

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2022

Lyle W. Cayce
Clerk

No. 21-10027

MURPHY OIL USA, INCORPORATED,

Plaintiff—Appellant,

versus

LOVE'S TRAVEL STOPS & COUNTRY STORES, INCORPORATED;
GEMINI MOTOR TRANSPORT; MUSKET CORPORATION; STANLEY
BOWERS; SCOTT DODD; LARRY JONES; MICHAEL WOOD; ROY
TAYLOR; MATT TUGMAN; EDWARD WASHINGTON; ALAN
SVAJDA,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CV-1345

Before SMITH, COSTA, and WILSON, *Circuit Judges.*

PER CURIAM:*

Murphy Oil sells fuel wholesale to other gas stations and also retail in its own stations. During Hurricane Harvey, fuel carriers for Love's Travel

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Stops—one of Murphy’s wholesale customers—entered a third-party facility where Murphy stores its product and took 220,000 gallons of fuel that Murphy intended to save for its own gas stations. A week later, Murphy drafted Love’s bank account for the fuel at a rate \$0.29/gallon higher than Murphy’s posted wholesale prices on the days the fuel was taken. Murphy later sued Love’s and its fuel carrier for civil theft, conversion, unjust enrichment, and conspiracy. The district court granted summary judgment for the defendants, concluding that Murphy had waived its claims by recouping from defendants a special price for the fuel. The court also awarded over a million dollars in attorneys’ fees to the defendants as prevailing parties under the Texas Theft Liability Act. Murphy appeals the summary judgment ruling and the fee award.

Having reviewed the briefs, record, and applicable law, and heard oral argument, the judgment is **AFFIRMED**. We agree with the waiver holding essentially for the reasons given by the district court. And we see no abuse of discretion in the district court’s fee order, which thoroughly addressed all the concerns Murphy raises.