

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

May 9, 2008

No. 07-20456

Charles R. Fulbruge III
Clerk

In The Matter Of: SUN TOOL COMPANY

Debtor

ESTATE OF SUN TOOL COMPANY INC, by and through Joseph M Hill,
Trustee for the Estate of Sun Tool Company, Debtor

Appellant

v.

STEPHEN L BAKER; ROSS, BANKS, MAY, CRON & CAVIN; ESTATE OF
KHOI TRUONG; HOA TRUONG, Individually

Appellees

Appeal from the United States District Court
for the Southern District of Texas, Houston
USDC No. 4:05-CV-1787

Before KING, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

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 R. 47.5, the court has determined that this opinion should not
be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We have carefully reviewed the briefs and the record, and we have had the benefit of oral argument. We have concluded that the record establishes that attorney Stephen L. Baker made it clear, both before the meeting of June 1, 2003, and during the meeting, that he represented Hoa Truong. Sun Tool Company, Inc. could not have justifiably relied on statements made by Baker during the meeting because the record further establishes that an adversarial relationship existed between Baker and Sun Tool, and that Sun Tool did not believe the alleged representations of Baker and could not justifiably have relied on those statements. Further, lacking any evidence, expert testimony or otherwise, supporting the essential elements on Sun Tool's breach of fiduciary duty claim, the district court correctly held that Baker did not breach any fiduciary duty to Sun Tool after the June 1, 2003 meeting.

The district court's Order Adopting Memorandum, Recommendation and Order entered June 8, 2006 is AFFIRMED for essentially the reasons set forth therein; the district court's Order Adopting Magistrate Judge's Memorandum, Recommendation, and Order entered February 26, 2007 is AFFIRMED for essentially the reasons set forth therein; and the district court's Order of Dismissal entered April 9, 2007 is AFFIRMED.

AFFIRMED. Costs shall be borne by Appellants.