

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50864  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

REAL PROPERTY LOCATED AT 1258  
HIGUERA ROAD, SAN ELIZARIO,  
TEXAS, WITH ALL APPURTENANCES AND  
IMPROVEMENTS THEREON; ET AL.,

Claimants,

BENJAMIN CHAGOYAN; GUADALUPE CHAGOYAN,

Claimants-Appellants.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-94-CV-386  
- - - - -

September 16, 1997

Before JOLLY, SMITH, and STEWART, Circuit Judges.

PER CURIAM:\*

Benjamin Chagoyan and Guadalupe Chagoyan appeal the denial of their "Motion to Rescind Agreement and for the Restitution of Real Property" filed in the instant forfeiture proceeding, 21

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

U.S.C. § 881. On appeal, they argue (1) that there was no evidence of wrongdoing on their part and, therefore, the Government was without authority to take their property; (2) that they failed to receive any consideration for surrendering their interest in the subject property; and (3) that the stipulation agreement for compromise settlement should be rescinded because it was signed without any understanding of its contents inasmuch as the document was in English and they read and understand Spanish only.

The Chagoyans' motion to rescind, being construed as a Fed. R. Civ. P. 60(b)(1) motion, was filed more than one year after the entry of the order on the stipulation agreement and, therefore, was untimely. Because the Chagoyans' motion was not timely filed, the district court lacked jurisdiction to entertain it. United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994).

In any event, the Chagoyans' brief wholly fails to meet the requirements for preserving issues on appeal. Fed. R. App. P. 28(a)(4). This appeal presents no issue of arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.