

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 14, 2011

No. 10-50764
Summary Calendar

Lyle W. Cayce
Clerk

IN THE MATTER OF: LOTHIAN OIL INCORPORATED,

Debtor

FCR GUARDIAN TRUST; MYG TRUST; HERZBERG FAMILY TRUST;
YYS D TRUST; FEINBERG FAMILY TRUST; SPITZER FAMILY TRUST;
MOSES FAMILY TRUST; BRENDA CRAYK; HIRSHBERG FAMILY
TRUST; EDMOND BALAKHANE JG TRUST; ALBERT BALAKHANE; S.
POLLAK AUDIOLOGICAL P.C. PROFIT SHARING PLAN,

Appellants

v.

LOTHIAN OIL, INC., Jointly Administered Cases Lothian Oil (USA),
Incorporated, Lothian Oil Texas I, Incorporated, Lothian Oil Texas II,
Incorporated, Lothian Oil Investments I, Incorporated, Lothian Oil
Investments II, Incorporated, Lead I JVGP, Incorporated,

Appellee

Appeals from the United States District Court
for the Western District of Texas
USDC No.7:09-CV-71

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

No. 10-50764

PER CURIAM:*

On this appeal, Appellants challenge the bankruptcy court's entry of summary judgment ordering pro rata distribution of the funds of the debtor, Lothian Oil, Inc. ("Lothian"), to holders of Lothian's preferred stock. Appellants make this challenge despite the fact that they took a contrary position in the bankruptcy court when they urged the court to make the pro rata distribution at the summary judgment hearing. Appellants apparently hired a different attorney to appeal the summary judgment entered by the bankruptcy court. The district court, in a straightforward order, affirmed the bankruptcy court's order and rejected replacement counsel's argument that Appellants' other attorney was not authorized to argue in favor of the proposed distribution. The record contains no support for replacement counsel's contention. We agree with the district court that this argument is unsupported and without merit. We also agree with the district court that Appellants are barred on appeal by the doctrine of judicial estoppel from making arguments contrary to the position they took during the summary judgment proceedings in the bankruptcy court.

For these reasons and the reasons assigned by the district court, the district court's order is **AFFIRMED**.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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