

# UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## Browning v. Navarro

105 B.R. 553 (5th Cir. 1989) (5th Cir.) · No. 88-1761; 88-1894 · Decided October 23, 1989

### SUMMARY

The Fifth Circuit considers appeals arising from efforts to enforce an \$82 million Texas state-court judgment in a bankruptcy proceeding. The court addresses appellate jurisdiction, timeliness, law of the case, res judicata, the clean-hands doctrine, and whether a later state-court judgment affects enforcement of the earlier judgment. It holds that the debtor is precluded from asserting fraud on the court and that the judgment remains valid and enforceable.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Fifth Circuit                                                                                                                                                                                             |
| WRITING FOR THE COURT | Duhé, Circuit Judge; Davis; Duhé; Politz                                                                                                                                                                                                         |
| JURISDICTION          | Federal                                                                                                                                                                                                                                          |
| DECIDED               | October 23, 1989                                                                                                                                                                                                                                 |
| DOCKET                | 88-1761; 88-1894                                                                                                                                                                                                                                 |
| DISPOSITION           | other                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | The Brownings appealed the denial of their motion for summary judgment in an interlocutory appeal certified under 28 U.S.C. § 1292(b). Holloway separately appealed the denial of his motions for summary judgment under 28 U.S.C. § 1292(a)(1). |
| STANDARD OF REVIEW    | De novo review of summary-judgment rulings and appellate jurisdictional issues.                                                                                                                                                                  |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                                                                                                                                   |
| PARTIES               | Jane H. Browning, et al., Don Holloway v. Don Navarro, et al., Jane H. Browning, et al.                                                                                                                                                          |

### TOPICS

- bankruptcy
- res judicata
- adversary proceedings
- appellate jurisdiction
- summary judgment

### PRACTICE AREAS

- Bankruptcy
- Civil procedure
- Appellate procedure
- Res judicata
- Commercial litigation

## QUESTIONS PRESENTED

1. Whether the Fifth Circuit had jurisdiction over interlocutory appeals from a district court acting as a trial court in a core bankruptcy matter.
2. Whether Holloway's interlocutory appeal was timely.
3. Whether res judicata barred Holloway from asserting that the Walker judgment was procured by fraud.
4. Whether the law-of-the-case doctrine barred Holloway from raising issues other than the fraud-on-the-court claim on remand.
5. Whether the clean-hands doctrine permitted a collateral attack on the Walker judgment.
6. Whether a later 1987 Texas judgment nullified or displaced the earlier Walker judgment under the last-in-time rule.

## HOLDINGS

1. When a federal district court itself acts as the trial court in determining a core bankruptcy matter, 28 U.S.C. § 158 does not govern appeals from its decisions; 28 U.S.C. §§ 1291 and 1292 govern final and interlocutory appeals.
2. Holloway's appeal was timely because the Brownings' petition for interlocutory appeal was the functional equivalent of a notice of appeal and triggered the additional filing period under Federal Rule of Appellate Procedure 4(a)(3).
3. The Fifth Circuit's prior remand order limited Holloway's arguments on remand to his fraud-on-the-court claim; the remaining issues were barred by the law-of-the-case doctrine, except for issues supported by substantially different evidence.
4. Res judicata barred Holloway from collaterally attacking the Walker judgment as fraudulently obtained because the parties, court jurisdiction, final judgment on the merits, and cause of action were the same, and Holloway could have raised the fraud claim in the prior federal action.
5. The clean-hands doctrine did not provide a basis for collaterally attacking or vacating the Walker judgment.
6. The 1987 Texas judgment did not nullify or disturb the Walker judgment because the two judgments were consistent: the claims underlying the Walker judgment had merged into that judgment and could not be relitigated in the later action.

## KEY QUOTATIONS

*“It is black-letter law that a claim is not barred by res judicata if it could not have been brought.”* (559)

*“The doctrine of unclean hands is not the functional equivalent of fraud.”* (562)

*“It is for the public interest and policy to make an end to litigation ... [so that] suits may not be immortal, while men are mortal.”* (564)

## FACTUAL BACKGROUND

The Brownings obtained an \$82 million judgment in Texas state court against Holloway after litigation beginning in 1979. Holloway later filed for bankruptcy, converted his Chapter 11 case to Chapter 7, and a trustee refused to satisfy the judgment, leading the Brownings to sue in federal court to enforce it. Holloway argued that the judgment was fraudulently obtained, that later state-court proceedings displaced it, and that the Brownings' conduct barred enforcement under the clean-hands doctrine.

## PROCEDURAL HISTORY

The Brownings obtained an \$82 million Texas state-court judgment against Holloway. After Holloway entered bankruptcy and a trustee refused to satisfy the judgment, the Brownings brought a federal bankruptcy action to enforce it. On remand from prior Fifth Circuit decisions, the district court held that *res judicata* did not bar Holloway from attacking the judgment as fraudulent and denied the Brownings' summary-judgment motion; it also denied Holloway's motions seeking to enjoin enforcement. The Fifth Circuit reversed in docket 88-1894, granted the Brownings' summary judgment, and affirmed in docket 88-1761.

## DISPOSITION

other

## REMAND INSTRUCTIONS

In docket 88-1894, the district court's judgment was reversed and the Brownings' motion for summary judgment was granted. In docket 88-1761, the district court's judgments denying Holloway's motions for summary judgment were affirmed.

## CASES CITED

- Holloway v. Walker, 784 F.2d 1287 (5th Cir. 1986) (per curiam), cert. denied, 479 U.S. 984 (1986)
- Browning v. Navarro, 743 F.2d 1069 (5th Cir. 1984)
- Browning v. Navarro, 826 F.2d 335 (5th Cir. 1987)
- Ex parte Sibbald v. United States, 37 U.S. (12 Pet.) 488, 492 (1838)
- E.E.O.C. v. International Longshoremen's Ass'n, 623 F.2d 1054, 1058 (5th Cir. 1980)
- Signal Oil & Gas Co. v. Barge W-701, 654 F.2d 1164 (5th Cir. 1981), cert. denied, 455 U.S. 944 (1982)
- In re Sanford Fork & Tool Co., 160 U.S. 247 (1895)
- Morrow v. Dillard, 580 F.2d 1284, 1290 (5th Cir. 1978)
- Messinger v. Anderson, 225 U.S. 436, 443 (1912)
- Loumar v. Smith, 698 F.2d 759, 762 (5th Cir. 1983)
- Falcon v. General Tel. Co., 815 F.2d 317, 310 (5th Cir. 1987)
- White v. Murtha, 377 F.2d 428, 431-32 (5th Cir. 1967)
- In re Watson, 884 F.2d 879 (5th Cir. 1989)
- In re Delta Services Industries, 782 F.2d 1267, 1268-69 (5th Cir. 1986)
- In re Barrier, 776 F.2d 1298, 1299 (5th Cir. 1985)

- In re Teleport Oil Co., 759 F.2d 1376, 1377-78 (9th Cir. 1985)
- E.E.O.C. v. Neches Butane Products Co., 704 F.2d 144, 147 (5th Cir. 1983)
- Western Electric Co. v. Milgo Electronic Corp., 568 F.2d 1203, 1206 (5th Cir. 1978), cert. denied, 439 U.S. 895 (1978)
- Austracan (U.S.A.) Inc. v. M/V Lemoncore, 500 F.2d 237, 239 (5th Cir. 1974)
- Washington v. Patlis, 868 F.2d 172, 174 (5th Cir. 1989)
- Cobb v. Lewis, 488 F.2d 41, 44, 46 (5th Cir. 1974)
- In re Bertoli, 812 F.2d 136, 138, 140 (3d Cir. 1987)
- Kemp v. Birmingham News Co., 608 F.2d 1049, 1052 (5th Cir. 1979)
- Nilsen v. City of Moss Point, 701 F.2d 556, 559-63 (5th Cir. 1983) (en banc)
- Cromwell v. County of Sac, 94 U.S. 351, 352 (1877)
- Heiser v. Woodruff, 327 U.S. 726, 728-29, 733, 735-36, 740 (1946)
- D-1 Enterprises, Inc. v. Commercial State Bank, 864 F.2d 36, 38-39 (5th Cir. 1989)
- Banker's Mortgage Co. v. United States, 423 F.2d 73, 77-79 (5th Cir. 1970), cert. denied, 399 U.S. 927 (1970)
- United States v. Sutton, 786 F.2d 1305, 1307-08 (5th Cir. 1986)
- Official Committee of Equity Security Holders v. Mabey, 832 F.2d 299, 302 (4th Cir. 1987), cert. denied, 485 U.S. 962 (1988)
- Southern Railway Co. v. Johnson, 758 F.2d 137, 141 (3d Cir. 1985)
- Margolis v. Nazareth Fair Grounds & Farmers Market, 249 F.2d 221, 224 (2d Cir. 1957)
- Pepper v. Litton, 308 U.S. 295 (1939)
- Brown v. Felsen, 442 U.S. 127 (1979)
- Kinnear-Weed Corp. v. Humble Oil & Refining Co., 403 F.2d 437, 439-40 (5th Cir. 1968) (en banc)
- Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 401 (1981)
- Salazar v. U.S. Air Force, 849 F.2d 1542, 1546 n. 8 (5th Cir. 1988)
- A.L.T. Corp. v. S.B.A., 801 F.2d 1451, 1455 (5th Cir. 1986)
- Rives v. Franklin Life Ins. Co., 792 F.2d 1324, 1328-29 (5th Cir. 1986)
- Fehlhaber v. Fehlhaber, 681 F.2d 1015, 1020-21 (5th Cir. 1982), cert. denied, 464 U.S. 818 (1983)
- Browning v. Placke, 698 S.W.2d 362 (Tex. 1985) (per curiam)
- Austin Independent School District v. Sierra Club, 495 S.W.2d 878, 881 (Tex. 1973)
- Midessa Television Co. v. Motion Pictures for Television, 290 F.2d 203, 205 (5th Cir. 1961), cert. denied, 368 U.S. 827 (1961)
- Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373 (1985)
- Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518, 523 (1986)
- Layton v. Layton, 538 S.W.2d 642 (Tex. Civ. App. 1976) (per curiam)
- Reimer v. Smith, 663 F.2d 1316, 1327 n. 13 (5th Cir. 1981)
- Jeanes v. Henderson, 688 S.W.2d 100, 103 (Tex. 1985)
- Crabtree v. Southmark Commercial Management, 704 S.W.2d 478, 481 (Tex. Ct. App. 1986)

- Gilbert v. Fireside Enterprises, Inc., 611 S.W.2d 869, 871 (Tex. Civ. App. 1980)
- Ocean Insurance Co. v. Fields, 18 F. Cas. 532 (C.D.D. Mass. 1841) (No. 10,406)

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