

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 97-60165
No. 97-60295

THE PEABODY CORPORATION, doing business as
Reilly-Benton Co. Inc.,

Plaintiff-Appellant,

versus

MERCHANTS AND MARINE BANK,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(1:96-CV-255-RR & 1:96-CV-255-FF)

January 14, 1998

Before WIENER, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

On the unopposed motion of Merchants and Marine Bank ("M&M"), we have consolidated appeal numbers 97-60165 and 97-60295. In 97-60165, the Peabody Corporation ("Peabody") appeals the district court's grant of summary judgment to M&M on Peabody's claims of fraud and negligent misrepresentation arising out of a brief telephone conversation between a representative of Peabody's bank

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and the Chief Executive Officer of M&M. We affirm this judgment for substantially the reasons set out by the district court in its Memorandum Order of November 25, 1996, finding particularly persuasive the district court's discussion of M&M's lack of duty to Peabody. See, e.g., *Foster v. Bass*, 575 So. 2d 967, 972 (Miss. 1990) ("duty and breach of that duty are essential to a finding of negligence").

In appeal number 97-60295, M&M appeals the district court's denial of attorney's fees. We find no abuse of discretion in the district court's order and therefore affirm. See *Wegner v. Standard Ins. Co.*, 129 F.3d 814, 820-821 (5th Cir. 1997) ("We review the district court's decision to award attorneys' fees only for an abuse of discretion.").