissory note in question, the FDIC had to establish that: (1) the note is valid; (2) the FDIC is the present holder of the note; and (3) Rizk had defaulted on the note.[6] In support of its summary judgment motion, the FDIC submitted an affidavit by the FDIC case administrator setting forth such information. Considering the uncontested fact (Rizk did not contest the note's validity in his answer) and the affidavit attached to the summary judgment motion, the district court found that the FDIC had established a prima facie case on the note under the controlling authority. After a thorough review of the record, we agree with the district court's findings.

The only defense raised by Rizk in his answer was that an "accord and satisfaction" had been reached on the note. The

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[4]Marshall, 939 F.2d at 276 (citing FDIC v. Cardinal Oil Well Servicing Co., 837 F.2d 1369, 1371 (5th Cir. 1988)).

[5]Eversley v. MBank Dallas, 843 F.2d 172, 174 (5th Cir. 1988)(citing Matsushita Electrical Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986); and Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)).

[6]Marshall, 939 F.2d at 276 (citing FSLIC v. Atkinson-Smith Univ. Park Joint Venture, 729 F. Supp. 1130, 1132 (N.D. Tex. 1989)).

statement in his answer, however, amounts to nothing more than a bald assertion, totally unsupported by specific factual representations. That cannot create an issue of fact.[7] As Rizk did not put forward any competent summary judgment evidence in support of his defense, the district court properly granted summary judgment in favor of the FDIC, which had made out a prima facie case as to indebtedness on the note.[8]

III

Having thus found that the district court properly granted summary judgment in favor of the FDIC, we

AFFIRM.

[7]See Anderson, 477 U.S. at 249.

[8]Rizk also argues that summary judgment was improperly granted because the FDIC did not prove that it was a holder in due course. This argument fails, however, because the FDIC's status as a holder in due course is not relevant given that the FDIC proved a prima facie case as to recovery on the promissory note and Rizk failed to put forward any defense to the district court.