

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7794
Summary Calendar

ROBERTO MORALES,

Plaintiff-Appellant,

versus

PAN AMERICAN BANK, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for
the Southern District of Texas
(92-CV-159)

(January 12, 1995)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Roberto Morales had a checking account with Pan American Bank in Brownsville, Texas. He allegedly deposited \$530,330.00 in that account in December of 1977. He was mailed monthly bank statements, which he admittedly received and which were reviewed by his wife. In 1992, fifteen years after the alleged deposit, Morales filed suit against Pan American, two Bank employees and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Pan American's successor in interest, Texas Commerce Bank, for breach of a depository contract. The district court granted summary judgment for the bank, holding that the statute of limitations barred Morales' suit. We affirm.

Under Texas law, the statute of limitations for breach of depository contracts is four years. Tex.Rev.Civ.Stat. Ann.art. 342-701, §1 (Vernon Supp. 1995), Tex.Civ.Prac. & Rem.Code Ann. §16.004 (Vernon 1986). The statute begins to run when either a demand is made by the depositor and is refused by the depository, or when some adverse claim is asserted by the depository. Tex.Rev.Civ.Stat. Ann.art. 342-701, §1. Bank statements sent to a depositor constitute notice of an adverse claim and triggers the running of the statute. Id. Morales admittedly received bank statements which did not reflect the deposit in dispute. These statements constituted a denial of liability on the part of the bank and began the running of the limitations period.

Morales contends that an exception to the statute of limitations should be made because the bank is guilty of fraudulent concealment. Morales did not make this argument in the trial court, and therefore, cannot argue it on appeal. In any case, Morales does not allege facts supporting a fraudulent concealment claim.

AFFIRMED.