

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-20373  
Summary Calendar

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ROBERT L. RANDOLPH, ET AL.,

Plaintiffs and Counter  
Defendants-Appellants,

versus

RESOLUTION TRUST CORPORATION  
as Receiver for FIRST SOUTH  
SAVINGS ASSOCIATION,

Defendant-Counter Plaintiff  
and Cross Plaintiff-Third  
Party Plaintiff-Appellant-  
Appellee,

versus

PHILLIPS, KING & SMITH,  
Attorneys at Law, ET AL.,

Defendants-Cross Defendants-  
Appellees.

versus

E. ASHLEY SMITH, P.C., ET AL.,

Third Party Defendants-  
Appellees.

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Appeal from the United States District Court for  
the Southern District of Texas  
(CA H 89 1302)

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March 22, 1995

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:\*

With the opinion of Randolph v. Resolution Trust Corp., 995 F.2d 611, this court vacated summary judgment in favor of the defendant lawyers. The summary judgment had been predicated on limitations, but we found no ground in the record to warrant a determination of injury to the plaintiffs to begin the accrual of their causes of action and the running of the two year limitation period.

The district court has reentered summary judgment for the defendants on the limitation ground, but we find no significant change in the record. The court explains by order that the examination report and proposed cease and desist order of the Federal Home Loan Board constituted an injury, but our opinion in 1993 expressly rejected that proposition. The district court held that this report and proposed order reduced the value of the Lincoln stock, impairing the collateral of First South (where RTC stands). We noted that possibility before, but no proof of that reduction in value has been presented. The district court relies on an admission in the pleading of RTC, but we see no statement there which admits an injury to First South prior to March 15, 1987.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

It is certainly open to argument that the control groups of Lincoln had done considerable injury to that association, and to its stock, prior to 1986 when the Board report and proposed order were delivered. Though the injury had been done by the concerted owners, the world and investment advisers may not have known of the injury to translate into market values. Whatever the merit of that thinking, we find no further support for it in the record and consider ourselves bound by the holding of the prior panel.

We express no opinion on the merits of the limitation defense; we only hold that the summary judgment against the claims of the plaintiff investors or Resolution Trust Corporation cannot stand.

The judgment is reversed; the cause is remanded for further proceeding.

REVERSED AND REMANDED.