

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-3788

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IN RE: TAXABLE MUNICIPAL BOND SECURITIES LITIGATION.

CITY NATIONAL BANK, ET AL.,

Appellants,

versus

UNION PLANTERS INVESTMENT BANKERS GROUP, INC.,  
UMIC, INC., VINING-SPARKS IBG, LTD., and  
B.J. WOOLVERTON,

Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(90-MD-863)

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(November 25, 1992)

Before DAVIS, and WIENER, Circuit Judges.<sup>1</sup>

BY THE COURT:

IT IS ORDERED that appellees' motion to substitute Exhibit A to their motion to dismiss appeal is GRANTED. IT IS FURTHER ORDERED that the appellees' motion to dismiss the appeal is GRANTED, and the appeal is DISMISSED.

In Marino v. Ortiz, the Supreme Court stated:

The rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment is well settled. The Court of Appeals suggested that there may be exceptions to this general rule, primarily "when the nonparty has an interest that is affected by

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<sup>1</sup>This matter is being decided by a quorum. 28 U.S.C. §26(d).

the trial court's judgment." We think the better practice is for such a nonparty to seek intervention for purposes of appeal; denials of such motions are, of course, appealable.<sup>2</sup>

We are not required to decide if the Court's decision in Ortiz forecloses the ability of a non-party to appeal an injunction that affects it. We thus decline to rule on the dictum of this court in United States v. Chagra<sup>3</sup> that "[i]f an injunction extends to non-parties, they may appeal from it." In thus declining, we emphasize our statement in Chagra that "a non-party may appeal orders for discovery if he [or she] has no other effective means of obtaining review."<sup>4</sup>

In the instant case, the appellants clearly have an effective means of obtaining review))the same means discussed in Ortiz) intervention. The district court has pending before it a motion to intervene, and apparently is awaiting our disposition of this motion to dismiss the instant appeal before ruling on that motion. As the Supreme Court stated, the better practice is "for such a nonparty to seek intervention." If appellants are denied intervention, they may obtain review by this court by appealing the district court's denial of intervention.

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<sup>2</sup>484 U.S. 301, 304 (1988) (per curiam) (citations omitted) (quoting Hispanic Soc'y v. New York City Police Dept., 806 F.2d 1147, 1152 (2d Cir. 1986)).

<sup>3</sup>701 F.2d 354, 359 (5th Cir. 1983)(citing Brown v. Board of Bar Examiners, 623 F.2d 605, 608 (9th Cir 1980), and Commercial Sec. Bank v. Walker Bank & Trust Co., 456 F.2d 1352 (10th Cir. 1972)).

<sup>4</sup>Id.