

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-40540

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FEDERAL DEPOSIT INSURANCE CORP., as  
receiver obo Liberty Savings & Loan  
Association,  
Plaintiff-Appellant,

versus

RANDALL S. DAVIDSON, Et Al.,  
Defendants-Appellees.

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Appeal from the United States District Court  
For the Western District of Louisiana  
(90 CV 0715)

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( June 30, 1995 )

Before JOLLY, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:\*

The Federal Deposit Insurance Corporation ("FDIC") is the plaintiff in this action as the receiver of Liberty Federal Savings and Loan Association of Leesville, Louisiana ("Liberty"). The dispute arose from a \$9.6 million real estate development loan

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

extended by Liberty to Diversified Investment Real Estate Venture I ("DIREVO"). The defendant-appellees include attorneys and appraisers involved in the loan transaction. The FDIC brought professional malpractice claims against the attorneys and appraisers, claiming that they breached their duty to Liberty by failing to inform Liberty on the day of the loan closing, March 28, 1985, of the occurrence of and details surrounding a "land flip" involving the subject real estate.<sup>1</sup>

The district court found on uncontested facts that the FDIC was aware by January 1986 at the latest of the defendants' alleged tortious failures to disclose the details of the land flip, and thus was fully aware of its cause of action against the appellees. Therefore, the district court determined that Liberty's claims against the appellees accrued in January 1986. See LA. REV. STAT. ANN. §9:5605; Succession of Hellmers, 637 So.2d 1302, 1305 (La. App. 1994); Herberg v. Dixon, 531 So.2d 532 (La. App. 1988). The FSLIC (FDIC's predecessor in interest) was appointed as receiver for Liberty on April 24, 1987, and this lawsuit was filed on April 24, 1990. Under Louisiana law, claims of professional malpractice against both attorneys and real estate appraisers sound in negligence and are thus governed by a one-year prescription period. See LA. CIV. CODE art. 3492. In order for the FDIC to take advantage

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<sup>1</sup>The term "land flip" refers to the purchase of property and then the immediate resale of the property to another at a large profit. The FDIC alleged in its complaint that if Liberty had known of the land flip on the closing date, it would have questioned the soundness of the loan transaction because it would have been apparent that Liberty's profits would be significantly less than expected.

of the three-year statute of limitations for tort actions set forth in 28 U.S.C. § 2415 and 12 U.S.C. § 1821(d)(14), the cause of action brought by the FDIC must have been viable under Louisiana law at the time of the appointment of Liberty's receiver. See Davidson v. FDIC, 44 F.3d 246, 248 (5th Cir. 1995); FDIC v. Bledsoe, 989 F.2d 805, 808 (5th Cir. 1993) (both holding that a claim acquired by a federal receiver from an insolvent institution is valid only if it is still viable under state law at the time of the receivership appointment). In this case, the district court found that on April 24, 1987, when Liberty went into receivership, its claims against the appellees -- having accrued in January 1986 and being subject to a one-year prescriptive period -- had already prescribed and were no longer viable under state law. We agree, and hold that the district court was correct in granting summary judgment in favor of the appellees on all of the FDIC's claims.

Accordingly, we AFFIRM the judgment of the district court.