UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5391
Summary Calendar

NOLIN W. RAGSDALE and
SAMMYE H. RAGSDALE,

Plaintiffs-Appellants,

versus

WELLS FARGO BANK, N.A., as attorney
in the fact for Great American Bank,
fka Great American First Savings Bank, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
from the Eastern District of Texas
(4:92-CV-203)

(December 2, 1994)

Before DAVIS, JONES, DUHÉ, Circuit Judges.

By EDITH H. JONES, Circuit Judge:[*]

Nolin W. Ragsdale and Sammye H. Ragsdale filed a complaint against Wells Fargo Bank, James C. Baker, Great American Federal Savings Association, the Resolution Trust Corporation, and Commonwealth Land Title Insurance Company asserting that the defendants had illegally foreclosed a lien on the Ragsdales' home

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

and 23 acres of their homestead. Specifically, the Ragsdales allege that the defendants engaged in a conspiracy to convert the Ragsdales' property, deny them due process, perpetrate a fraud, and breach their fiduciary duty to them. The district court granted summary judgment against appellants, we affirm.

In August 1985, the Ragsdales executed a mechanic's lien note payable to Pat McCombs in the amount of $250,000 on 23 acres of land. The note was secured by a mechanic's and materialman's lien contract in favor of McCombs for the construction of a four bedroom home on the 23 acres. Significantly, the contract's own terms provided that it was "executed and delivered before any labor or material for the erection and construction of said improvements has been furnished or fabricated."

The Ragsdales executed a second mechanic's lien note payable to McCombs in April 1986, in the amount of $100,000. The note was secured by a mechanic's and materialman's lien contract in favor of McCombs for the construction of a swimming pool and a larger garage and for cypress paneling on the 23 acres. The contract, like the first mechanic's lien, was "executed and delivered before any labor or material for the erection and construction of said improvements has been furnished or fabricated." The Ragsdales asserted that Commonwealth Land Title Insurance Company (Commonwealth) filed both of the mechanic's liens. Id. at 6.

In October 1986, the Ragsdales refinanced the first and second mechanics' lien notes and executed an adjustable rate

mortgage note payable to the Great American Mortgage Corporation (GAMC) in the amount of $375,000. The mortgage note was secured by a deed of trust in favor of GAMC that covered the 23 acres. The deed provided that "the note secured hereby is in renewal and extension, (refinancing) but not in extinguishment," of the two mechanics' liens.

GAMC simultaneously assigned the Ragsdales' $375,000 adjustable rate mortgage note and deed of trust and the corresponding mechanic's liens to Great American First Savings Bank (GAFSB) by a corporation assignment of deed of trust.[1] In January 1991, GAB executed a limited power of attorney in favor of Wells Fargo Bank -- providing Wells Fargo the authority to service GAB's mortgage loans.

In August 1991, the Office of Thrift Supervision (OTS) appointed the Resolution Trust Corporation (RTC) as conservator for GAB. Two months later, the OTS determined that GAB was insolvent and appointed the RTC as receiver. The OTS also authorized the creation of a new financial institution, Great American Federal Savings Association (Great American), and placed Great American into conservatorship under the RTC. In October 1991, Great American purchased most of GAB's assets including the Ragsdales' $375,000 adjustable rate mortgage note.

The Ragsdales had defaulted on this adjustable rate mortgage note in October 1988. Nevertheless, the Ragsdales obtained a temporary restraining order which prevented the

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[1] GAFSB changed its name to Great American Bank (GAB) in July 1989.

scheduled foreclosure sale of the property. Ultimately, Great American foreclosed on the 23 acres after a state court denied the Ragsdales' request for a temporary injunction to enjoin foreclosure.

According to the Ragsdales' federal complaint, the mortgage note and deed of trust were executed on their homestead after the creation of the homestead and thus were invalid unless the mechanic's liens were legal. The Ragsdales argued that the mechanic's liens were unenforceable under Tex. Prop. Code Ann. § 53.059 (West 1984) because labor and materials were provided before the contracts were executed in contravention of the statute. Under § 53.059 a lien on a homestead is not valid, unless the contract between the person who is to furnish material or perform labor and the owner enter the contract before the material is furnished or the labor is performed.

The Ragsdales asserted that the defendants had conspired to delay the temporary injunction hearing in state court until GAB was declared insolvent and placed in receivership so that the RTC could assert that federal statutes prohibited the state court from issuing an injunction and barred the Ragsdales' claims.

Wells Fargo, James C. Baker, individually and as substitute trustee, RTC, as receiver for GAB, and RTC as conservator for GAFSA filed a motion for summary judgment. Defendants argued that the Ragsdales were estopped by statute from claiming that labor and materials were supplied before the contracts were executed because the contracts specifically stated

that no work was done before the contracts were signed. Wells Fargo and the other defendants also argued that the postponement of the state court hearing on the Ragsdales' request for a temporary injunction had no effect on the RTC's ability to assert its "super defenses."

The district court granted the defendants' motions for summary judgment. In effect the district court held that: (a) there was no genuine issue of material fact whether Great American's lien was valid; (b) the foreclosure was valid; (c) Wells Fargo and the other defendants had not converted the Ragsdales' property; (d) and the Ragsdales were not denied due process. The court also determined that there was no genuine issue of material fact as to whether Commonwealth had conspired illegally to obtain the Ragsdales' land; that Commonwealth did not owe the Ragsdales a fiduciary duty; that Commonwealth did not owe the Ragsdales a duty of good faith and fair dealing; that Commonwealth had not engaged in deceptive trade practices; and that Commonwealth was not liable for the title company's actions.

Proceeding pro se, the Ragsdales advance various grounds for asserting that the district court erred in granting the defendants' motions for summary judgment.

I.

The Ragsdales argue that the district court erred by granting the defendants' motions for summary judgment because a genuine issue of material fact existed.

The Court reviews a grant of summary judgment de novo. Abbott v. Equity Group, Inc., 2 F.3d 613, 618 (5th Cir. 1993), cert. denied, 114 S.Ct. 1219 (1994). Summary judgment is proper if the moving party establishes that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1119 (5th Cir. 1992).

According to the Ragsdales, material fact issues exist as to whether the "purported" mechanic's liens were valid. More particularly, the Ragsdales argue that they supplied the court with copies of checks used to pay for construction on the 23 acres prior to execution of the mechanics' liens. Evidence that the Ragsdales paid for work or materials, or that work or material was supplied prior to the date that the mechanics' liens were executed, however, does not establish a genuine issue of material fact.

Pursuant to the D'Oench, Duhme doctrine, codified at 12 U.S.C. § 1823(e), the Federal Deposit Insurance Corporation (FDIC) is not bound by oral agreements not reflected in a bank's written records that would undermine its interest in an asset. Beighley v. Federal Deposit Ins. Corp., 868 F.2d 776, 784 (5th Cir. 1989). Obligors who have "`lent [themselves] to a scheme or arrangement' that was likely to mislead bank examiners may not assert against the FDIC any part of an agreement that might diminish the value of [their] written loan obligation." Beighley, 868 F.2d at 784 (quoting D'Oench, Duhme & Co. v. Fed. Deposit Ins. Corp., 315 U.S.

447, 460, 62 S.Ct. 676, 86 L.Ed. 956 (1942)). This is a "categorical" rule. Id. at 782.

The RTC in its role as conservator or receiver for a failed banking institution is protected by the doctrine. Resolution Trust Corp. v. Murray, 935 F.2d 89, 93-94 (5th Cir. 1991). In Buchanan v. Federal Sav. and Loan Ins. Corp., 935 F.2d 83 (5th Cir.), cert. denied, 112 S.Ct. 639 (1991), this Court rejected an escape from the D'Oench Duhme doctrine by means of an assertion by the debtor that she signed the lien contract after work on the house had begun.

Even were the RTC aware that the Ragsdales had paid for work or material or that work or materials had been supplied, prior to the execution of the contract "knowledge of the misrepresentation by the [RTC] prior to its acquisition of the note is not relevant to whether [the doctrine] applies." Langley v. Fed. Deposit Ins. Corp., 484 U.S. 86, 94-95, 108 S.Ct. 396, 98 L.Ed.2d 340 (1987). Thus, the Ragsdales' argument that the RTC was aware that the lien contracts were invalid, is unavailing.

The Ragsdales also argue that Fed. R. Civ. P. 56(c) mandates a hearing, which they were not afforded, prior to the court's ruling on motions for summary judgment. The Ragsdales, however, did not file a cross-motion for summary judgment nor did they file a motion for oral argument on the defendants' motions. Under the Local Rules for the Eastern District of Texas oral argument is not granted unless requested. E.D.Tex.R. 6(g). This Rule has been upheld by the Court. See Rodriguez v. Pacificare of

Texas, Inc., 980 F.2d 1014, 1020 (5th Cir.), cert. denied, 113 S.Ct. 2456 (1993). Additionally, because the court did not rule on the defendants' motions for summary judgment until over two months after the motions were filed, the Ragsdales had adequate notice of the pending summary judgment motion. See Enplanar, Inc. v. Marsh, 11 F.3d 1284, 1293 n.11 (5th Cir. 1994). As long as the nonmovants have adequate notice of the pending summary judgment motion, the district court may rule on the motion based solely on the pleadings and the "hearing requirement" is satisfied.

II.

The Ragsdales assert that the district court erred by assigning their case to Track 3 of the District Court's Civil Justice Expense and Delay Reduction Plan. In their motion for reconsideration the Ragsdales contended, as they do now on appeal, that the assignment of their case to Track 3 denied them the ability to conduct adequate discovery.

The district court's enforcement of a scheduling order and the enforcement of local rules is reviewed for abuse of discretion. Geiserman v. MacDonald, 893 F.2d 787, 790 (5th Cir. 1990). This Court affords the district court broad discretion in controlling and expediting pretrial discovery through a scheduling order under Fed. R. Civ. P. 16(b).

Aside from asserting that the scheduling order denied them an opportunity to adequately pursue discovery, the Ragsdales fail to explain how the order prevented them from conducting adequate discovery, what discovery they were not able to complete,

or why they did not bring this to the district court's attention until some seven months after the track assignment was made.

"Although [the Court] liberally construe[s] the briefs of pro se appellants, [the Court] also require[s] that arguments must be briefed to be preserved." Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988) (citations omitted). Issues raised but not argued are ordinarily abandoned. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

III.

The Ragsdales argue that the Texas homestead laws are a real defense that defeat operation of the D'Oench, Duhme doctrine.

As established by Tex. Prop. Code Ann. §§ 41.001(b)(3), 53.059, liens on homesteads are permissible if executed before the material is furnished or the labor performed. Buchanan, 935 F.2d at 84-86. Even assuming the lien was void under Texas law, the D'Oench, Duhme doctrine operates to protect the Government's expectations. Id. at 85 & n.3.

The Ragsdales assert that D'Oench, Duhme does not function where a real defense such as fraud, forgery, or duress can be asserted. According to the Ragsdales, there was no secret side agreement -- only a void lien. Yet "[n]either fraud in the inducement nor knowledge by the FDIC is relevant" to the application of § 1823. Langley, 484 U.S. at 93. Because the Ragsdales signed the contract, they "lent themselves" or are culpable for purposes of D'Oench, Duhme.

The only case relied on by the Ragsdales to establish that the foreclosure was invalid because of state homestead provisions, Matter of Bradley, 960 F.2d 502 (5th Cir. 1992), cert. denied, 113 S.Ct. 1412 (1993), is inapposite because there the debtor elected the state exemption scheme in federal bankruptcy proceedings and neither the FDIC nor the RTC were involved. Id. at 506.

IV.

The Ragsdales argue that they were denied due process because they were denied the opportunity to request a temporary injunction in state court and because the RTC "refus[ed] to allow Plaintiffs to file a claim against the assets of the failed Great American Bank, prior to the disposal of the failed institutions assets." According to the Ragsdales the RTC as receiver for GAB was obligated to notify the Ragsdales that GAB had failed and to provide them with a claim form and instructions for making a claim against the assets of GAB pursuant to 12 U.S.C. § 1821(d)(3)(C)(ii).

The Ragsdales do not explain how they were denied due process in the state court injunction proceedings, nor do they provide legal support for the assertion. In their brief, the Ragsdales state that they filed the request for a temporary injunction barring the foreclosure sale on September 30, 1991. However, because the OTS appointed the RTC as conservator for GAB in August 1991, the state court was already prevented by 12 U.S.C. § 1821(j) from considering this motion at the time it was filed.

Further, the Ragsdales' argument that the RTC failed to notify them that GAB had become insolvent and that the RTC failed to notify them of their right to pursue a claim against GAB's assets with the RTC in contravention of § 1821(d)(3)(C)(ii) is partially undermined by the admission in their complaint that they filed such a claim with the RTC in March 1992. Assuming that the Ragsdales were not promptly notified, they do not specify an injury they received as a result of not being notified earlier.

V.

The Ragsdales' argument concerning the conspiracy issue raised in their complaint and the matter of attorney fees is incomprehensible. It is conclusional and unsupported by facts or law. As an issue raised but not argued, it is deemed abandoned. See Yohey, 985 F.2d at 224-25.

VI.

The Ragsdales argument concerning "no reliance no estoppel" is incomprehensible, conclusional, inapposite, or repetitious of issues already addressed in other sections of their brief. It is deemed abandoned. See Yohey, 985 F.2d at 224-25. It is not evident, nor do the Ragsdales explain, how GAMC's expectations concerning the Ragsdales' performance on the adjustable rate mortgage note affect the analysis of the validity of the foreclosure under D'Oench, Duhme.

VII.

Finally, the Ragsdales argue that the district court erred by denying their motion for leave to file a motion for

summary judgment with excess pages and by refusing to consider their motion for summary judgment.

Under Article Four of the Expense and Delay Reduction Plan motions shall not exceed 15 pages including authorities. The Ragsdales concede that the motion was three pages beyond the page limit; enforcement of local rules is reviewed for abuse of discretion. Geiserman v. MacDonald, 893 F.2d 787, 790 (5th Cir. 1990). In their motion for reconsideration of the district court's denial of their motion to file a motion for summary judgment with excess pages the Ragsdales explained that the extra pages could be attributed to an "interesting and enlighten[ing]" three-page exposition on how the homestead exemption came into being and was due in part to "numerous cites of cases ranging from the late 1800's to the present time."

Because the Ragsdales were not obligated to educate the district court at length on the historical origins of the homestead provision and because the Ragsdales do not explain why they could not delete this section and keep their summary judgment argument intact, the district court did not abuse its discretion by refusing to consider the motion that was in excess of the page limits. Notably, the Ragsdales did not file a motion requesting that the court extend the deadline for filing a new motion within the proper page limits.

Finally, the Ragsdales argue that the defendants' two briefs together total 62 pages and should be stricken as exceeding the permissible length of one principal brief. The Ragsdales

misconstrue local rule 28.1; multiple appellees they may file multiple briefs. See Fed. R. App. P. 28(i). In answer, the Ragsdales' lengthy discourse on the origins of the Texas homestead and their argument concerning the D'Oench, Duhme doctrine, is unnecessary and largely repetitious of arguments already considered.

For the first time the Ragsdales argue that they had not read the contract before signing it. This contention is waived. All other issues raised by the Ragsdales in their reply brief are redundant.

For the foregoing reasons, the district court's decision is **AFFIRMED**.