

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS BROWNSVILLE DIVISION

United States District Court Southern District of Texas ENTERED

MAR 03 2008

Michael N. Milby, Clerk of Court By Deputy Clerk [Signature]

LUIS C. MUNOZ AND CARMELA MUNOZ,

Plaintiffs,

v.

STATE FARM LLOYDS,

Defendant.

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CIVIL ACTION NO. B-04-141

OPINION & ORDER

BE IT REMEMBERED that on March 3, 2008, the Court DENIED Benino Capetillo's Request to Perpetuate and Conditionally Reconsider his Prior Motions, in event Jurisdiction Reposes in Trial Court, Dkt. No. 156.

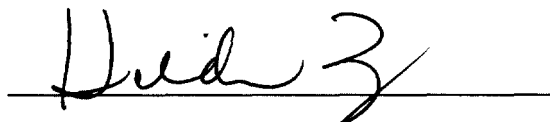
This Court entered final judgment for Plaintiffs, Luiz C. Munoz and Carmela Munoz, against Defendant, State Farm Lloyds, on April 4, 2006, Dkt. No. 111. Defendant then filed a Rule 59(e) motion to alter or amend the judgment, Dkt. No. 112, a renewed Rule 50(b) motion for judgment as a matter of law, Dkt. No. 113, and a Rule 59 motion for new trial, Dkt. No. 114. On April 26, 2006, this Court denied Defendant's Rule 50(b) motion and Rule 59 motion for a new trial. Dkt. No. 115. On May 2, 2006, this Court denied Defendant's Rule 59(e) motion. Dkt. No. 116. Defendant then filed its notice of appeal on May 4, 2006. Dkt. No. 117. This case is still on appeal. On November 27, Capetillo filed a motion to intervene in this Court. Dkt. Nos. 149, 150. This Court denied Capetillo's motion for lack of jurisdiction. Dkt. No. 155.

On January 29, 2008, Benino Capetillo filed this Request to Perpetuate and Conditionally Reconsider his Prior Motions. Dkt. No. 156. Essentially Capetillo requests that this Court permit his motion to intervene to remain pending until this Court has jurisdiction over the case. Id. at 2.

This Court previously held that it does not have jurisdiction to rule on Capetillo's motion to intervene because on May 4, 2006 Defendant filed an effective notice of appeal in this case. *Ross v. Marshall*, 426 F.3d 745, 751 (5th Cir. 2005) (citing *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897, 928 (5th Cir. 1983)); *Nicol v. Gulf Fleet Supply Vessels, Inc.*, 743 F.2d 298, 299 (5th Cir. 1984). Therefore, this Court lacks jurisdiction to entertain Capetillo's motion to intervene and his new motion for reconsideration. Furthermore, this Court will not permit his instant motion to remain pending in this Court indefinitely.

WHEREFORE, this Court **DENIES** Benino Capetillo's Request to Perpetuate and Conditionally Reconsider his Prior Motions, in event Jurisdiction Reposes in Trial Court, Dkt. No. 156.

DONE at Brownsville, Texas, on March 3, 2008.

A handwritten signature in cursive script, appearing to read 'Hilda G. Tagle', written over a horizontal line.

Hilda G. Tagle

United States District Judge