

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40495
Summary Calendar

In the Matter of: RAYMOND R. POWELL; THOMAS
VEAZEY MILLER, Debtors.

RAYMOND R. POWELL; THOMAS
VEAZEY MILLER,

Appellants,

versus

FIRST NATIONAL BANK OF VAN ALSTYNE,

Appellee.

Appeal from the United States District Court
For the Eastern District of Texas
(4:96-CV-58)

January 13, 1997

Before POLITZ, Chief Judge, KING and PARKER, Circuit Judges.

PER CURIAM:*

Thomas Veazey Miller individually, and purportedly on behalf of Raymond

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

R. Powell, appeals the district court's ruling that their attempt to appeal a decision by the bankruptcy court in an adversary proceeding was not timely filed and, accordingly, that the district court lacked jurisdiction. We affirm.

Miller filed for bankruptcy in the Eastern District of Texas. He filed therein on behalf of Powell an adversary proceeding against First National Bank of Van Alstyne. Miller is not an attorney. He alleged that the bank defrauded both him and Powell. The bankruptcy court dismissed the complaint on June 30, 1995 under the authority of Fed.R.Civ.P. 12(b)(1) and Bankruptcy Rule 7012(b), finding that the alleged cause of action neither arose under nor related to Title 11 of the United States Code, the bankruptcy title. Powell and Miller did not file a notice of appeal to the district court until December 19, 1995.

Under Bankruptcy Rule 8002 the notice of appeal had to be filed within 10 days of the order or decision appealed. The district court dismissed the appeal for lack of jurisdiction, citing Bankruptcy Rule 8002. We find no error in this ruling. Indeed it is eminently correct.

Appellants have moved for appointment of counsel and for the special forfeiture by the bank of collateral profits. Both motions are DENIED.

The judgment appealed is AFFIRMED.