

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 93-1486  
Summary Calendar

---

RONALD E. CHAMNESS, ET AL.,

Plaintiffs,

RONALD E. CHAMNESS and RHEA ANN CHAMNESS,

Plaintiffs-Appellants,

VERSUS

FEDERAL DEPOSIT INSURANCE CORPORATION.,  
as Receiver for MBank Dallas, N.A.,  
DEPOSIT INSURANCE BRIDGE BANK, N.A.,  
OREGON, INC., WILLIAM R. TRIONE, and LINDA HILL WIKERT,

Defendants-Appellees.

---

Appeal from the United States District Court  
for the Northern District of Texas  
(3:89-CV-1117-P)

---

(November 17, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:\*

Ronald Chamness and wife Rhea Chamness appeal summary judgment  
and dismissal of their suit against the Federal Deposit Insurance

---

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 Pursuant to that rule, the court has determined that this opinion should not be published.

Corp. ("FDIC"), MBank Dallas, N.A. ("MBank"), Deposit Insurance Bridge Bank, N.A. ("Bridge Bank"), Oregon, Inc., William Trione, and Linda Wikert. We affirm.

I.

A.

During 1979, Ronald Chamness and his late wife, Marlene Chamness, lived in, and claimed as their homestead, a house located at 6550 Cliffbrook in Dallas, Texas (the "Cliffbrook homestead"). In 1979, at a time when they still lived at the Cliffbrook homestead, they purchased a house located at 4208 Armstrong Parkway, Highland Park, Texas (the "Armstrong property"). They immediately began renovating the Armstrong property, during which time it was not occupied. Shortly thereafter, Marlene Chamness died.

In 1980, while still living in the Cliffbrook homestead, Ronald Chamness obtained a \$1 million loan secured by a deed of trust covering the Armstrong property in order to renovate it. To obtain the loan, Chamness executed a homestead affidavit stating that the Armstrong property "does not constitute any part of [Chamness's] business or urban homestead, and the [Armstrong property] is not claimed . . . as homestead property." In 1981, Chamness sold the Cliffbrook homestead and thereafter claimed his Cedar Creek lake house in Henderson County, Texas, as his homestead.

Chamness borrowed an additional \$1.5 million and \$937,500 from Republic National Bank of Dallas to renovate the Armstrong property; both loans were secured by a deed of trust to the property. Chamness also signed two homestead affidavits and a subordination agreement.

The loans were moved to First City Bank of Dallas and eventually assigned to MBank in March 1985. Chamness signed an additional homestead affidavit disclaiming the Armstrong property as a homestead. He defaulted on the promissory note, and MBank requested Trione, the trustee of the deed of trust, to foreclose. After foreclosure, the Armstrong property then was sold to Oregon, Inc., which conveyed title to Wikert.

B.

In 1988, Chamness, his second wife, Rhea, and his children filed suit in state court against MBank, Oregon, Inc., Trione, and Wikert, claiming that Chamness was the fee simple owner of the Armstrong property and that it was his homestead and therefore improperly subjected to foreclosure.<sup>1</sup> MBank filed a counterclaim against Ronald Chamness for common law fraud and for collection on the notes on the Armstrong property. In 1989, the suit was removed to federal court.

---

<sup>1</sup> Rhea Chamness was included as a plaintiff because she claimed a marital interests in the property; Ronald Chamness's children claimed an interest in the property under their late mother's will.

C.

During the course of the lawsuit, the plaintiffs objected to and/or failed to respond to several discovery requests after obtaining various extensions of time. In October 1989, the FDIC<sup>2</sup> filed its first motion to compel production of certain documents. In December 1989, the FDIC, Bank One, and Trione filed a motion for summary judgment.<sup>3</sup> After six motions for extensions by the plaintiffs, the FDIC filed a motion for sanctions pursuant to FED. R. Civ. P. 37 based upon the plaintiffs' failure to produce documents. The plaintiffs failed to respond to this motion.

In June 1990, the FDIC filed a FED. R. CIV. P. 16(f) motion for sanctions, seeking dismissal based upon the plaintiffs' failure to cooperate in the filing of a joint pretrial order. Because of confusion concerning the plaintiffs' legal representation, no response to the rule 16(f) motion was filed.

In August 1990, the district court entered a memorandum opinion granting summary judgment, holding that the doctrine of D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447 (1942), and 12 U.S.C. § 1823(e) barred the plaintiffs' homestead claims. Since the plaintiffs had failed to respond to the summary judgment motion, the court accepted as true the defendants' factual allegations. The court also granted the FDIC's motion for sanctions, including

---

<sup>2</sup> The FDIC became receiver of MBank in the spring of 1989.

<sup>3</sup> Because Bank One's counterclaim against Ronald Chamness was still pending, the motion was titled "Motion for Partial Summary Judgment."

dismissal of plaintiffs' claims. In April 1993, the court entered its final order of summary judgment and sanctions.

## II.

### A.

We review a grant of summary judgment de novo. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks, 953 F.2d at 997.

The plaintiffs failed to respond to the summary judgment motion, despite repeated extensions of time. In such cases, we must assume as true the facts alleged by the moving party. Eversley v. MBank Dallas, 843 F.2d 172, 174 (5th Cir. 1980). Furthermore, we may affirm a grant of summary judgment on grounds other than those stated by the district court. Bernhardt v. Richardson-Merrell, Inc., 892 F.2d 440, 444 (5th Cir. 1990).

We agree with the district court that the homestead claims asserted by the plaintiffs were barred under Texas homestead law, which provides that a claimant has no homestead protection if he represents that the property is not his homestead at a time when he is not actually occupying the property. Even if a claimant intends to use the property as a homestead, he will be estopped by any disclaimers executed before actual use of that homestead. Miles Homes, Inc. v. Brubaker, 649 S.W.2d 791, 793 (Tex. App. ) San Antonio 1983, writ ref'd n.r.e.). Accord Patterson v. FDIC, 918 F.2d 540, 547 (5th Cir. 1990).

B.

As we reasoned in a similar recent case, "[Because] Texas law bars the Plaintiff's defense to payment, we find that it is unnecessary to reach the question whether Plaintiff's defense to payment would be barred by D'Oench, Dume or § 1823(e)." Wiltfang v. FDIC, No. 92-4811, 1993 U.S. App. LEXIS 23605 (5th Cir. Aug. 10, 1993) (per curiam) (unpublished). We also need not consider whether the district court was correct in dismissing plaintiffs' claim as a sanction for discovery abuse. As we have explained, under Texas law the plaintiffs had absolutely no legitimate homestead claim. Accordingly, they are entitled to no recovery, and dismissed on that ground alone would have been appropriate.

The judgment is AFFIRMED.