

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 92-3147

(Summary Calendar)

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CRUCIBLE, INC.,

Plaintiff-Appellee,

VERSUS

JOHN CASTELLVI,

Defendant-Appellant.

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JOHN CASTELLVI,

Third-Party Plaintiff-Appellant,

VERSUS

JEAN SEVAUX, ET AL.,

Third-Party Defendants-Appellees.

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Appeal from the United States District Court  
Eastern District of Louisiana  
(90 CV 1483 E)

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(January 11, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIUM:\*

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\* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Defendant, John Castellvi, appeals the district court's judgment which held him liable to Crucible, Inc. for one-half of a promissory note in the amount of \$1,100,000. Claiming that he is liable for only one-third of the indebtedness, Castellvi submits the district court erred in holding him liable for \$550,000. Castellvi claims that there were three co-makers of the note and no evidence that any of these co-makers was insolvent. Accordingly, Castellvi claims he is liable for only one-third of the note, pursuant to La. Code Civ. Proc. Ann. art. 1804 and *Aiavolasiti v. Versailles Garden Land Dev. Co.*, 371 So.2d 755 (La. 1979).

However, as Crucible correctly points out, Castellvi did not dispute at any time during the course of the proceedings Crucible's uncontested fact No. 10 that "NPT Acquisition Company, a Delaware Corporation, and one of the co-makers of the Note, is unable to pay its debts, its liabilities exceed its assets, and it is insolvent."<sup>1</sup> Under the local rules, this fact was "deemed admitted." See *Skyline Air Service, Inc. v. G.L. Capps Co.*, 916 F.2d 977, 979-80 (5th Cir. 1990); *Jaroma v. Massey*, 873 F.2d 17, 20 (1st Cir. 1989).

Because this appeal is frivolous, we GRANT Crucible's motions for sanctions pursuant to FED. R. APP. P. 38 and sanction Castellvi \$2,000.00 to be paid Crucible in addition to the judgment.

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<sup>1</sup> In fact, Castellvi in his brief opposing Crucible's motion for summary judgment indicated that NPT Acquisition Company ("NPTA") was insolvent. See Record on Appeal at 1035. Furthermore, Castellvi in his statement of undisputed facts stated that NPTA was insolvent. See Record on Appeal at 999.

Accordingly, we AFFIRM the district court's judgment as modified to include sanctions.