IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-7322
Summary Calendar

CRUZ GONZALEZ, JR., RUBEN GARZA and MIGUEL LEAL,

Plaintiffs-Appellants,

v.

JACK HUNTER, individually and in his official capacity as Judge of the 94th District Court of Nueces County, Texas, ET AL.,

Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Texas
(CA-C-91-98)

(January 18, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

This is, in effect, the third time that the appellants have attempted to litigate the same issue. The first bite at the apple, which was unsuccessful, was attempted in the Texas state

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

courts. See City of Robstown v. Barrera, 779 S.W.2d 83 (Tex.App.--Corpus Christi 1989, no writ). The second bite at the apple was unsuccessfully attempted in the federal courts, under the guise of a civil rights action filed under 42 U.S.C. § 1983. See Garza v. Westergren, 908 F.2d 27 (5th Cir. 1990), further proceeding, Garza v. Westergren, unpublished slip op., No. 91-2388 (5th Cir. January 21, 1992). In the instant case, a third bite has been attempted under the guise of an action filed under federal racketeering, antitrust, and civil rights statutes (together with pendent state law tort claims). In this third attempt, the district court found, inter alia, that the action filed by appellants was an impermissible collateral attack on a valid state court judgment; the court below also awarded sanctions against appellants and their counsel, Juan Perales.

The appellants not only appeal from the judgment of the district court, but also for the first time allege that the appellees and their counsel engaged in fraud on the district court. The appellants urge this court to remand to the district court for further proceedings on the latter claim. We affirm the judgment of the district court in all respects and reject the appellants' allegations of fraud on the court. We also award sanctions on appeal against the appellants and their counsel, Juan Perales, Jr.

I.

The factual and procedural background of this case is adequately set forth in Barrera, 779 S.W.2d at 84-85, and Garza, 908 F.2d at 28. We simply note that this seemingly never-ending litigation grew out of a dispute between former members of the city council of the City of Robstown, Texas (the appellants) and the members of the City's Utility Systems Board of Trustees. Along the way, a local bank, a local law firm, and the Texas Attorney General, among others, were roped into the litigation by the former city council members. Rather than unnecessarily proceeding any farther with an explication of facts of this case, we instead observe that the only issue relevant to this appeal is a legal question raised in the two prior litigations: whether the Robstown Utility Systems Board of Trustees was clothed with the legal capacity to bring a counter-claim against the appellants during the original state court case. We, therefore, turn to that issue, which forms the basis of the district court's judgment and the appellants' allegations of fraud on the court.

II.

Integral to their federal court claims, the appellants have repeatedly argued that the state court judgment was invalid because the successful counter-claim filed by the Utility Systems Board "without lawful authority."[1] To support their claim, the

[1] In its opinion dismissing the appellants' claims, the district court noted that, "[a]lthough plaintiffs' counsel has attempted to plead new causes of action, he concedes that all plaintiffs' claims arise from the premise that [the state courts in the original litigation] were without power to act because the

appellants cite two Texas Supreme Court cases decided in the 1940s.[2] We observe that appellants cited this authority in the original state court litigation. The Texas Court of Appeals squarely held that those cases were not controlling and instead held that other Texas caselaw permitted the Utility Systems Board to file a counter-claim against the Robstown council members. See Barrera, 779 S.W.2d at 85. The appellants chose not to appeal the intermediate state appellate court's decision to the Texas Supreme Court.

We agree with the district court's holding that the claims raised in the appellants' subsequent federal court actions have impermissibly attempted to collaterally attack the Texas court's decision in Barrera. Such federal court collateral attacks on a valid state court judgment -- particularly one involving a state law issue such whether a municipal utilities board possesses the capacity to sue -- are simply not permitted.[3] Appellants' invocation of federal civil rights, antitrust, and racketeering statutes are thinly disguised attempts to pour old wine into new bottles. Moreover, even if such collateral federal actions were permitted, appellants have engaged in abusive litigation by

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Utility Board has no capacity to seek relief in court."

[2] See Guadalupe Blanco River Authority v. City of San Antonio, 200 S.W.2d 989, 1000 (Tex. 1947); Tuttle v. Guadalupe Blanco River Authority, 174 S.W.2d 589 (Tex. 1943) (opinion on rehearing).

[3] We note this is especially true in the instant case, where appellants never even appealed the Texas Court of Appeals' decision to the Texas Supreme Court.

bringing successive federal actions raising essentially the same issues. Cf. McCleskey v. Zant, 111 S. Ct. 1454 (1991) (discussing "abuse of the writ" doctrine in federal habeas corpus jurisprudence).

On this appeal, however, appellants have not merely wasted the limited resources of the federal courts. Appellants have also brought totally unfounded charges of serious misconduct against the appellees and their counsel. Appellants specifically allege that the appellees and their counsel have engaged in "fraud upon the court" and that counsel for the appellees have violated ethical rules prohibiting officers of the court from perpetrating such fraud. The basis of appellants' allegations is the appellees' representations to the district court that under prevailing Texas law the Utility Systems Board had the capacity to bring a counter-claim in the original state court litigation.

Once again, appellants' arguments rely solely on the two decisions of the Texas Supreme Court that were rendered over four decades ago. See the Guadalupe Blanco River Authority cases, supra. Appellants claim that appellees and their counsel perpetrated "fraud" simply by citing City of Robstown v. Barrera, supra, a 1989 Texas Court of Appeals' decision, as authority for the proposition that the Utility Systems Board had lawful authority to bring the counter-claim in state court, rather than citing the Guadalupe Blanco River Authority cases. Appellants similarly claim that appellees' counsel engaged in "unethical

behavior," in violation of Rules 3.03, 4.01, and 8.04 of the Texas Disciplinary Rules of Professional Conduct.[4]

Appellants' argument here is patently frivolous. In making their arguments to the district court, appellees and their counsel relied on a recent Texas Court of Appeals decision directly on point (indeed, a case involving the very parties before the district court), a case which expressly distinguished the two cases which appellants claim that appellees and their counsel "hid" from the district court. Appellants totally misconceive the concept of "fraud."

III.

In sum, we AFFIRM the district court in all respects -- including the court's award of sanctions against appellants -- and reject appellants' claim that appellees and their counsel engaged in fraudulent and unethical conduct in the proceedings below. We, thus, see no need to remand for any findings regarding the alleged fraud.

We further believe that this case is an appropriate one for imposing sanctions on appeal. In the prior appeal, we assessed double costs and attorneys fees against appellants' attorney, Juan Perales. See Garza, 908 F.2d at 28. Pursuant to Rule 38 of

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[4] Rule 3.03 provides that "Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal . . . . [A]n advocate has the duty to disclose directly adverse authority in the controlling jurisdiction . . . . " Rules 4.01 and 8.04 generally proscribe attorneys from engaging in dishonesty, deceit, and misrepresentation.

the Federal Rules of Appellate Procedure, we again assess double costs and attorneys fees, as well as any reasonable expenses incurred on appeal, although this time against appellants and their counsel, Juan Perales. We REMAND to the district court for the limited purpose of determining the amount of attorneys fees and any other expenses reasonably incurred by appellees by virtue of this appeal.[5] The district court shall enter judgment against appellants and Perales accordingly.[6]

[5] All appellees except the three members of the Texas Attorney General's office (Jim Mattox, Harry Potter, and James Thompson) have requested sanctions on appeal. With respect to those three appellees, we sua sponte award double costs and attorneys fees, as well as any other reasonable expenses incurred.

[6] Finally, we note that appellants have filed a Rule 60(b) motion with the district court, requesting relief from judgment. As of the date of this opinion, that motion is still pending. We caution appellants and their counsel that should that motion be denied, any appeal therefrom -- if it were to prove frivolous -- would warrant more severe sanctions than those imposed on this appeal.