

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-5442
Summary Calendar

BENJAMIN D. MARTIN, ET AL.,

Plaintiffs-Appellants,

VERSUS

EDWARD W. ATER, ET AL.,

Defendants,

MARK F. PREDDY and MISS-LOU OIL FIELD SUPPLY, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(1:90-CV-02194)

(March 15, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:*

BACKGROUND

This suit was originally brought on February 22, 1988 by Benjamin D. Martin ("Martin") and another individual as plaintiffs

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in the Western District of Tennessee asserting a cause of action against Edward W. Ater, the only defendant, on the grounds that he had induced plaintiffs to invest in a Louisiana oil well and then had converted the funds to his personal use. On September 11, 1989, plaintiffs filed an amended complaint in the Western District of Tennessee which added 17 new plaintiffs and 5 new defendants, asserting a RICO action against all defendants including Miss-Lou Oil Field Supply, Inc. ("Miss-Lou") and Mark F. Preddy ("Preddy"). Additional causes of action "under Tennessee law" were asserted against other defendants; but the only cause of action stated against Miss-Lou and Preddy in the amended petition is the RICO action. On September 25, 1990, the case was transferred to the Western District of Louisiana under 28 U.S.C. § 1404(a). Two and one-half years later, on February 9, 1993, the district court for the Western District of Louisiana (the "District Court") denied plaintiff's motion to file a second amended complaint which would add new claims under Louisiana blue sky law and the Louisiana Unfair Trade Practice & Consumer Protection Act. On February 10, 1993, the plaintiffs stipulated at the pre-trial conference that the RICO conspiracy allegations were without merit and were being abandoned; a minute entry was issued by the District Court reflecting voluntary dismissal of the RICO claims against all defendants. Thereafter, Miss-Lou and Preddy filed motions to dismiss all claims against them on grounds that no cause of action remained against them after dismissal of the RICO conspiracy allegations. Miss-Lou and Preddy also filed motions for summary

judgment on grounds that no factual basis exist to support plaintiff's allegations and that the causes of action have prescribed under Louisiana law. Subsequently, on June 7, 1993, the District Court (i) denied plaintiff's motion for reconsideration of the denial of leave to file the second amended complaint; and (ii) granted the motions to dismiss of Miss-Lou and Preddy. On September 22 and 23, 1993, respectively, Miss-Lou and Preddy obtained orders of certification under Rule 54(b) with respect to the granting of their judgments of dismissal, and final judgments were entered by the District Court in their favor. Plaintiffs filed a notice of appeal on October 22, 1993. The only brief filed herein by plaintiffs is the pro se brief filed by Martin. Since Martin is not an attorney and may not represent any other plaintiffs as appellants, his claim of filing his brief "on behalf of all other plaintiffs and appellants" is erroneous.

We have carefully reviewed the briefs, the reply brief, the record excerpts and relevant portions of the record itself and have concluded:

- (1) that there was no abuse of discretion on the part of the District Court in denying the motion of plaintiffs for leave to file their second amended petition nor in denying the motion of plaintiffs to reconsider the denial of their motion for leave to file a second amended petition; and
- (2) that, for the reasons stated in the District Court's ruling of June 7, 1993, the District Court's granting of

the motions to dismiss in favor of Miss-Lou and Preddy and the entry of final judgment thereon should be affirmed.

Accordingly, we AFFIRM the final judgments of the District Court entered in favor of Miss-Lou and Preddy.