

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9566
Summary Calendar

TALBERT-SIEBERT ENTERPRISES, INC.,
Plaintiff-Appellant,
VERSUS
SHELL OIL COMPANY,
Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
CA 90 552 A M1

June 11, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

In this action based upon diversity of citizenship, the plaintiff, Talbert-Siebert Enterprises, Inc. ("Talbert-Siebert"), sued Shell Oil Company ("Shell") for damages based upon, inter alia, Shell's alleged breach of an oral agreement to convert a

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 Pursuant to that rule, the court has determined that this opinion should not be published.

full-service gasoline station to a convenience store gasoline station. In the alternative, Talbert-Siebert claims detrimental reliance on alleged promises made and not kept by Shell. Talbert-Siebert avers that without Shell's oral agreement to convert the station, Talbert-Siebert would not have entered into the Dealer Agreement and Motor Fuel Station Lease covering the station in question.

The district court granted summary judgment for Shell and denied all relief. Although Talbert-Siebert asserted several theories of recovery, it appeals only the district court's refusal, under the parol evidence rule, to consider evidence of an oral agreement, either in regard to the claim that that oral agreement existed or in regard to the claim of detrimental reliance.

The district court explained its reasons in a comprehensive twenty-one-page opinion, entered May 8, 1992, entitled "Ruling on Consolidated Motions for Summary Judgment." We affirm essentially for the reasons advanced by the district court in that opinion, which relies primarily upon the existence of an integration clause, in the Dealer Agreement and Motor Fuel Station Lease, for its conclusion that the parol evidence rule prohibits consideration of the oral evidence that Talbert-Siebert seeks to present. That clause states that the written lease agreement "constitutes the entire contract between Shell and Lessee concerning the subject matter or in consideration hereof."

One matter not specifically addressed by the district court is Talbert-Siebert's argument that the parol evidence rule does not apply to a claim of detrimental reliance because detrimental reliance is a tort, not contract, theory. In the case upon which Talbert-Siebert principally relies, however, Stokes v. Georgia-Pacific Corp., 894 F.2d 764, 770 (5th Cir. 1990), we have concluded to the contrary.

There is no error in the district court's conclusion that the parol evidence rule bars introduction of the oral evidence upon which Talbert-Siebert relies. The summary judgment is AFFIRMED.¹

¹ Prior to the submission of this case on the merits, Shell moved for dismissal of the appeal on the ground that Talbert-Siebert had consented to judgment. Shell's argument was shabby)) indeed, probably frivolous, if not vexatious)) and this panel, acting as an administrative panel, denied the motion. Shell now reurges this point on appeal.

Shell's argument is no less meritless now than it was then. Accordingly, we exercise our discretion and tax the costs of this appeal against Shell, although it is the prevailing party on the merits. See FED. R. APP. P. 39(a).