

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Ritchie Capital Management, L.L.C. v. General Electric Capital Corp.

821 F.3d 349 (2d Cir. 2016) · Decided May 11, 2016

OPINION

PER CURIAM.

PER CURIAM: Ritchie Capital Management, L.L.C. and the four other appellants (collectively, “Ritchie”) appeal from an August 4, 2015 final judgment entered in the United States District Court for the Southern District of New York (Engelmayer, J.) that dismissed Ritchie’s claims for lack of standing and, in the alternative, for failing to state a claim upon which relief could be granted.

Ritchie brought New York state law claims against General Electric Capital Corporation (“GECC”) for civil conspiracy to commit fraud, for aiding and abetting fraud, and for negligence in connection with Thomas Petters’ Ponzi scheme. GECC moved to dismiss the case, and the district court granted the motion, determining that Ritchie lacked standing to bring the conspiracy and aiding and abetting claims because the causes of action were the exclusive property of the Petters Estate and, in the alternative, that Ritchie failed to state a claim because Ritchie failed to plead proximate cause for the aiding and abetting claim and failed to plead an “overt act” for the civil conspiracy claim.¹ We affirm on the ground that the plaintiffs lack standing to assert the claims they have brought; thus we do not address whether Ritchie has “adequately pled claims entitling appellants to relief.

The underlying facts, as alleged, are described in the district court’s opinion. See *Ritchie Capital Mgmt. L.L.C. v. Gen. Elect. Capital Corp.*, 121 F.Supp.3d 321, 325-30 (S.D.N.Y.2015). They may be summarized as follows. Beginning in October 2000 GECC uncovered, joined, and profited from Petters’ Ponzi scheme. GECC knowingly allowed Petters to use GECC’s business reputation, a letter of recommendation, and documents, containing misrepresentations by GECC to recruit new investors. • Later, based in part upon GECC’s relationship with Petters, Ritchie invested in Petters’ scheme and suffered a monetary loss as a result of its investment.

After the Ponzi scheme came unraveled in 2008, Petters was convicted of fraud. As part of the ongoing bankruptcy proceedings in connection with the Petters-related companies, the Petters Estate Trustee (“Trustee”) brought an action against GECC- for fraudulent transfers rooted in the same conduct outlined above that- underlies Ritchie’s claims against GECC.

GECC agreed to pay \$19 million to the Trustee to settle all of the claims that the Petters Estate owned. See Settlement Agreement at 7-8, *In re Petters Co.*, No. 08-45257 (Bankr.D. Minn. June 28, 2012) ECF No. 1733. The district court determined that- Ritchie lacked standing in this case because its claims were the sole property of the Petters Estate. Appealing the district court's ruling on standing, Ritchie argues that its claims are not' the property of the Petters Estate because they are particularized to Ritchie, the Petters Estate could not bring them on its own, and if the Petters Estate had brought these claims, it would have been barred by the doctrine of *in pari delicto*.

GECC argues that Ritchie's claims are the sole property of the Petters Estate because Ritchie suffered- generalized harm that is common to all subsequent investors in Petters' scheme. Having conducted a *de novo* review of the facts and arguments presented in this case, see *Ford v. D.C. 37 Union Local 1519*, 579 F.3d 187, 188 (2d Cir.2009), we conclude that Ritchie lacks standing to assert its "claims because Ritchie has not alleged a particularized injury.

In so holding, we adopt and incorporate by reference the well-reasoned standing analysis in section III part B(l) of the district court's opinion and order. *Ritchie*, 121 F.Supp.3d at 333-38. Ritchie, argues that the district court abused its discretion by not allowing Ritchie the opportunity to amend the complaint. See *Williams v. Citigroup Inc.*, 659 F.3d 208, 212 (2d Cir.2011).

We dis*352agree. Ritchie did not- ask the district court for leave to amend. *Id.* (noting that "[w]e have described the contention that the District Court abused its discretion in not permitting an amendment that was never requested as frivolous" (internal quotation omitted)). Furthermore, the district court's rules explicitly state that if a party does not elect to amend within 21 days of a motion to dismiss no further opportunity to amend will ordinarily be granted.

Judge Paul A. Engelmayer, Individual Rules and Practices in Civil Cases R. 3(B). We find no error in the district court's decision to dismiss Ritchie's complaint with prejudice and without granting Ritchie leave to amend.

We have considered Ritchie's remaining arguments and found them to be' without merit. The judgment of the district court is therefore affirmed.. The district court also determined that Ritchie's negligence claim was time barred and, in any event, failed to state a claim because GECC did not owe a duty to Ritchie.

Because Ritchie does not argue that the district court erred in dismissing its negligence claim we consider it abandoned on appeal. See *Gordon v. Softech Int'l, Inc.*, 726 F.3d 42, 47 n. 1 (2d Cir.2013).