

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 99-20953

---

GDQ CORPORATION, An Arkansas Corporation

Plaintiff - Appellee

v.

SANFORD P. BRASS, An Individual

Defendant - Appellant

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CV-1936  
-----

August 11, 2000

Before KING, Chief Judge, and REYNALDO G. GARZA and PARKER,  
Circuit Judges.

PER CURIAM:\*

Citing Bianca v. Parke-Davis Pharmaceutical Div. of Warner-Lambert Co., 723 F.3d 392, 397 (5<sup>th</sup> Cir. 1984), the district court correctly held that the inquiry under 28 U.S.C. § 1359 is guided by the "motive/function" rule, and the effort of defendant-appellant Sanford P. Brass to persuade us that a different rule does or should obtain for assignments fails for the reasons adduced by plaintiff-appellee GDQ Corporation in its appellate brief. The findings of fact of the district court on the question whether the assignment at issue here was improperly

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5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

or collusively made to invoke federal jurisdiction are not clearly erroneous. The district court also correctly held that the assignment was valid under Oklahoma law. Brass's contention that the assignment was champertous, which was made to the district court for the first time in his motion for reconsideration was waived. Even if it had not been waived, the district court did not abuse its discretion in denying Brass's motion for reconsideration on this ground as GDQ had a sufficient interest in the action and no officious intermeddling was established. Finally, having argued that Oklahoma law controlled on the statute of limitations issue during the briefing on the summary judgment motion, Brass was in no position to change horses on his motion for reconsideration.

The judgment of the district court is AFFIRMED.