

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FIRST SECURITY BANK; JAMES D. FRALIN, as a director and individually as a shareholder of First Security Bank; CARLOS E. GUTIERREZ, as a director and individually as a shareholder of First Security Bank; DENNIS R. CRONK, as a director and individually as a shareholder of First Security Bank; PAUL G. BLACK, as a director and individually as a shareholder of First Security Bank; JERRY W. BRINKLEY, as a director and individually as a shareholder of

No. 94-2040

First Security Bank; ALFRED SILVERSTEIN, as a director and individually as a shareholder of First Security Bank; JAMES M. GRASSE, a shareholder in First Security Bank; LYNN J. REESE, a shareholder in First Security Bank; ROBERT H. HALE, a shareholder in First Security Bank; OTHER UNNAMED SHAREHOLDERS OF FIRST SECURITY BANK, AS THEIR INTERESTS MAY APPEAR,
Plaintiffs-Appellants,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver for First
Security Bank,
Plaintiff-Appellee.

FIRST VIRGINIA BANK-SOUTHWEST;
HENRY H. HICKS, JR.; JAMES N.
HINSON, JR., officer and director of
First Virginia Bank-Southwest in
his individual and official capacity;
ELLIS L. GUTSHALL, officer and
director of First Virginia Bank-
Southwest in his individual and
official capacity,
Defendants-Appellees.

and

ROBERT H. ZALOKAR, Chairman of
the Board and CEO First Virginia
Banks, Incorporated, in his
individual and official capacity;
THOMAS E. HARTMAN, a former
officer of First Virginia Bank-
Southwest; RICHARD A. HESS,
Defendants.

FIRST SECURITY BANK; JAMES D. FRALIN, as a director and individually as a shareholder of First Security Bank; CARLOS E. GUTIERREZ, as a director and individually as a shareholder of First Security Bank; DENNIS R. CRONK, as a director and individually as a shareholder of First Security Bank; PAUL G. BLACK, as a director and individually as a shareholder of First Security Bank; JERRY W. BRINKLEY, as a director and

No. 94-2349

individually as a shareholder of First Security Bank; ALFRED SILVERSTEIN, as a director and individually as a shareholder of First Security Bank; JAMES M. GRASSE, a shareholder in First Security Bank; LYNN J. REESE, a shareholder in First Security Bank; ROBERT H. HALE, a shareholder in First Security Bank; OTHER UNNAMED SHAREHOLDERS OF FIRST SECURITY BANK, AS THEIR INTERESTS MAY APPEAR; JOSEPH L. ANTHONY, Plaintiffs-Appellants.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver for First
Security Bank,
Plaintiff-Appellee.

v.

FIRST VIRGINIA BANK-SOUTHWEST;
HENRY H. HICKS, JR.; JAMES N.
HINSON, JR., officer and director of
First Virginia Bank-Southwest in
his individual and official capacity;
ELLIS L. GUTSHALL, officer and
director of First Virginia Bank-
Southwest in his individual and
official capacity,
Defendants-Appellees.

and

ROBERT H. ZALOKAR, Chairman of
the Board and CEO First Virginia
Banks, Incorporated, in his
individual and official capacity;
THOMAS E. HARTMAN, a former
officer of First Virginia Bank-
Southwest; RICHARD A. HESS,
Defendants.

FIRST SECURITY BANK; JAMES D. FRALIN, as a director and individually as a shareholder of First Security Bank; CARLOS E. GUTIERREZ, as a director and individually as a shareholder of First Security Bank; DENNIS R. CRONK, as a director and individually as a shareholder of First Security Bank; PAUL G. BLACK, as a director and individually as a shareholder of First Security Bank; JERRY W. BRINKLEY, as a director and individually as a shareholder of

No. 94-2693

First Security Bank; ALFRED SILVERSTEIN, as a director and individually as a shareholder of First Security Bank; JAMES M. GRASSE, a shareholder in First Security Bank; LYNN J. REESE, a shareholder in First Security Bank; ROBERT H. HALE, a shareholder in First Security Bank; OTHER UNNAMED SHAREHOLDERS OF FIRST SECURITY BANK, AS THEIR INTERESTS MAY APPEAR; JOSEPH L. ANTHONY, Plaintiffs-Appellants,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver for First
Security Bank,
Plaintiff-Appellee.

FIRST VIRGINIA BANK-SOUTHWEST;
HENRY H. HICKS, JR.; JAMES N.
HINSON, JR., officer and director of
First Virginia Bank-Southwest in
his individual and official capacity;
ELLIS L. GUTSHALL, officer and
director of First Virginia Bank-
Southwest in his individual and
official capacity,
Defendants-Appellees.

and

ROBERT H. ZALOKAR, Chairman of
the Board and CEO First Virginia
Banks, Incorporated, in his
individual and official capacity;
THOMAS E. HARTMAN, a former
officer of First Virginia Bank-
Southwest; RICHARD A. HESS,
Defendants.

Appeals from the United States District Court
for the Western District of Virginia, at Roanoke.
Jackson L. Kiser, Chief District Judge.
(CA-91-275-R)

Argued: June 6, 1996

Decided: July 22, 1996

Before WILLIAMS and MICHAEL, Circuit Judges, and
JACKSON, United States District Judge for the
6350 35 8 Eastern District of Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Joseph L. Anthony, STOTT & ANTHONY, P.C., Roanoke, Virginia, for Appellants. James Scott Watson, FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C.; Douglas Warren Densmore, FLIPPIN, DENSMORE, MORSE, RUTHERFORD & JESSEE, Roanoke, Virginia, for Appellees. **ON BRIEF:** Kevin P. Oddo, FLIPPIN, DENSMORE, MORSE, RUTHERFORD & JESSEE, Roanoke, Virginia; Christopher M. Malone, John B. Farmer, THOMPSON & MCMULLAN, P.C., Richmond, Virginia; Ann S. DuRoss, Assistant General Counsel, Robert D. 3193 107 1 McGillicuddy, Senior Counsel, Michelle Kosse, FEDERAL

DEPOSIT INSURANCE CORPORATION, Washington, D.C.; Charles O. Cornelison, COPENHAVER, ELLETT & CORNELISON, Roanoke, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Appellants in this suit are the now-defunct First Security Bank, First Security's former directors or shareholders or both,* and First Security's former counsel, Joseph Anthony. First Security and its directors/shareholders retained Anthony to represent them in litigation against First Virginia Bank, First Virginia Bank's directors, and its parent company, First Virginia Bank-South West (collectively First Virginia), all of which are Appellees to this appeal. After Anthony had filed a variety of claims against First Virginia, First Security was

*James Fralin, Carlos Gutierrez, Dennis Cronk, Paul Black, Jerry Brinkley, Alfred Silverstein, James Grasse, Lynn Reese, and Robert Hale were directors or shareholders or both of First Security.

declared insolvent and placed under the receivership of the Federal Deposit Insurance Corporation (FDIC). Consequently, the FDIC succeeded to First Security's interests and represented First Security on its claims against First Virginia. See 12 U.S.C.A. § 1821(d)(2)(A)(i) (West 1989) (providing that the FDIC, in its capacity of receiver, succeeds to "all rights, titles, powers, and privileges of the [failed institution], and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution"). Anthony, however, remained as counsel for the directors/shareholders regarding any claims, which the parties and the district court termed "nonderivative claims," against First Virginia that were independent of the First Security litigation against First Virginia. Having succeeded to First Security's claims against First Virginia, the FDIC terminated Anthony's representation of First Security and pursued the litigation against First Virginia. After the FDIC and First Virginia settled their suit, they successfully moved the district court to dismiss it with prejudice.

Anthony raised sixty-three assignments of error in his briefs to this Court in this consolidation of three appeals of the district court's orders. First, Anthony appeals the district court's denial of his motion to intervene as of right on behalf of the former shareholders and directors of First Security respecting any nonderivative claims First Security could have asserted against First Virginia prior to First Security's insolvency. Second, Anthony appeals the district court's denial of his request to intervene as a pro se litigant due to his claim for attorney's fees in the amount of a one-third share of claims First Security could have asserted against First Virginia prior to First Security's insolvency. Third, Anthony appeals the district court's denial of his motion to impress a lien on the FDIC for his attorney's fees and the district court's dismissal of the settled claims.

We have carefully examined the record, the briefs, the applicable law, and have had the benefit of the parties' oral argument. We affirm the district court's orders, finding Anthony's assignments of error without merit. Accordingly, the judgments of the district court are affirmed.

AFFIRMED