

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4395  
Conference Calendar

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BERLIN P. NELSON,

Plaintiff-Appellant,

versus

CITIBANK MASTERCARD ET AL.,

Defendants,

CITIBANK SOUTH DAKOTA, NA,  
Improperly Named Citibank  
Mastercard & Citibank Visa, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 92-CV-1891  
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August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Nelson's challenge to the district court's dismissal of his action for failure to state a claim under Fed. R. Civ. P. 12(b)(6) is meritless. Although Nelson alleged in his complaint that he had originated the idea of identification photographs for credit cards, he failed to point to any legal device he used or

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

attempted to use to protect to his idea. See Sears, Roebuck and Co. v Stiffel Co., 376 U.S. 225, 231, 84 S.Ct. 784, 11 L.Ed.2d 661 (1964). Nelson's claim was properly dismissed because, accepting his allegations as true, "it appears beyond doubt that [he] can prove no set of facts . . . which would entitle him to relief." McCormack v. National Collegiate Athletic Ass'n, 845 F.2d 1338, 1343 (5th Cir. 1988) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)).

Nelson mistakenly asserts that his complaint was dismissed without prejudice. Although the district court's judgment did not indicate whether it was with or without prejudice, the court's dismissal for failure to state a claim under Rule 12(b)(6) was a judgment on the merits and thus, a dismissal with prejudice. See Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394, 399 n.3, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981). Given that Nelson was afforded full opportunity to state and restate his claim, no modification of the court's judgment is required.

AFFIRMED.