UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-2461
Summary Calendar

FEDERAL DEPOSIT INSURANCE CORPORATION,
In its corporate capacity as liquidator
Community Bank, N.A.,

Plaintiff-Cross Claimant,
Defendant-Appellee,

VERSUS

ALTAF ADAM, ET AL.,

Defendants,

ALTAF ADAM,
Defendant-Appellant,

and

ALTAF ADAM, individually
and as next friend of
Maheen Siddik,

Intervenor-Defendant,
Cross Claimant-Plaintiff,
Appellant.

Appeal from the United States District Court
for the Southern District of Texas

(CA-H-89-0654)

(April 26, 1994)

Before THORNBERRY, DAVIS and SMITH, Circuit Judges.

THORNBERRY, Circuit Judge:[*]

---

[*]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."

Facts and Prior Proceedings

In August 1987, Community Bank, N.A., filed suit against Altaf Adam in state court alleging wrongful acts by Adam in his role as director and officer of the bank. On August 31, 1987, Adam filed suit against the Bank, on his own behalf and on behalf of his minor daughter, Maheen Siddik. Apparently, the bank had exercised its general right of setoff against Adam's accounts, and he believed the setoff to be unjustified. The two actions were consolidated. In January 1989, the United States Comptroller declared Community Bank insolvent and appointed the FDIC as the bank's receiver. The FDIC removed the litigation to federal district court.

Shortly after removal, Adam sent a letter to the FDIC dated February 13, 1989, inquiring about his accounts at the Bank and seeking deposit insurance for those accounts. The FDIC responded by letter dated February 15, 1989, that there were no accounts in Adam's name or his minor child at the time of the bank's closing. "Because there were no deposits on the books and records of the bank at the time of its closing, there are no insured deposits covered by the Federal Deposit Insurance Act. Also, because there are no deposits, there is nothing to release."

On February 21, 1991, two years after the FDIC's denial for deposit insurance, Adam filed an action against the FDIC demanding payment of deposit insurance. The action was consolidated with the existing litigation in federal court, and on March 3, 1992, the

---

Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court denied Maheen Siddik's motion for summary judgment against the FDIC because there was no evidence that she had any funds on deposit with the bank at the time of the bank's closing. On May 7, 1992, the FDIC filed a motion to dismiss its own claims against Adam based on alleged wrongdoings while he was an officer and director of the bank.[1] The court granted the motion to dismiss, and additionally noted that it had no jurisdiction over Adam's claims for deposit insurance because such claims were reviewable only by the United States Court of Appeals for the Fifth Circuit. The final order of dismissal was entered January 12, 1993.

On February 4, 1993, Adam filed a "motion to reconsider". He argued that the FDIC had not yet made a "final determination" with regard to his claims for deposit insurance and that the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), establishing jurisdiction with the courts of appeals to review final deposit insurance determinations, could not be applied retroactively to a final determination rendered before August 9, 1989, the effective date of FIRREA. The district court denied this motion on April 22, 1993.

Adam filed his notice of appeal on May 21, 1993. He is appealing from (1) the district court's January 8, 1993 order dismissing his claims for lack of jurisdiction, (2) the court's order of April 22, 1993 denying his "motion to reconsider", (3) the FDIC's denial of deposit insurance coverage on February 15, 1989,

[1] Apparently, the FDIC believed it too costly to pursue Adam.

and (4) the district court's March 3, 1992 denial of Maheen Siddik's motion for summary judgment.

Discussion

1. Order of Dismissal--January 8, 1993

First of all, any appellate consideration of the January 8, 1993 judgment is barred. Because Adam served his "motion to reconsider" more than ten days after entry of the January 8, 1993, judgment, it is treated as a motion under Fed. R. Civ. P. 60(b). **Harcon Barge Co. v. D. & G Boat Rentals, Inc.,** 784 F.2d 665, 667 (5th Cir.)(en banc), **cert. denied**, 479 U.S. 930 (1986). A Rule 60(b) motion does not toll the running of the 60-day appeal period. Because Adam did not file his notice of appeal until May 21, 1993, more than 60 days after the January 8, 1993 order, this Court has no jurisdiction to review the district court's order dismissing Adam's claims. **See** Fed. R. App. P. 4(a)(4); **Aucoin v. K-Mart Apparel Fashion Corp.**, 943 F.2d 6, 8 (5th Cir. 1991).[2] Adam simply did not file notice of appeal until May 21, 1993, and appellate consideration of this judgment is barred.[3]

---

[2] Even if the Dec. 1, 1993, version of Rule 4(a)(4) were applied, **see Burt v. Ware**, 14 F.3d 256, 258 (5th Cir. 1994), the Rule 60(b) motion would not interrupt the time to appeal because it was served more than 10 days after entry of judgment. **See** Rule 4(a)(4)(F) (Dec. 1, 1993).

[3] In addition, when reviewing the denial of a Rule 60(b) motion, the appellate court does not address the merits of the underlying judgment. **Matter of Ta Chi Navigation (Panama) Corp. S.A.,** 728 F.2d 699, 703 (5th Cir. 1984).

2. "Motion to Reconsider"

We may, however, review the district court's denial of Adam's "motion to reconsider" for abuse of discretion.[4] **Aucoin**, 943 F.2d at 8. It is not enough that the granting of relief might have been permissible, or even warranted -- denial must have been so unwarranted as to constitute an abuse of discretion. **Matter of Jones**, 970 F.2d 36, 37-38 (5th Cir. 1992). Moreover, Rule 60(b) may not be employed as "`an avenue for challenging mistakes of law that should ordinarily be raised by timely appeal.'" **Aucoin**, 943 F.2d at 8 (internal citation omitted).

Adam argued in his motion to reconsider that the jurisdictional provisions of FIRREA should not be applied retroactively to his case because his claims were pending before FIRREA's enactment. He further argued that the February 15, 1989 letter from the FDIC did not constitute a final determination.

The district court did not abuse its discretion in denying Rule 60(b) relief. First, although the FDIC denied Adam's deposit insurance coverage prior to the enactment of FIRREA, the statute established the courts of appeals as the proper forum to review final deposit insurance determinations. 12 U.S.C. § 1821(f). "When Congress adopts statutory changes while a suit is pending, the effect of which is not to eliminate a substantive right but rather to `change the tribunal which will hear the case,' those

[4] As stated above, Adam's appeal of his "motion to reconsider", which is treated as a Rule 60(b) motion, is timely. The district court denied his motion to reconsider on April 22, 1993. Adam filed his notice of appeal on May 21, 1993, well within the 60-day period.

changes -- barring specifically expressed intent to the contrary -- will have immediate effect." **Turboff v. Merrill Lynch, Pierce, Fenner & Smith**, 867 F.2d 1518, 1521 (5th Cir. 1989) (internal citation omitted). Therefore, the district court correctly reasoned that because the effect of § 1821(f) was procedural, rather than substantive, the statute's jurisdictional requisites should apply to pending cases.

Further, with regard to Adam's argument that the FDIC's February 15, 1989 letter did not, of itself, constitute a final determination, this Court has already held in **Nimon v. RTC**, 975 F.2d 240, 244 (5th Cir. 1992), that a letter sent by the Resolution Trust Corporation (RTC) to a claimant stating the RTC's intention not to pay deposit insurance is sufficient to satisfy a "final determination" for purposes of § 1821(f). The FDIC notified Adam by letter dated February 15, 1989 that there were no accounts in his name or his daughter's at the time of the bank closing, no insured deposits covered by the Federal Deposit Insurance Act, and thus nothing to release. The district court did not abuse its discretion in determining that this letter constituted a final determination within the meaning of § 1821(f).

3. Review of the Final Determination

Adam next challenges the FDIC's denial of deposit insurance coverage on February 15, 1989. This Court lacks jurisdiction to consider Adam's claims, however, because his appeal of the FDIC's final determination is untimely. Any request for review of a final determination must be filed with the appropriate circuit court of

appeals not later than 60 days after such determination is ordered. 12 U.S.C. § 1812(f)(5). While it is true that the final determination by the FDIC was rendered in February 1989, which was prior to the enactment of FIRREA, Adam did not even file suit until two years after the FDIC's final determination and did not seek review by this Court until over three years after the enactment of FIRREA. Statutory changes that relate only to procedure or remedy apply immediately to pending cases. **FDIC v. Belli**, 981 F.2d 838, 842 (5th Cir. 1993). Statutes of limitations are procedural rather than substantive and are generally accorded retroactive effect. **Id.; see also RTC v. Seale,** 13 F.3d 850, 853 (5th Cir.1994). However, even if the 60-day appeal period runs from August 9, 1989, the effective date of FIRREA, Adam still was not timely in filing his appeal with regard to the FDIC's final determination. Therefore, this Court is without jurisdiction to review the FDIC's denial of deposit insurance.

4. Summary Judgment

Finally, Adam appeals from the district court's March 3, 1992, denial of Maheen Siddik's motion for summary judgment against the FDIC. Again, this Court lacks jurisdiction to review the district court's denial of summary judgment.

A denial of a motion for summary judgment is an interlocutory order that is ordinarily not appealable absent a final judgment. **Harvey Construction Co. v. Robertson-CECO Corp.**, 10 F.3d 300, 304 (5th Cir. 1994). A final judgment was not entered in this case until January 12, 1993, and Adam did not file his notice of appeal

until May 21, 1993. Because Adam's motion to reconsider, which we treat as a Rule 60(b) motion, does not toll the running of the 60-day appeal period, the appeal was not timely filed. Therefore, this Court lacks jurisdiction to review the underlying judgment. **See Matter of Ta Chi**, 728 F.2d at 703. Adam's appeal of the denial of the motion for summary judgment was thus untimely.

Conclusion

Based on the foregoing, the judgment of the district court is AFFIRMED.