

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 94-10543
Summary Calendar

JONNIE FAYE RODDY, Plaintiff-Appellant,

versus

THE FEDERAL DEPOSIT INSURANCE CORPORATION,
as Receiver for FIRST CITY BANK-DALLAS
and THE FEDERAL DEPOSIT INSURANCE CORPORATION,
as Receiver for COLLECTING BANK, N.A., Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas
(4:93-CV-406-E)

November 14, 1994

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM¹:

On April 29, 1980, Plaintiff-Appellant Jonnie Faye Roddy ("Roddy") executed a "continuing guaranty" to First City Bank of Lewisville, Texas ("First City") for past, present and future debts of Roddy Enterprises, Inc. ("Roddy Enterprises") to First City. The Guaranty provided that in order to terminate her obligations, Roddy had to give written notice to First City. Roddy never terminated the Guaranty by written notice. First City Bank of

¹ 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 Pursuant to that Rule, the Court has determined that his opinion should not be published.

Lewisville, Texas subsequently merged into First City Bank of Dallas.

On May 20, 1988, Roddy Enterprises executed a Real Estate Lien Note in the amount of \$461,650.00 payable to First City. When the note was not paid in accordance with its terms, First City made a demand for payment. The collateral securing the note was foreclosed, resulting in a deficiency of \$327,296.00.

On September 5, 1991, First City and Collecting Bank, N.A. ("Collecting Bank") filed suit in state court against defendants Roddy, Roddy Enterprises and Ronald J. Roddy to collect the remaining sums due under the note. On April 8, 1992, summary judgment was entered in favor of First City and Collecting Bank and against the defendants. Roddy was the only defendant to appeal the judgment to the state appellate court.

On October 30, 1992, First City and Collecting Bank were declared insolvent by the Texas Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as Receiver for both banks. The FDIC was subsequently substituted into the appeal.

On June 18, 1993, the FDIC removed the action to the United States District Court for the Northern District of Texas. In accordance with this Court's decision of in *Matter of Meyerland Co.*², the district court ordered the parties to designate and prepare the record for appeal to this Court. The record was then

² 960 F.2d 512 (5th Cir. 1992), *cert. denied*, ___U.S.____, 113 S.Ct. 967, 122 L.Ed.2d 123 (1993).

forwarded for our review.

Review of a motion for summary judgment is plenary. *Lodge Hall Music, Inc. v. Waco Wrangler Club, Inc.*, 831 F.2d 77, 79 (5th Cir. 1987). Although review is *de novo*, we apply the same standards governing the lower court's determination. *Jackson v. Federal Deposit Ins. Corp.*, 981 F.2d 730, 732 (5th Cir. 1992). Summary judgment must be granted if the court determines that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c).

Our review of the record reveals that there exists no genuine issue of material fact. Roddy executed a continuing guaranty to First City which expressly required written notice to terminate. Roddy failed to give any written notice of termination. Therefore, under the express terms of the Guaranty, when Roddy Enterprises defaulted on its note payable to First City, Roddy became liable.

CONCLUSION

Having found summary judgment is appropriate in this action, the judgment of the state district court is AFFIRMED.