UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9534
Summary Calendar

INEZ STREET and SYLVIA MALONE,

Plaintiffs-Appellants,

versus

TEXACO, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 87 3947 "G")

July 26, 1993

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

PER CURIAM:*

These appellants filed a personal injury suit against Texaco several months before it commenced a Chapter 11 case in late 1987. They were informed of the bankruptcy case, their case was stayed in the district court pending the bankruptcy, and they apparently attempted to communicate with the debtor to file a proof of claim. They never filed a formal proof of claim, however, and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the bankruptcy concluded without their participation. The district court held that their claim against Texaco was discharged, and it dismissed the lawsuit. Finding no error, we affirm the dismissal.

We first take note of the state of the record on appeal. Appellants rely heavily on a letter dated February 10, 1988, that their counsel allegedly wrote to the bankruptcy clerk in charge of the Texaco case. The district court refused to consider this letter, finding it inadmissible for summary judgment purposes. That ruling was correct, and in any event, appellants have not contested it. Thus, the only other evidence in appellants' behalf is a February 18 letter written by paralegals of Texaco's bankruptcy counsel in New York to appellants' previous attorney. The February 18 letter referred to appellants' "request" for a proof of claim, stated the request had been "forwarded" by the bankruptcy court, and purported to transmit a proof of claim form and proper filing information to appellants' counsel. This letter may not have been properly proved up under Rule 56, but Texaco did not object to its admissibility at the time, the court apparently considered the letter, and we may do so.

When reviewing a summary judgment, the court of appeals must determine de novo whether a genuine issue of material fact exists that requires a trial. Davis v. Illinois Central R.R., 921 F.2d 616, 617-18 (5th Cir. 1991). Further, the court must take all inferences from the evidence in the light most favorable to the non-movant. Id. Appellants have not presented sufficient evidence

that they filed even an informal proof of claim in the Texaco reorganization case.

The district court properly observed that many courts recognize that an "informal" proof of claim may be filed with the bankruptcy court or with counsel for the debtor and, under certain circumstances, such claims can allow the claimant to participate in the bankruptcy proceedings. Bankruptcy Rule 5005(c); see generally 8 Collier on Bankruptcy ¶ 3001.03 (15th Ed.) (cases cited therein). In such cases, however, there has been proof that the would-be claimant indicated an intent to participate in the bankruptcy proceedings and continued to assert his rights against the debtor. See, e.g., Matter of Pizza of Hawaii, Inc., 761 F.2d 1374 (9th Cir. 1985); In re Sambo's Restaurants, Inc., 754 F.2d 811 (9th Cir. 1985). Mere knowledge of the existence of the claim by the debtor, trustee or bankruptcy court is insufficient as an informal proof of claim. In re International Horizons, Inc., 751 F.2d 1213, 1217-18 (11th Cir. 1985). The only evidence before us in this case fails to establish the appellants' unequivocal intent or desire to participate in the bankruptcy proceedings. At most, appellants' counsel was informed that the bankruptcy case existed, he was furnished claim forms together with adequate filing information and notice of the deadline for filing proofs of claim, and he neglected ever to file a claim at all. No evidence appears that appellants voted in Texaco's plan of reorganization or sought further information about the plan or their rights under it. Appellants

never moved for relief from stay in order to proceed with the federal case and liquidate their claim for damages.

For these reasons, the judgment of the district court is AFFIRMED.