

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 09-15242  
\_\_\_\_\_

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT AUGUST 5, 2010 JOHN LEY CLERK
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D. C. Docket No. 09-00113-CV-KD-N

SHAWNEE TERMINAL RAILROAD CO., INC.,

Plaintiff-Appellant,

versus

J.E. ESTES WOOD CO., INC.,  
A.A. NETTLES, SR. PROPERTIES, LTD.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Alabama  
\_\_\_\_\_

(August 5, 2010)

Before TJOFLAT, CARNES and REAVLEY,\* Circuit Judges.

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\*Honorable Thomas M. Reavley, United States Circuit Judge for the Fifth Circuit, sitting by designation.

PER CURIAM:

Before us in this appeal is the district court's judgment dismissing this lawsuit for lack of subject matter jurisdiction. After the district court entered its judgment, the Supreme Court issued its decision in Hertz v. Friend, 130 S.Ct. 1181 (2010). Both parties agree that we should vacate the judgment and remand the case to the district court for further consideration in light of the Hertz decision, although they disagree about what the district court should do in light of that decision. We leave it to the district court to decide as an initial matter what it should do on remand in light of the Hertz decision, but agree with the parties that reconsideration by the district court is in order.

The district court's judgment is VACATED and the case is REMANDED to that court for further consideration in light of the Supreme Court's intervening decision in Hertz v. Friend, 130 S.Ct. 1181 (2010).<sup>1</sup>

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<sup>1</sup>This case was originally scheduled for oral argument, but the panel has unanimously decided that it is unnecessary. See 11th Cir. R. 34-3(f).