

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

Andreo v. Friedlander, Gaines, Cohen, Rosenthal & Rosenberg

660 F. Supp. 1362 (D. Conn. 1987) · No. H-85-551 Civil · Decided May 12, 1987

SUMMARY

The court addresses motions for summary judgment, judgment on the pleadings, and dismissal in a dispute arising from allegedly fraudulent private placements of limited partnership interests in satellite communication facilities. It treats the motion as one for judgment on the pleadings and analyzes the sufficiency of the plaintiffs’ securities fraud aiding-and-abetting claims, RICO claims, statute of limitations arguments, and state-law claims against a law firm. The court concludes that the amended complaint adequately pleads securities fraud aiding and abetting under a recklessness standard but does not sufficiently plead the law firm’s participation in or conspiracy to violate RICO.

CASE DETAILS

COURT	United States District Court for the District of Connecticut
WRITING FOR THE COURT	Blumenfeld, Senior District Judge
JURISDICTION	Connecticut
DECIDED	May 12, 1987
DOCKET	H-85-551 Civil
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Friedlander, Gaines, Cohen, Rosenthal & Rosenberg moved for summary judgment, judgment on the pleadings, and dismissal of the amended complaint. The court treated the motion as one for judgment on the pleadings under Rules 12(c) and 12(h)(2), granted it in part, and denied it in part.
STANDARD OF REVIEW	On judgment on the pleadings, the court applied the Rule 12(b)(6) standard, treating properly pleaded allegations as true and construing them in favor of the nonmovant. Summary judgment was inappropriate because discovery had been stayed and plaintiffs had not received a reasonable opportunity to respond to facts outside the pleadings.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority within the District of Connecticut and not binding on other courts except as to the court's treatment of the case.

TOPICS

commercial litigation

motion for judgment on the pleadings

motions to dismiss

civil procedure

breach of contract

PRACTICE AREAS

securities litigation

commercial litigation

civil procedure

RICO

contracts

QUESTIONS PRESENTED

1. Whether the motion should be treated as one for summary judgment, dismissal under Rule 12(b)(6), or judgment on the pleadings.
2. Whether the amended complaint pleaded an aiding-and-abetting securities-fraud claim against Friedlander Gaines with the particularity required by Rule 9(b).
3. Whether the amended complaint adequately alleged that Friedlander Gaines conducted or participated in a RICO enterprise under 18 U.S.C. § 1962(c).
4. Whether the amended complaint adequately alleged a RICO conspiracy under 18 U.S.C. § 1962(d).
5. Whether the statute of limitations barred the federal and state claims.
6. Whether the amended complaint stated a Connecticut third-party-beneficiary breach-of-contract claim.
7. Whether CUTPA applies to claims arising from the purchase and sale of securities.
8. Whether the court should retain pendent state-law claims.
9. Whether section 17(a) of the Securities Act of 1933 provides a private right of action in the Second Circuit.

HOLDINGS

1. The motion was properly treated as a motion for judgment on the pleadings rather than as a motion for summary judgment or an untimely Rule 12(b)(6) motion.
2. The amended complaint adequately stated an aiding-and-abetting securities-fraud claim against Friedlander Gaines under Rule 9(b).
3. The amended complaint did not state a RICO claim against Friedlander Gaines under 18 U.S.C. § 1962(c).
4. The amended complaint did not adequately state a RICO-conspiracy claim against Friedlander Gaines.
5. The federal and state claims were not subject to dismissal on statute-of-limitations grounds at the pleading stage because the allegations of fraudulent concealment sufficiently invoked equitable tolling.
6. The amended complaint adequately stated a breach-of-contract claim based on plaintiffs' alleged status as intended third-party beneficiaries of the contract between Rabin and Friedlander Gaines.
7. CUTPA does not apply to the purchase and sale of securities, so the CUTPA claim was dismissed.

8. The court retained the state-law claims because the amended complaint stated a federal cause of action and the state claims arose from the same occurrences.
9. Under binding Second Circuit precedent, section 17(a) of the Securities Act of 1933 provides a private right of action.

KEY QUOTATIONS

“This does not mean that attorneys who draft such documents have an affirmative duty to verify all information provided by their clients, or to discover if any pertinent information might have been omitted.”
(660 F. Supp. at 1368)

“These passages require “at least two acts that have a common purpose of furthering a continuing criminal enterprise.”” (660 F. Supp. at 1370)

“Thus, until such time as the rationale of Kirshner is overruled, plaintiffs in this circuit have a private right of action under section 17(a).” (660 F. Supp. at 1375)

FACTUAL BACKGROUND

Sixty-seven plaintiffs purchased interests in one or more of three limited partnerships formed to build and operate satellite communications ground stations. Plaintiffs alleged that the defendants participated in a fraudulent scheme involving materially false financial projections, omissions, and irregularities in offering memoranda, tax opinions, and related partnership transactions. Friedlander Gaines allegedly drafted the offering memoranda and tax opinions and recklessly included erroneous information or omitted material information. Plaintiffs also alleged that they were intended third-party beneficiaries of a contract between Rabin and Friedlander Gaines.

PROCEDURAL HISTORY

Plaintiffs filed an action arising from the alleged fraudulent sale of limited partnership interests, asserting federal securities, RICO, state statutory, and common-law claims. The court previously dismissed the original complaint with leave to amend, and plaintiffs filed an amended complaint. The court had also dismissed claims against Peat Marwick in a prior ruling. After the amended complaint and oral argument, the court dismissed the RICO and CUTPA claims against Friedlander Gaines, dismissed the CUTPA claim against the other defendants on its own motion, and allowed the securities-fraud aiding-and-abetting and third-party-beneficiary contract claims against Friedlander Gaines to proceed.

DISPOSITION

other

CASES CITED

- In re G. & A. Books, Inc., 770 F.2d 288, 295 (2d Cir. 1985)
- Shapiro v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 353 F. Supp. 264, 268 (S.D.N.Y. 1972), aff'd on other grounds, 495 F.2d 228 (2d Cir. 1974)

- Shapiro v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 495 F.2d 228, 231 (2d Cir. 1974)
- IIT, An International Investment Trust v. Cornfeld, 619 F.2d 909, 922-27 (2d Cir. 1980)
- Decker v. Massey-Ferguson, Ltd., 681 F.2d 111, 114-20 (2d Cir. 1982)
- Ross v. A.H. Robins Co., 607 F.2d 545, 557-58 (2d Cir. 1979)
- Connecticut National Bank v. Fluor Corp., 808 F.2d 957, 962 (2d Cir. 1987)
- Sirota v. Solitron Devices, Inc., 673 F.2d 566, 575 (2d Cir. 1982), cert. denied, 459 U.S. 838 (1982)
- Morgan v. Prudential Group, Inc., 527 F. Supp. 957, 961 (S.D.N.Y. 1981), aff'd mem., 729 F.2d 1443 (2d Cir. 1983)
- In re Investors Funding Corp. Securities Litigation, 523 F. Supp. 550, 558 (S.D.N.Y. 1980)
- Olek v. Fischer, [1979] Fed. Sec. L. Rep. (CCH) ¶ 96,898, at 95,699 (S.D.N.Y. 1979), aff'd on other grounds, 623 F.2d 791 (2d Cir. 1980)
- Mallis v. Bankers Trust Co., 615 F.2d 68, 82 (2d Cir. 1980), cert. denied, 449 U.S. 1123 (1981)
- Chiarella v. United States, 445 U.S. 222 (1980)
- Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985)
- United States v. Ianniello, 808 F.2d 184, 190-92 (2d Cir. 1986)
- United States v. Turkette, 452 U.S. 576, 583 (1981)
- Zerman v. Ball, 735 F.2d 15, 22 (2d Cir. 1984)
- Luce v. Edelstein, 802 F.2d 49, 54 (2d Cir. 1986)
- O'Brien v. Dean Witter Reynolds, Inc., [1984 Transfer Binder] Fed. Sec. L. Rep. ¶ 91,509, at 98,562 (D. Ariz. 1984)
- Nye & Nissen v. United States, 336 U.S. 613, 619 (1949)
- United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938)
- United States v. Dickerson, 508 F.2d 1216, 1217-18 (2d Cir. 1975)
- United States v. Newman, 490 F.2d 139, 142-43 (3d Cir. 1974)
- United States v. Castellano, 610 F. Supp. 1151, 1165 (S.D.N.Y. 1985)
- United States v. Russotti, 555 F. Supp. 1236, 1241 (W.D.N.Y. 1983), aff'd on other grounds, 717 F.2d 27 (2d Cir. 1983)
- Laterza v. American Broadcasting Co., 581 F. Supp. 408, 412-13 (S.D.N.Y. 1984)
- Kranzdorf v. Green, 582 F. Supp. 335, 337 (E.D. Pa. 1983)
- United States v. Cauble, 706 F.2d 1322, 1341 (5th Cir. 1983), cert. denied, 465 U.S. 1005 (1984)
- United States v. Melton, 689 F.2d 679, 683 (7th Cir. 1982)
- United States v. Ruggiero, 726 F.2d 913, 921 (2d Cir. 1984), cert. denied, 469 U.S. 831 (1984)
- Alfaro v. E.F. Hutton & Co., 606 F. Supp. 1100, 1117 (E.D. Pa. 1985)
- Ellentuck v. Klein, 570 F.2d 414, 426 (2d Cir. 1978)
- Angola v. Civiletti, 666 F.2d 1, 4 (2d Cir. 1981)
- Knapp v. New Haven Road Construction Co., 150 Conn. 321, 325-26, 189 A.2d 386 (1963)
- Colonial Discount Co. v. Avon Motors, Inc., 137 Conn. 196, 201, 75 A.2d 507 (1950)

- Russell v. Dean Witter Reynolds, Inc., 200 Conn. 172, 175, 184, 510 A.2d 972 (1986)
- United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)
- Nolan v. Meyer, 520 F.2d 1276, 1280 (2d Cir. 1975)
- Kirshner v. United States, 603 F.2d 234 (2d Cir. 1978), cert. denied, 442 U.S. 909 (1979)
- Herman & MacLean v. Huddleston, 459 U.S. 375, 378 n.2 (1983)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-district-of-connecticut/1987/andreo-v-friedlander-gaines-cohen-rosenthal-and-rosenberg-0r2m5ni0>