

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 95-11212

(Summary Calendar)

TOM TIMPANARO,

Plaintiff-Appellee,

versus

JAMES W WEST,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas
(3:95-CV-1274-H)

June 27, 1996

Before HIGGINBOTHAM, DUHÉ, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Defendant James W. West appeals from the district court's final judgment declaring invalid West's Tennessee lien against Tom Timpanaro's property, and further ordering that West be permanently enjoined from attempting to collect on the lien and from notifying any person or business of the existence of the lien. Substantially

* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

for the reasons set out in the district court's "Memorandum Opinion and Order," we affirm. See *Timpanaro v. West*, No. 3:95-CV-1274-H (N.D. Tex. Dec. 18, 1995).

Furthermore, because we find that West's appeal is frivolous, we ORDER West to show cause why sanctions in the form of attorney fees and costs should not be imposed pursuant to FED. R. APP. P. 38.² West shall have fourteen days from the date of this opinion to file a response. Timpanaro shall also respond on or before the same date, and shall submit an affidavit addressing reasonable attorney fees incurred on appeal, in accordance with Local Rule 47.8.

The judgment of the district court is AFFIRMED, but the mandate is STAYED pending determination of the issue of sanctions.

² Rule 38 provides, "If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." FED. R. APP. P. 38.