

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50027

ROCKING DIAMOND K RANCH, INC.,

Plaintiff-Appellant,

versus

MELVIN M. NORMAN CONSTRUCTIONS, INC., ET AL.,

Defendants-Appellees.

Consolidated with
No. 94-50029

MELVIN M. NORMAN CONSTRUCTION, INC., ET AL.,

Plaintiffs-Appellees,

versus

ROCKING DIAMOND K RANCH, INC., ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
for the Western District of Texas
(W-93-CA-338 & W-93-CV-332)

(November 2, 1994)

Before JONES and DeMOSS, Circuit Judges, and TRIMBLE*, District
Judge.

* District Judge of the Western District of Louisiana, sitting by
designation.

PER CURIAM:**

The parties and the district court construed the settlement agreement in this case as unambiguous in its effect upon the promissory note owed to Rocking Diamond. In the district court's view, the settlement agreement discharged Norman Construction from all liability under the note. The district court almost surely viewed this case from the perspective of its superior knowledge of the underlying disputes among the parties.

To this reviewing court, however, the agreement is not just ambiguous, it is essentially silent concerning the intended status of the Rocking Diamond note after settlement. The Settlement Agreement broadly releases Norman from all "claims or causes of action of any kind" arising theretofore, but it also references continuing liens and payments schedules on the property, which are fully consistent with the continuing existence of an obligation to pay on the note. Moreover, it is questionable whether there had been any default on the note before settlement that would render it a "claim or cause of action" within the meaning of the release. Finally, Norman did make a post-settlement payment on the note, albeit at a lower rate than appellants demanded. While the Settlement Agreement does not unambiguously discharge the note, neither does it clearly leave the note unaffected as appellants contend. The agreement seems to have been

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

calculated to release Norman from part of its obligations to Rocking Diamond, as evidenced by the need for a new schedule of payments and a partial release of liens executed by the parties.

Although neither party raised the issue, the diametrically opposed views of the parties on whether there is a continued obligation to make payments under Rocking Diamond's note lead us to wonder whether they ever reached a meeting of the minds in their settlement of the pre-existing disputes. This problem we leave to the district court.

We conclude that the district court erred in its construction of the Settlement Agreement to release appellees from all liability under the note to Rocking Diamond. We decline to award summary judgment to appellants. We reverse the summary judgment for appellees and remand for further proceedings. Our disposition of this appeal renders it unnecessary to consider the matters raised in the consolidated appeal between the parties.

REVERSED and REMANDED.