

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5516
Conference Calendar

FEDERAL DEPOSIT INSURANCE CORP.,
in its corporate capacity as
liquidator of First National Bank
of Frisco,

Plaintiff,

versus

HOWARD THORNTON ET AL.,

Defendants,

HOWARD THORNTON,

Defendant-Cross Defendant-
Appellant,

versus

STAR FORD, INC.,

Defendant-Cross Claimant-
Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 92-CV-103
- - - - -

(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Howard Thornton appeals the amount of attorney's fees awarded to Star Ford. For the first time on appeal, Thornton argues that his liability for Star Ford's attorney's fees should be limited to \$3000 by the terms of an agreement between the parties. A written document, dated July 22, 1992, and signed only by Thornton, purportedly assigns to Star Ford rental payments owed Thornton "up to the sum of \$3,000.00 to cover Star Ford, Inc. for attorney fees actually incurred respecting such lawsuit [brought by the FDIC on the Note] from and after July 9, 1992." This document was offered and admitted at trial solely for impeachment purposes. It was not offered as evidence of an agreement and it was not properly before the district court on the issue of attorneys' fees. Nor did Thornton present it or any countervailing affidavit in response to the court-ordered filing of affidavits on the issue of attorneys' fees.

This Court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

The validity and effect of the purported attorney fee contract does not involve a purely legal question. It presents a question of fact that could have been resolved by the district court had the matter been submitted to it. Moreover, consideration of this contract would be prejudicial to Star Ford

which was not given the opportunity to present evidence controverting this purported contract.

The issue is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.