UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-2626
Summary Calendar

C. Louis Noack and Carolyn S. Noack,

Plaintiffs-Appellants,

VERSUS

State Farm Fire and Casualty Company and Jimmy Young,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
CA H 89 3335

April 14, 1993

Before JOLLY, DUHÉ, AND BARKSDALE, Circuit Judges.

PER CURIAM:[1]

C. Louis Noack and Carolyn S. Noack, Appellants, seek review of a summary judgment in favor of the Appellees, State Farm Fire and Casualty Company ("State Farm") and Jimmy Young. The district court held that the claims against Young were barred by the statute of limitations, and that the releases signed by the Noacks released all claims against State Farm and Jimmy Young. We affirm.

Background

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In 1987, a fire destroyed the Noack's home and personal property. Their home and its contents were insured under a policy issued by State Farm. The Noacks promptly filed a proof of claim. They contend, however, that State Farm failed to timely pay the proceeds owed under their policy.

The Noacks eventually settled their claim with State Farm. On June 14, 1988, and August 3, 1988, via execution of separate releases, the Noacks discharged State Farm from any claims for the content loss and structure loss under their policy.[2] The Noacks expressly reserved only their claim for additional living expenses. The Noacks later filed suit in state court to recover damages for State Farm's alleged breach of its duty of good faith and fair dealing and violations of the Texas Deceptive Trade Practices Act. State Farm had the case removed to federal court. Subsequently, the Noacks added Jimmy Young, a Texas resident, as a defendant and moved to remand.

In April 1991, Jimmy Young moved for summary judgment asserting that the applicable statute of limitations had run and the affirmative defenses of release and accord and satisfaction. The Noacks responded asserting that the federal court did not have jurisdiction to hear Young's motion because no diversity of citizenship existed. On March 20, 1992, State Farm filed a

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[2] The Noacks argue that these releases were not intended to include their claims for extra contractual claims. They argue that because they refused to sign an earlier release which expressly included extra contractual claims, these releases only included claims arising under the contract. For the reasons expressed by the district court, we disagree.

letter with the district judge's case manager stating that it wished to join in Jimmy Young's Motion for Summary Judgment and sent a copy to Appellants' counsel. On March 31, 1992, eleven days later, the district court ruled that the Noacks lacked standing to sue State Farm and Young because the releases discharged all of the claims for which the Noacks sued. Additionally, the court found that the statute of limitations barred the Noacks' action against Young.

Discussion

The Noacks contend that the district court erred in granting summary judgment in favor of State Farm and Jimmy Young for several reasons. First, they argue that summary judgment for State Farm was improper because State Farm did not file a Motion for Summary Judgment and no hearing on Young's motion was ever held. Further, they contend that they did not receive the requisite ten day notice required under Federal Rule of Civil Procedure 56(c) before the court ruled on the motion. Second, the Noacks argue that the statute of limitations did not bar their claims against Jimmy Young. Finally, they contend that the signed releases did not discharge their claims against Jimmy Young or State Farm.

Summary judgment is appropriate if the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In reviewing the summary judgment, we apply the same standard of review as did the district court. Waltman v.

International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548 (5th Cir. 1989). The pleadings, depositions, admissions, and answers to interrogatories, together with affidavits, must demonstrate that no genuine issue of material fact remains. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). To that end we must "review the facts drawing all inferences most favorable to the party opposing the motion." Reid v. State Farm Mut. Auto. Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); see Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

Before reaching the merits of the summary judgment ruling, we must determine whether the court complied with the 10 day notice requirement of Rule 56(c). Jimmy Young moved for summary judgment in April 1991, but State Farm did not. State Farm instead sent a letter to the court on March 20, 1992, stating that it "join[ed] in the Motion for Summary Judgment filed by Jimmy Young."[3] Eleven days later, the court rendered summary judgment in favor of both defendants on all claims. The Noacks argue that this letter was insufficient to give them notice that a judgment would include their claims against State Farm.

[3] The letter was apparently delivered directly to the judge's case manager and was not officially filed in the record. The Noacks do not content, however, that the letter was not sent to the court on March 20 or that they did not receive it on March 20.

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party must have 10 days notice of a motion for summary judgment before a ruling can be entered.[4] Fed. R. Civ. P. 56(c). Rule 56(c) does not require an oral hearing. Daniels v. Morris, 746 F.2d 271, 274 (5th Cir. 1984). If no hearing is held, the adverse party must have at least ten days to respond to the motion for summary judgment. Id. at 274-75; see Hamman v. Southwestern Gas Pipeline, Inc., 721 F.2d 140, 142 (5th Cir. 1983). Rule 56(c) also does not require that the court give parties advance notice of a "date certain" on which it is to decide the motion. Id. at 275-76. In fact, a court may grant summary judgment sua sponte. Arkwright-Boston Mfrs. Mut. Ins. Co. v. Aries Marine Corp., 932 F.2d 442 (5th Cir. 1991).

The Noacks had notice of the Motion for Summary Judgment filed by Jimmy Young and responded to that motion. When State Farm joined in that motion, the Noacks had notice and an opportunity to respond prior to the court's ruling. The court was not required to hold a hearing or to notify the parties of when it would rule on the motion. The Noacks rely on Capital Films Corp. v. Charles Fries Productions, Inc.[5] for the proposition that when the court grants the motion for summary judgment months or even years after the non-moving party has been served with the motion, it is required to give a formal 10 day notice to the parties that it

[4] Rule 56(c) states "The Motion [for Summary Judgment] shall be served at least 10 days before the time fixed for the hearing."

[5] 628 F.2d 387 (5th Cir. 1980).

intends to rule on that motion. The cases in this Circuit, however, hold that mere delay in ruling, without court-induced prejudicial inaction, is insufficient to invoke a formal 10 day notice requirement. See e.g., Daniels, 746 F.2d at 274; Hamman, 721 F.2d at 142; Prudhomme v. Tenneco Oil Co., 955 F.2d 390 (5th Cir.), cert. denied, ---U.S.---, 113 S.Ct. 84 (1992). This Court's jurisprudence on this issue is nicely summarized by Judge Wiener in Prudhomme v. Tenneco Oil Co., 955 F.2d at 394:

> [T]he principal distinguishing feature between those cases in which we reversed the district court and those in which we did not [is] court-induced prejudicial inaction. For example, the trial court in Capital Films Corp. v. Charles Fries Productions, Inc.,[6] had already docketed the case for trial when, without notice, it granted summary judgment. At one point that court had even stated that it was not going to rule on the motion for summary judgment. There we found that the parties were "induced [by the trial court] to believe that the case was going to trial."[7] As Judge Rubin observed in Daniels, the other line of cases, possibly best illustrated by Hamman v. Southwestern Gas Pipeline, Inc.,[8] involve no indication that the trial court had misled the parties or lulled them into believing that the case would be tried rather than be disposed of by summary judgment.

Prudhomme, 955 F.2d at 394.

We find this case more in line with the Daniels and Hamman cases. Although the case was docketed for trial, the court gave no indication that it was not still considering all pending motions. We are reluctant to conclude that merely docketing a case for trial amounts to court-induced prejudicial inaction. The Noacks had

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[6] 628 F.2d at 391.

[7] Id.

[8] 721 F.2d at 143-44.

eleven days from the time State Farm joined in the Motion to file a response with the court before it ruled. The Noacks knew what issues were raised in the Motion and that both defendants supported that Motion. We conclude that the ten day notice requirement under Rule 56(c) was met.

As to the Noacks remaining points on appeal, upon de novo review, we conclude that the district court's opinion is thoroughly reasoned and an accurate statement of the law. We, therefore, adopt the opinion of the district court with regard to the Noacks' remaining issues on appeal.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.