

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20507
Summary Calendar

M. R. MIKKILINENI, Trustee,

Plaintiff-Appellant,

versus

CREATIVE PROPERTY MANAGEMENT CO.,
ET AL.,

Defendants-Appellants.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-94-0913)

(June 5, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:*

The plaintiff M. R. Mikkilineni ("Mikkilineni"), proceeding pro se, brought this action against the above listed defendants claiming violations of his rights under 42 U.S.C. §§ 1981, 1982, 1983, and 3601; 18 U.S.C. §§ 1962 and 1964 (RICO); the Civil Rights Act of 1968, sections 804, 810, and 812; the Fourteenth Amendment;

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

and the Civil Rights Act of 1991, section 101; and requesting that the district court grant a declaratory judgment; an injunction (or temporary restraining order); and punitive and compensatory damages in his favor. The district court denied relief on the basis of no subject matter jurisdiction. For the reasons described below, we affirm.

I

The origin of this action dates back to the fall of 1991, when Mikkilineni, a naturalized Indian-American, bought a condominium for his daughters at the Cambridge Court Condominiums in Houston, Texas, managed for the Cambridge Court Owners Association, Inc. ("Cambridge Court"), by Creative Property Management Company ("CPM"). As a part of the condominium agreement, Mikkilineni agreed to pay to CPM monthly maintenance fees that represented Mikkilineni's share of operating expenses for the condominiums. This agreement also required Cambridge Court through CPM to deliver a copy of its statement of income and expenditures to its members at the time of the annual board of directors meeting, held each January.

In January 1992, these maintenance fees increased from \$119.04 per month to \$155.46 per month. In January 1993, the monthly maintenance fees were apparently again adjusted upward, prompting Mikkilineni to request an accounting of the expenses. The record is not clear on this point, but apparently CPM sent him a generalized accounting of expenses, but did not send Mikkilineni a

detailed accounting to his liking. Mikkilineni requested that CPM bring a detailed accounting of the expenses to another monthly board meeting in early 1993, to which CPM responded with an offer for him to review the documents at its office during normal business hours. Because CPM did not provide him with the detailed records in the manner he requested, Mikkilineni refused to pay the increase in the monthly maintenance fee. This dispute escalated from that point to a war of correspondence. Taking the offensive, CPM inflicted several tangible injuries along the way by disconnecting Mikkilineni's cable service, towing his business's truck from his designated parking space, refusing to accept his personal checks, turning his debt over to its attorneys to collect, twice threatening to sell the property under the provisions in Texas Property Code Annotated § 51.002, and demanding that Mikkilineni cease and desist from using the property as a home/office. Mikkilineni has not used the property since April 14, 1994. Stinging from wounds to his pride and pocketbook, Mikkilineni counter-attacked with this lawsuit, alleging violations of RICO and his civil rights under various provisions of federal law and requesting a temporary restraining order. Named as defendants are CPM; Jamie Taylor, CPM's property manager for Cambridge Court; Pat Ryan, an agent of Cambridge Court; Frank, Elmore, Lievens, Van Fleet, & Chesney, CPM's law firm; and Richard Lievens, the attorney with Frank, Elmore who directed collection efforts against Mikkilineni on behalf of CPM. In their answer, the

defendants denied Mikkilineni's allegations and asked that the court dismiss the complaint based upon the affirmative defenses of lack of subject matter jurisdiction and a failure to state a claim upon which relief can be granted.

At a hearing on the temporary restraining order, the district court dismissed the action without prejudice for want of jurisdiction and refused to grant the temporary restraining order. Mikkilineni now appeals, requesting that we vacate the district court's order and remand for further proceedings after allowing him to amend his complaint.

II

Mikkilineni raises only one error with the district court's judgment: he argues that the district court erred in finding that it lacked jurisdiction to hear his claims. The defendants did not file a brief, so we do not have the benefit of their arguments in considering this appeal.

Because Federal Rule of Civil Procedure 12(b)(1) concerns the district court's essential power to hear the case, the court is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." MDPhysicians & Assocs. v. Texas State Board of Ins., 957 F.2d 178, 181 (5th Cir. 1992). "Jurisdictional issues are for the court--not a jury--to decide, whether they hinge on legal or factual determinations." Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir. 1981). Thus, the district court has the power to dismiss a complaint for lack of subject

matter jurisdiction on any one of three separate bases: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." Id.

We must accept the court's factual findings unless they are clearly erroneous. MDPhysicians, 957 F.2d at 181. In evaluating a Rule 12(b)(1) motion, "'no presumptive truthfulness attaches to the plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.'" Williamson, 645 F.2d at 404 (quoting Mortensen v. First Federal Savings and Loan Assoc., 549 F.2d 884, 891 (3d Cir. 1977)).

Reviewing the transcript of the district court's ruling from the bench, it appears that the court ruled solely on the defendants' Fed. R. Civ. P. 12(b)(1) motion to dismiss for lack of subject matter jurisdiction and did not reach the merits of the plaintiff's claims by considering the Rule 12(b)(6) motion to dismiss for failure to state a claim. See id., 645 F.2d at 412. Instead, the court stated that having heard Mikkilineni's testimony and considered the evidence, it found that the case should be dismissed without prejudice for "want of jurisdiction." The court further stated that "the nature of [Mikkilineni's] claim as pled¹"

¹With his original and amended complaints, Mikkilineni attached as exhibits copies of the correspondence which traced the

and as amplified by [his] testimony evidences that it is not the type of claim that Congress has authorized for federal courts to handle, and that it is not based upon any type of discrimination based upon race or national origin, but rather is a dispute that arises out of accounting of income, expenses, amounts of assessments and the general operations of the organization." Record Excerpts, Tab C at 3.

We agree. Reviewing this decision, we cannot say that the district court was clearly erroneous when it found that this dispute arose from Mikkilineni's dissatisfaction with the manner in which CPM spent funds on operating expenses at the condominiums, not from a violation of constitutional rights. The district court, in its discretion, devised a "method for making a determination with regard to the jurisdictional issue," Moran v. Kingdom of Saudi Arabia, 27 F.3d 169, 172 (5th Cir. 1994), when at the hearing it considered all of the correspondence that passed between the parties, as well as the testimony of Mikkilineni. Because we cannot determine that these findings are clearly erroneous, we affirm the district court's judgment.²

escalation of this dispute.

²Moreover, it is unclear to us what goal Mikkilineni hoped to achieve with this appeal. At the district court level, his complaint was dismissed without prejudice, which meant that he was free to amend his complaint and refile in federal court, or even pursue an action in state court on state law grounds because this dismissal did not operate as an adjudication on the merits. See F. R. Civ. P. 41(b). On appeal, he asks us to remand for further proceedings after allowing him an opportunity to amend his

III

For the foregoing reasons, we hold that the judgment of the district court is

A F F I R M E D.

complaint, which is, in essence, a wish that the district court had already granted him.