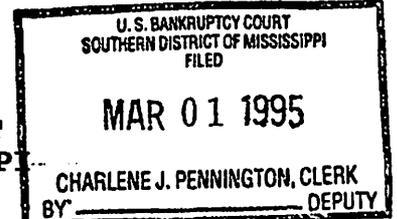


IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



IN RE: BUTLER, INC.

CASE NO. 87-09101SEG

EDDIE C. BUTLER

PLAINTIFF

VS.

ADVERSARY NO. 89-0939SC

MERCHANTS BANK & TRUST CO.

DEFENDANT

Eddie C. Butler
3609 15th Street
Gulfport, MS 39501

Pro Se

Robert A. Byrd
P.O. Box 1939
Biloxi, MS 39533

Attorney for Chapter 7
Trustee

George E. Estes, Jr.
P.O. Box 88
Gulfport, MS 39502

Attorney for Merchants
Bank and Trust Co.

Ronald McAlpin
100 West Capitol St.
Suite 800
Jackson, MS 39269

Assistant U.S. Trustee

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This case is before the Court on the *Motion for Relief from Judgment* filed by Eddie Butler, *pro se*, pursuant to Rule 60(b)(3) of the Federal Rules of Civil Procedure, which is made applicable to adversary proceedings by Rule 9024 of the Federal Rules of Bankruptcy Procedure. After considering the motion and being fully advised in the premises, this Court holds that Mr.

Butler's motion is not well taken and should be denied. In so holding, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

This adversary proceeding came on for trial on the complaint filed against the Defendant, Merchants Bank and Trust Company. At the conclusion of the trial on November 20, 1991, the Honorable Edward R. Gaines, Bankruptcy Judge for the Southern District of Mississippi, announced his ruling into the record. On January 7, 1992, a written judgment consistent with the November 20, 1991, bench ruling was entered by Judge Gaines and docketed in this adversary proceeding.

On January 16, 1992, an order was entered denying a motion for reconsideration filed by Eddie C. Butler. After denial of his motion for reconsideration, Mr. Butler appealed the January 7, 1992, judgment to the United States District Court for the Southern District of Mississippi. The District Court affirmed the ruling of the Bankruptcy Court. Mr. Butler then appealed the District Court's ruling to the Fifth Circuit Court of Appeals. On January 5, 1995, the Fifth Circuit entered an order affirming the ruling of the District Court.

On January 17, 1995, Mr. Butler filed the present *Motion for Relief from Judgment*, seeking relief from the January 7, 1992, judgment entered by the Bankruptcy Court.

CONCLUSIONS OF LAW

Mr. Butler brings his motion pursuant to Rule 60(b)(3) of the Federal Rules of Civil Procedure which is made applicable to adversary proceedings by Rule 9024 of the Federal Rules of Bankruptcy Procedure. Rule 60 provides an avenue for relief from a judgment or order in certain limited circumstances, stating in pertinent part as follows:

Rule 60. Relief from Judgment of Order.

....

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

Mr. Butler filed his Rule 60(b)(3) motion for relief from judgment approximately three years after entry of the judgment. Rule 60(b) specifically states that a motion brought pursuant to subsections (1), (2) and (3) of Rule 60(b) must be made within one year after the judgment was entered. Furthermore, the Fifth Circuit Court of Appeals has held that "[t]he one year limitation is not tolled by an appeal." Gulf Coast Building and Supply Co. v.

International Brotherhood of Electrical Workers, Local No. 480,
AFL-CIO, 460 F.2d 105, 108 (5th Cir. 1972).

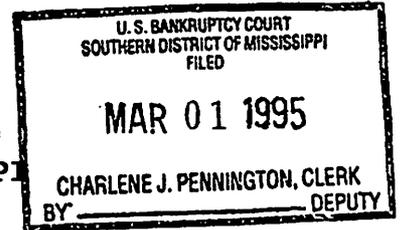
This Court holds that Mr. Butler's motion for relief from the January 7, 1992, judgment is barred by the one year limitation contained in Rule 60(b) of the Federal Rules of Civil Procedure. Therefore, the *Motion for Relief from Judgment* will be denied.

A separate final judgment will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

THIS the 1st day of March, 1995.


UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN RE: BUTLER, INC.

CASE NO. 87-09101SEG

EDDIE C. BUTLER

PLAINTIFF

VS.

ADVERSARY NO. 89-0939SC

MERCHANTS BANK & TRUST CO.

DEFENDANT

FINAL JUDGMENT

Consistent with this Court's opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the *Motion for Relief from Judgment* filed by Eddie C. Butler, pro se, should be, and hereby is, denied.

SO ORDERED this the 1st day of March, 1995.


UNITED STATES BANKRUPTCY JUDGE