

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

No. 01-30062

(Summary Calendar)

ASSOCIATED TERMINALS LLC,

Plaintiff - Counter Defendant -
Appellee,

versus

DELAWARE MARINE SERVICE, INC, in personam; M/V JAMES
E PHILPOTT, in rem; XYZ INSURANCE CO,

Defendants - Counter Claimants -
Appellants.

Appeal from the United States District Court
For the Middle District of Louisiana
USDC No. 99-CV-287

August 30, 2001

Before JONES, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Delaware Marine Service, Inc. (“Delaware”) appeals the dismissal of its counterclaims against

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Associated Terminals, L.L.C. (“Associated”). Delaware contends that the district court procedurally erred in granting Associated’s motion to dismiss “the case in its entirety” after the district court granted Delaware’s motion for summary judgment on Associated’s claims and denied Delaware’s motion for summary judgment on Delaware’s claims. Delaware argues that it is entitled to a trial on the merits of its counterclaims.

Delaware’s challenge to the procedural propriety of the dismissal is unavailing. Delaware had sufficient opportunity in the district court to respond to the arguments presented by Associated. *See McCarty v. United States*, 929 F.2d 1085, 1088 (5th Cir. 1991). Moreover, the evidence presented fails to indicate that a genuine issue of material fact exists. *Ross v. Univ. of Tex. at San Antonio*, 139 F.3d 521, 527 (5th Cir. 1998); Fed. R. Civ. P. 56. Thus, any error committed by the district court was harmless, and the district court’s decision to grant Associated’s motion was correct.

AFFIRMED.