

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8018
Summary Calendar

JOE MCDANIEL CONSTRUCTION COMPANY, INC.,

Plaintiff,

SUN COAST CONSTRUCTION, INC.,

Movant-Appellant,

VERSUS

HENRY CISNEROS,
Secretary of Housing and Urban Development, et al.,

Defendants-Appellees,

Appeal from the United States District Court
for the Western District of Texas
91 CA 333 WS

July 16, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Sun Coast Construction, Inc. ("Sun Coast"), appeals the denial of its motion to intervene. Finding no abuse of discretion, we affirm.

Joe McDaniel Construction Company, Inc. ("McDaniel"), sued

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

the Department of Housing and Urban Development ("HUD"), American Mortgages, Inc. ("American"), Trinity Meadows, Ltd., and Compass Development, Inc., on April 26, 1991, regarding the construction of a housing project. The action was based upon breach of contract. Sun Coast was a subcontractor of McDaniel, which was to build the project. Various counterclaims and cross-claims were filed.

Almost a year later, American filed a motion for summary judgment; HUD filed such a motion in October 1992. An amended docket control order provided for completion of discovery in October 1992 and trial in December 1992. Extensive discovery had ensued when, in November 1992, Sun Coast moved to intervene as of right or, alteratively, permissibly. The district court denied the motion in December 1992, stating that Sun Coast was not a necessary party, that its intervention was not timely, and that its intervention would delay the proceedings. The other parties have settled, and the action has been dismissed.

Assuming arguendo that Sun Coast has standing to intervene)) a matter that is contested)) its attempted intervention is reviewed only for abuse of discretion. Kneeland v. National Collegiate Athletic Ass'n, 806 F.2d 1285, 1287 (5th Cir.), cert. denied, 484 U.S. 817 (1987). A requirement of intervention under FED. R. CIV. P. 24(a)(2) is that it be timely. New Orleans Pub. Serv. v. United Gas Pipe Line Co., 732 F.2d 452, 463 (5th Cir.) (en banc), cert. denied, 484 U.S. 817 (1987). We cannot conclude that the district court abused its discretion in denying Sun

Coast's intervention at the eleventh hour. Moreover, Sun Coast has not shown prejudice, as it is pursuing its rights in state court and can attempt to foreclose on its mechanic's and materialmen's lien.

The order denying intervention is AFFIRMED.