

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30424

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BILLY WAYNE HART,

Plaintiff-Appellant,

versus

INTERNATIONAL PAPER COMPANY, ET AL.,

Defendants-Intervenors-  
Appellees,

DOW CHEMICAL COMPANY, ET AL.

Defendants-Appellees.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
(CA-93-554)

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(April 26, 1995)

Before REYNALDO G. GARZA, HIGGINBOTHAM, and PARKER, Circuit Judges.

PER CURIAM:\*

Hart's complaint alleges that Banker violated a personal duty to devise, implement, and test treatment equipment. But in his uncontradicted affidavit, Banker denies that he was responsible for designing and implementing treatment facilities and for sampling and testing effluent. Hart alleges that McCarthy violated a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

personal duty to design, implement, inspect, and adjust treatment processes. Like Banker, McCarthy in his affidavit denies that he was responsible for designing and implementing treatment facilities and for testing effluent. McCarthy also states that, as plant manager, he delegated the specific duties of running the mill to nine departments. Thus he retained no direct responsibility for running the mill, and there is no allegation that he was negligent in delegating or overseeing these employees. Likewise, the Dow employees' uncontroverted affidavits show that they had no responsibility for Dow's marketing and sale of chlorine to International Paper. Hart filed no contradictory evidence and did not oppose entry of a protective order, though he could have sought to take further discovery. Because Hart could not possibly recover from the individual defendants, the defendants have proven fraudulent joinder. See B., Inc. v. Miller Brewing Co., 663 F.2d 545, 549 (5th Cir. Unit A Dec. 1981). Therefore, there was complete diversity, and we need not reach the alternative argument that there was federal question jurisdiction.

Hart also contests the district court's grant of Dow's motion to dismiss for failure to state a claim. However, Hart did not oppose this motion in the district court, and we will not now listen to an objection.

AFFIRMED.