

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-50038
Summary Calendar

GERALD E. JUELS,

Plaintiff-Appellant,

VERSUS

FEDERAL REPUBLIC OF GERMANY, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas

(P-93-CA-55)

(August 2, 1994)

Before THORNBERRY, DAVIS and SMITH, Circuit Judges.

THORNBERRY, Circuit Judge:*

Facts and Prior Proceedings

Gerald E. Juels commenced this suit in district court against the Federal Republic of Germany and the Frankfurt, Germany court (the German court). Juels alleges that during the course of his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

litigation in Germany against the Deutsche Bank AG, the German court, in conjunction with the Republic of Germany, willfully or negligently allowed or caused to disappear, the records of his case filed against the bank. Juels claims the records in that case contained voluminous amounts of documentation pertinent to his litigation against the bank. As a result of the defendants' actions, Juels contends that he has been denied due process of law and that the defendants are in breach of contractual relations. Juels asserts that he has been damaged in the amount of \$5,050.00.

The defendants moved to dismiss this action for improper service of process and lack of personal jurisdiction pursuant to 28 U.S.C. § 1608(b) and Fed. R. Civ. P. 12(b). Juels responded and argued that it would be unjust for the court to grant the motion to dismiss and that under Fed. R. Civ. P. 8(f), the court should construe his pleadings to do substantial justice.

The district court, sua sponte, determined that it lacked subject matter jurisdiction over the case and dismissed the case accordingly. The court reasoned that since Juels was attempting to sue a sovereign foreign nation, the Foreign Sovereign Immunities Act provided the exclusive jurisdictional basis for the case. Because the facts of the case did not fit within any recognized exception to a foreign nation's immunity under the Act, the court lacked subject matter jurisdiction.

Juels then moved for rehearing as well as for sanctions against the defendant's attorney. Juels asserted that counsel for the defendants failed to serve him with the memorandum of law in

support of the defendant's motion to dismiss for lack of jurisdiction. The district court summarily denied the motion. Juels timely appeals to this Court.

Discussion

The Foreign Sovereign Immunity Act (FSIA) provides the exclusive jurisdictional basis for suits in the United States against foreign states. **Verlinden B. V. v. Central Bank of Nigeria**, 461 U.S. 480, 485 n.5, 103 S.Ct. 1962, 76 L.Ed. 2d 81 (1983); 28 U.S.C. § 1330. "Under the Act, a foreign state is presumptively immune from the jurisdiction of United States courts; unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state." **Saudi Arabia v. Nelson**, ___U.S.___, 113 S.Ct. 1471, 1476, 123 L.Ed.2d 47 (1993). Whether sovereign immunity exists is a question of law which this Court reviews de novo. **Stena Rederi AB v. Comision de Contratos del Comite Ejecutivo General del Sindicato Revolucionario de Trabajadores Petroleros de la Republica Mexicana, S.C**, 923 F.2d 380, 386 (5th Cir. 1991).

The district court correctly observed that Juels's claim was against a foreign state, the Federal Republic of Germany, and an instrumentality thereof, the Frankfurt court. Both entities are covered by the jurisdictional limitations of the FSIA. **See** 28 U.S.C. § 1603(a) & (b); **United States v. Moats**, 961 F.2d 1198, 1205 (5th cir. 1992). Juels argues, however, that his allegations come within the "commercial activity" exception of 28 U.S.C. § 1605(a)(2), thus the defendants are not immune from suit in the

United States. Section 1605(a)(2) provides in pertinent part that a foreign state is not immune from suit in the United States when the action:

is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.

"An activity is considered 'commercial' if it is the type a private person normally would engage in for profit." **Moats**, 961 F.2d at 1205. Section 1603(d) of the FSIA provides that the "commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by its purpose." The basis of Juel's complaint is that the defendants mishandled the case file of his action against the Deutsche Bank AG, causing two years of submissions to disappear thereby damaging him. Handling court files is not, however, the type of activity a private person would engage in for profit. Rather, it is a sovereign or public act routinely performed by state and national governments. **See Nelson**, 113 S.Ct. at 1479-80 (foreign state's exercise of police power, legislation or denial of justice is sovereign in nature). Therefore, because the act giving rise to Juels's claim is sovereign rather than commercial in character, the district court correctly concluded it lacked jurisdiction under the FSIA.

Juel's also contends that the district court erred by dismissing his complaint without giving him an opportunity to amend the complaint. A pro se plaintiff should be permitted to amend a pleading "when it is clear from the complaint that there is a potential ground for relief." **Gallegos v. Louisiana Code of Criminal Procedures Art. 658 Paragraph A & C(4)**, 858 F.2d 1091, 1092 (5th Cir. 1988). In view of the nature of his claim, however, any attempt to amend the complaint would be futile. **See Ashe v. Corley**, 992 F.2d 540, 542 (5th Cir. 1993).

Finally, Juel's argues that the district court erred by denying his motion for Fed. R. Civ. P. 11 sanctions against defendants' attorney, B. J. Buecker. Juels moved for sanctions on the ground that Buecker did not serve him with defendants' memorandum of law in support of the motion to dismiss, although Buecker certified that he had. In response, Buecker asserted that his failure to serve Juels was an oversight caused by the absence of his legal assistant. The district court denied the motion without explanation.

This Court reviews the denial of a motion for Rule 11 sanctions for abuse of discretion. **Elliott v. The M/V Lois B**, 980 F.2d 1001, 1006 (5th Cir. 1993). The district court did not abuse its discretion in denying Juels's motion as the conduct for which Juels sought Rule 11 sanctions does not come within the terms of the Rule. **See Id.** at 1006; Fed R. Civ. P. 11. Moreover, Juels was not prejudiced as a result of Buecker's failure to serve him with the memorandum because the district court did not dismiss the

complaint for improper service, as argued in the memorandum, but rather for lack of subject matter jurisdiction.

Conclusion

Based on the foregoing, we affirm.

AFFIRMED.