

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30231

FEDERAL TRADE COMMISSION,

Plaintiff-Appellee,

versus

VALUE INVESTMENTS, LTD., A Corporation,
ET AL.,

Defendants,

THOMAS A. MASSARO, MARK GOLDBERG,
MARJORIE GOLDBERG and ROSEANNE MASSARO,

Defendants-Appellants.

Appeal from the United States District Court for the
Middle District of Louisiana
(CA-91-317-B-M2)

(February 13, 1995)

Before REYNALDO GARZA, GARWOOD and DAVIS, Circuit Judges.*

PER CURIAM:

Having considered the arguments of counsel, the briefs, and relevant portions of the record, this Court is convinced that the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court correctly granted summary judgment in all respects except with regard to its determination that the conveyances to the spouses were fraudulent. With respect to the latter issue, it is undisputed that under Louisiana law a transfer cannot be set aside as fraudulent unless it then rendered the party making the transfer insolvent, and further that this was not shown to be the case with the here-challenged transfers. On appeal, appellee urges only that the transfers should be set aside as fraudulent under the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. § 3001 *et seq.*, particularly section 3304(b)(1). However, appellee did not raise the matter of the FDCPA below, and the district court did not rely on it. Under the circumstances, and in the interest of fairness, so much of the judgment as sets these transfers aside as fraudulent is vacated, and that aspect of the case is remanded to the district court so that the parties may present summary judgment evidence respecting and the district court may consider the applicability and effect of the FDCPA in this respect in the first instance. In all other respects the judgment below is affirmed.

AFFIRMED in part; VACATED in part; and REMANDED