

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-30767

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GULF SOUTH MACHINE, INC; ET AL  
Plaintiffs

GULF SOUTH MACHINE, INC  
Plaintiff - Counter Defendant - Appellant - Cross  
Appellee

v.

AMERICAN STANDARD INC; UNION SWITCH AND SIGNAL, INC.  
Defendants - Counter Claimants - Appellees - Cross  
Appellants

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Appeal from the United States District Court  
for the Eastern District of Louisiana, New Orleans  
USDC No. 97-CV-65-R  
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September 22, 2000

Before KING, Chief Judge, PARKER, Circuit Judge, and KAZEN\*,  
District Judge.

PER CURIAM\*\*:

The district court was correct in concluding that no genuine issue of material fact existed as to whether the arrangement between Gulf South Machine, Inc and Union Switch & Signal Inc. amounted to a partnership agreement, and we affirm the court's grant of summary judgment on that point for essentially the

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\* Chief Judge of the United States District Court for the Southern District of Texas, sitting by designation.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5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

reasons given by the district court in its Order and Reasons entered July 2, 1998. The district court also correctly concluded that the contractual standard for determining whether Gulf South would earn the proposed \$200,000 incentive bonus was not ambiguous, thereby obviating the need for a jury instruction relating to an ambiguous contract. The testimony on the value of the equipment presented by Union Switch's appraiser was undermined on cross-examination and by the testimony of one of Gulf South's witnesses, and on this record the value that the jury arrived at is supported by sufficient evidence. Finally, the district court was correct in concluding that Gulf South's duty to mitigate damages was breached when it withheld service of the complaint for nearly five years, resulting in a delay of almost eight years between the accrual of the cause of action and notification of Union Switch of the suit, and in limiting the recovery of prejudgment interest accordingly.

The judgment of the district court is AFFIRMED.