

**UNITED STATES COURT OF APPEALS
For the Fifth Circuit**

No. 92-4556
Summary Calendar

SAMMY D. BAILEY, ET AL,

Plaintiffs-Appellants,

VERSUS

J. SAMUEL O'DONNELL, III, ET AL,

Defendants-Appellees;

Appeal from the United States District Court
For the Western District of Louisiana
89 CV 0823

(December 9, 1992)

Before REYNALDO G. GARZA, DUHE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiffs brought suit against numerous defendants arising out of timber investments that they entered into with Maxwell Green. The plaintiffs, whose basis of jurisdiction was diversity, alleged both federal and state claims. The district court granted summary judgment on the federal claim, and retained jurisdiction over the pendent state claims. The court then proceeded to grant summary judgment on the pendent state law claims as well. One plaintiff, Sammy D. Bailey, waged this appeal. He contends: (1) the district court should not have retained jurisdiction over the state law claims after it disposed of the federal

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

claims; and (2) the summary judgment as to the state claims was improper on the merits. Because we find that the district court's summary judgment is in all respects proper, WE AFFIRM.

FACTS

Maxwell Green, the defendant's husband, died on April 10, 1985. Prior to his death, Mr. Green developed a plan to solicit investors to purchase options on tracks of standing timber. Pursuant to his plan, Mr. Green would act as a middle man buying these options, in turn selling them to papermills and lumber companies at a substantial markup.

Apparently, Mr. Green and his cronies were lining their pockets at the expense of the investors. Allegedly, one of Mr. Green's cohorts, Mr. Copeland, and Mrs. Gunnells, the decedent's wife, repeatedly assured investors that Mr. Green's life insurance would cover any shortfalls. They apparently maintained this belief in spite of the fact that Mrs. Gunnells was the named beneficiary.

The plaintiffs also alleged that Mrs. Gunnells was involved in her husband's business, maintained the books, solicited investors, and held joint checking accounts with the decedent. Therefore, they argue that she must have known about her husband's illegal conduct.

PROCEDURE

On April 11, 1989, thirty six named plaintiffs¹ filed a complaint alleging RICO violations, federal securities laws violations, federal mail, wire, and bank fraud violations. Subsequently, in a superseding complaint, the plaintiffs added pendent state law claims for breach of contract and unjust enrichment.² The defendants responded with a summary judgment motion. The plaintiffs countered with an opposition to the motion and two affidavits.

After weighing the evidence before it, the district court granted summary judgment on the RICO claim.³ The court then decided that in the interests of judicial economy it would retain jurisdiction over the

¹ Although thirty six plaintiffs joined in the trial, only Sammy D. Bailey properly filed a notice of appeal.

² The plaintiffs dropped the allegations of federal securities laws, federal mail, bank, and wire fraud. Further, numerous defendants were targeted in both the original and superseding complaints. However, the only currently remaining defendant is Mary Aycock Green Gunnells.

³ The appellant does not contest the summary judgment as to the RICO claim.

state law claims, which were ripe for resolution, and grant summary judgment as to those claims as well.

The court reasoned that summary judgment was proper as to the breach of contract claim because the plaintiffs failed to establish a contract between Mrs. Gunnels and any of the plaintiffs. Further, the court granted summary judgment on the unjust enrichment claim because the plaintiffs had an adequate remedy at law.⁴

DISCUSSION

The plaintiff's principal contention on appeal is that the trial judge should not have granted summary judgment on the pendent state law claims after he dismissed the only federal claims. Further, Bailey argues that summary judgment was improvidently granted. Because we find the appellant's contentions entirely without merit, WE AFFIRM.

1. Discretionary authority to retain pendent state law claims.

Bailey contends that after Judge Stagg dismissed the federal claims he should not have proceeded any further, and remanded the state claims back to state court. Appellant is completely mistaken. There is overwhelming support for the proposition that the district court, sitting in diversity, in its discretion may retain jurisdiction over pendent state law claims even after all federal claims have been disposed of. See Rosado v. Wyman, 397 U.S. 397, 403-05 (1970); United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966); Kelly v. City of Leesville, 897 F.2d 172, 174-75 (5th Cir. 1990); Grinter v. Petroleum Operation Support Serv., Inc., 846 F.2d 1006, 1008 (5th Cir.), cert. denied, 488 U.S. 969 (1988). The rationale behind deference in this regard is to avoid relitigation, timely expense, and needless waste of precious judicial resources. Judge Stagg had the record properly before him, and he properly ruled on all of the claims. There was certainly no abuse of discretion. Indeed, were we to overrule him we would be abusing our discretion.

ii. The Propriety of Summary Judgment.

The plaintiffs only contest the summary judgment as to the state law claims of unjust enrichment and breach of contract.

⁴ The plaintiffs could have filed a claim against the estate of Maxwell Green, but were barred by the statute of limitations.

Breach of contract

The breach of contract claim is entirely without merit because Mrs. Gunnells is the only party on this appeal, and the plaintiffs have established no contract with her. Bailey asserts that because he is seeking to sue on an oral contract that summary judgment is especially inappropriate. In support of his contention that summary judgment is ill equipped to deal with allegations of an oral contract, appellant cites Impossible Elec. Techniques, Inc. v. Warkenhirt Protective Sys., 669 F.2d 1026, 1032 (5th Cir. Unit B 1982). Appellant is simply mistaken because in Impossible the court noted that there were substantial ambiguities in the record, which precluded summary judgment. See id. Nowhere in the opinion does it state that allegations of an oral contract preclude summary judgment.

Indeed, Bailey does not point to any contract that he or any of the other plaintiffs entered into with Mrs. Gunnells. The plaintiffs merely alleged that they were reassured by Mrs. Gunnells, and others, that there was sufficient life insurance in the event that Mr. Green died. Reassurance is simply insufficient to establish a contractual relationship. Therefore, the district court properly granted summary judgment as to the breach of contract claims.

Unjust enrichment

Bailey also contends that Mrs. Gunnells was unjustly enriched: (1) by her husband's conversion of investor funds; and (2) receiving life insurance proceeds that were rightly promised to the plaintiffs. The district court denied the unjust enrichment claim because there existed an adequate remedy at law. The reason that the plaintiffs have persisted in their claims against Mrs. Gunnells is because they failed to file suit against the estate of Maxwell Green within the proper time period.

Undoubtedly, the plaintiffs had a remedy at law on the contractual relationship that existed between them and Maxwell Green. It is well settled in Louisiana, and elsewhere, that if an adequate remedy at law exists, then equitable remedies, including unjust enrichment, are necessarily foreclosed. See Sheets v. Yamaha Motors Corp., U.S.A., 849 F.2d 179, 184 (5th Cir. 1988) (applying Louisiana law); Austin v. North Am. Forest Prods., 656 F.2d 1076, 1088-89 (5th Cir. Unit A Sept. 1981) (same); Minyard v. Curtis Prods., Inc., 205 So. 2d 422, 433 (La. 1967). While it is unfortunate that the plaintiffs' legal claims have prescribed,

their equitable claims are nonetheless foreclosed, despite the currently untenable nature of their contractual claims. See Austin 656 F.2d at 1089. Were it otherwise, dilatory plaintiffs would be rewarded by revived equitable claims - that is simply not the law. Therefore, the district court properly granted summary judgment as to the unjust enrichment claim.

CONCLUSION

The district court properly exercised its discretion in retaining pendent claims and deciding them on the merits. Further, the court properly disposed of the breach of contract and unjust enrichment claims. Therefore, the district court is in all respects **AFFIRMED**.