

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10011

Summary Calendar

VIRGIL R. HUDDLESTON,

Plaintiff-Counter
Defendant-Appellant,

versus

CIGNA INS. CO.,
formerly known as
INA Underwriters
Insurance Company and
ROBERT FANGUY,

Defendants-Counter
Plaintiffs-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:91-CV-2390-P)

(July 15, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

I.

Virgil Huddleston purchased a new house in Dallas, Texas. The builder participated in a Home Owners Warranty program requiring

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"major construction defect" coverage disputes to go to mandatory, binding arbitration. Huddleston filed a claim for a major construction defect with CIGNA Insurance Co. Robert Fanguy, on behalf of CIGNA, inspected the house and denied the claim. The matter went to arbitration. The arbitrator concluded that Huddleston did not have a "major construction defect" and denied his claims.

Huddleston challenged the arbitration award in state court. CIGNA removed the case to federal court. In a separate action, CIGNA sought enforcement of the arbitration award in federal court. The district court in the latter case confirmed the arbitration award and sanctioned Huddleston for refusing to abide by it. In the removed case, the district court granted CIGNA and Fanguy's motions for summary judgment and required Huddleston to pay attorney's fees and costs. Huddleston appealed the removed case judgment. We affirm.

II.

Huddleston claims that diversity jurisdiction does not exist because he joined Fanguy, a Texas resident. CIGNA and Fanguy respond that Fanguy's joinder was fraudulent. The district court must pierce the pleadings and perform a kind of summary judgment analysis to determine fraudulent joinder. Carriere v. Sears, Roebuck & Co., 893 F.2d 98, 100 (5th Cir.), cert. denied, 498 U.S. 817 (1990). The district court found that Fanguy was entitled to summary judgment. We find that the district court properly concluded that Fanguy was fraudulently joined and that a remand was

inappropriate. See Green v. Amerada Hess Corp., 707 F.2d 201, 205 (5th Cir. 1983), cert. denied, 464 U.S. 1039 (1984).

III.

The district court held that res judicata and/or collateral estoppel from the original federal court case mandated the result in the removed case. In the original federal court case, the district court did not abuse its discretion by sanctioning Huddleston for refusing to respect the arbitration award, a point we recognized on appeal in that case. The district court in the instant case properly held that, given the holdings in the original federal court case, the instant case was groundless, in bad faith, and/or for harassment and that attorney's fees and costs should be assigned.

IV.

Huddleston alleges that the district court improperly refused his motions for a continuance, to file newly discovered supplemental exhibits, and to allow any discovery prior to the entry of judgment. The exhibits and discovery, however, related to issues already adversely decided in the original federal court case. The district court did not err in denying Huddleston's motions for a continuance and to file supplemental exhibits.

V.

The district court found that, in light of the original federal court case, this case was entirely groundless, brought in bad faith, and/or to harass CIGNA and Fanguy. It awarded CIGNA and Fanguy attorney's fees and costs. We do not disturb this

assessment. We note that this appeal also lacks merit so that Huddleston should pay attorney's fees and double costs for continuing the litigation. These new sanctions reflect the frivolous nature of this appeal.

AFFIRMED.