

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2010-1186

MARCO ANTONIO GALLO-RODRIGUEZ,

Plaintiff-Appellant,

v.

SUPREME COURT OF THE UNITED STATES,
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT,
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT,
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA,
and UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS,

Defendants-Appellees.

Appeal from the United States District Court for the District of Columbia in
case no. 08-CV-1890, Judge Richard W. Roberts.

ON MOTION

Before MAYER, LOURIE and BRYSON, Circuit Judges.

PER CURIAM.

ORDER

Marco Antonio Gallo-Rodriguez responds to this court's order directing a response as to why this appeal should not be transferred to the United States Court of Appeals for the District of Columbia Circuit. Gallo-Rodriguez also moves to stay district court proceedings.

Gallo-Rodriguez appeals from a judgment of the United States District Court for the District of Columbia dismissing his complaint for lack of subject matter jurisdiction. In his response, Gallo-Rodriguez concedes that this court lacks jurisdiction over his appeal. See 28 U.S.C. § 1295. However, he argues that we should transfer his case to the United States Court of Federal Claims.

Pursuant to 28 U.S.C. § 1631, “[w]henver a civil action is filed in a court . . . or an appeal is noticed . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed.” Section 1631 authorizes this court to transfer this appeal to the Court of Appeals for the District of Columbia Circuit because the appeal could have been brought there at the time it was filed in this court. However, the same cannot be said for transfer to the Court of Federal Claims. Gallo-Rodriguez is appealing the judgment of the district court. The Court of Federal Claims does not have appellate jurisdiction over the district court, and thus the Court of Federal Claims is not a court in which this appeal “could have been brought” at the time Gallo-Rodriguez’s appeal was filed.

Accordingly,

IT IS ORDERED THAT:

- (1) This appeal is transferred to the United States Court of Appeals for the District of Columbia Circuit pursuant to 28 U.S.C. § 1631.
- (2) Gallo-Rodriguez's motion is denied.
- (3) Each side shall bear its own costs associated with the appeal in this court.

FOR THE COURT

MAY 03 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Marco Antonio Gallo-Rodriguez
Jeanne E. Davidson, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAY 03 2010

JAN HORBALY
CLERK