

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 19, 2022

Lyle W. Cayce
Clerk

No. 22-40551

THOMAS E. RHONE, *Individually, doing business as* RHONE
INVESTMENTS,

Plaintiff—Appellant,

versus

CITY OF TEXAS CITY, TEXAS,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:21-CV-74

Before HAYNES, ENGELHARDT, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

IT IS ORDERED that Appellant's opposed motion to restrain and enjoin the City of Texas City, Texas and its agents, servants, representatives, and counsel from damaging or demolishing any portion of the properties which are subject to this litigation and appeal is DENIED without prejudice

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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for failure to comply with the requirements of Federal Rule of Appellate Procedure Rule 8.

Rule 8(a)(1) states that “[a] party must ordinarily move first in the district court for ... (A) a stay of the judgment or order of a district court pending appeal.” Rule 8(a)(2) provides, however that “[a] motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.” That provision is subject to a requirement that “[t]he motion must: (i) show that moving first in the district court would be impracticable; or (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.” Rule 8(a)(2)(A).

In this case, Rhone has moved for relief from judgment in the district court and no ruling has been made. As such, this motion is premature. Therefore, the motion before us is denied without prejudice. Should the district court deny Rhone’s pending motion, Rhone may revive the motion in this Court.