

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-30545

ALVIN C. COPELAND,

Plaintiff-Appellee,

versus

AMERICA'S FAVORITE CHICKEN COMPANY, ET AL.,

Defendants,

MERRILL LYNCH & CO., INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(92-CV-3961-S)

January 9, 1996

Before JONES, EMILIO M. GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Responding to a motion to enforce a settlement agreement signed in June, 1994 among Copeland, AFCC and CIBC, the district court entered judgment dismissing Copeland's complaint in the instant "Recipe Royalty" suit with prejudice in favor of AFCC and CIBC. As to co-defendant Merrill Lynch, the court granted judgment "dismissing plaintiff's complaint with prejudice but reserving any

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

and all rights of Alvin C. Copeland to prosecute the matter entitled [the Lender Liability suit]." This language is ambiguous as to whether or not it dismisses all claims that Copeland asserted against Merrill Lynch in the Recipe Royalty suit, or whether it allows even those claims to be pursued in the lender liability action pending under another cause number. The district court's ruling on the impact of the settlement agreement on the Lender Liability suit was premature in this case. Because of the ambiguity, we reverse and remand for entry of a new judgment.

Having considered the record, as well as the briefs and arguments of counsel, we conclude that the parties' settlement agreement compelled dismissal with prejudice of all claims asserted by Copeland against Merrill Lynch in the Recipe Royalty suit. We do not decide, however, what effect, if any, the settlement agreement or judgment in this case may have upon the pending Lender Liability case between Copeland and Merrill Lynch.

The judgment is REVERSED, and the case is REMANDED, for entry of judgment in favor of Merrill Lynch dismissing plaintiff's complaint in this Recipe Royalty lawsuit with prejudice.

REVERSED and **REMANDED** for entry of judgment as stated.