

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

California Architectural Building Products, Inc. v. Franciscan
Ceramics, Inc.

818 F.2d 1466 (9th Cir. 1987) · Decided June 4, 1987

SUMMARY

Ceramic tile dealers brought a civil RICO action against a manufacturer, alleging mail and wire fraud based on concealed plans to close the business. The Ninth Circuit affirmed summary judgment and denial of leave to amend, holding that the dealers failed to present a genuine issue regarding intent to defraud, but reversed Rule 11 sanctions against their attorney.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Sneed, Circuit Judge; Farris; Noonan; Sneed
JURISDICTION	Federal
DECIDED	June 4, 1987
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs appealed the grant of summary judgment against their RICO claims and the denial of leave to file a second amended complaint. Defendants cross-appealed, arguing that the Rule 11 sanctions imposed against plaintiffs' attorney were inadequate.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Denial of leave to amend after a responsive pleading is reviewed for abuse of discretion. The district court's legal conclusion that conduct violated Rule 11 is reviewed de novo.
PRECEDENTIAL VALUE	published and precedential
PARTIES	California Architectural Building Products, Inc., Other dealer plaintiffs v. Franciscan Ceramics, Inc., Josiah Wedgwood & Sons, Inc., Wedgwood plc

TOPICS

summary judgment

commercial litigation

motion to amend

sanctions

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PRACTICE AREAS

RICO

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QUESTIONS PRESENTED

1. Whether the dealers presented a genuine issue of material fact concerning the fraudulent intent necessary to support their RICO mail- and wire-fraud allegations.
2. Whether multiple alleged acts of mail and wire fraud involving multiple victims and occurring over several months constituted a RICO pattern of racketeering activity despite relating to one prospective business closure.
3. Whether the district court abused its discretion by denying leave to file a second amended complaint on the ground that the proposed amendment would be futile.
4. Whether the district court properly imposed Rule 11 sanctions on the dealers' attorney for signing and continuing to prosecute the complaint.

HOLDINGS

1. Summary judgment was appropriate because the dealers failed to show a genuine issue of fact concerning Franciscan's intent to defraud, even though the district court relied on an incorrect conclusion regarding the RICO pattern requirement.
2. Multiple alleged acts of mail and wire fraud involving multiple victims and continuing over five months can constitute a RICO pattern even when the acts relate to a single alleged criminal episode.
3. Absent an independent duty, such as a fiduciary or explicit statutory duty, failure to disclose a contingent business plan cannot constitute a fraudulent scheme.
4. The district court acted within its discretion in denying leave to amend because the proposed amendment was futile.
5. Rule 11 sanctions were improper because the complaint was not so baseless or implausible that the attorney's decision to sign and prosecute it violated the rule.

KEY QUOTATIONS

“Under Fed.R.Civ.P. 56(c), summary judgment is appropriate if the pleadings and supporting materials show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (818 F.2d at 1468)

“Therefore the dealers have alleged two or more acts of racketeering activity, and this, we hold, constitutes a pattern.” (818 F.2d at 1469)

“Absent an independent duty, such as a fiduciary duty or an explicit statutory duty, failure to disclose cannot be the basis of a fraudulent scheme.” (818 F.2d at 1472)

FACTUAL BACKGROUND

The dealer plaintiffs alleged that Franciscan represented that it would remain in business and supply tile through at least March 1984, despite allegedly deciding before May 3, 1983 to close in September or October 1983. Franciscan continued production, invested in its business, developed new products, pursued marketing arrangements, and explored whether it could restore profitability while considering closure as a contingency. Its board did not decide to close until September 1983, and Franciscan continued production through October to fill outstanding orders.

PROCEDURAL HISTORY

Ceramic-tile dealers sued the manufacturer and related entities under RICO, alleging that the manufacturer fraudulently concealed its plan to close while inducing continued purchases. The district court granted defendants summary judgment, denied leave to amend with prejudice as to RICO claims, and imposed \$350 in Rule 11 sanctions against plaintiffs' attorney. The Ninth Circuit consolidated the appeals and cross-appeal, affirmed the summary judgment and denial of leave to amend, and reversed the Rule 11 sanctions.

DISPOSITION

other

CASES CITED

- *Gabrielson v. Montgomery Ward & Co.*, 785 F.2d 762, 764-65 (9th Cir. 1986)
- *Celotex Corp. v. Catrett*, 106 S. Ct. 2548, 2552-53 (1986)
- *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2511 (1986)
- *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 1356 (1986)
- *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985)
- *Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1399-1400 (9th Cir. 1986)
- *United States v. Bohonus*, 628 F.2d 1167, 1171 & n.7 (9th Cir. 1980), cert. denied, 447 U.S. 928 (1980)
- *United States v. Dowling*, 739 F.2d 1445, 1449 (9th Cir. 1984), rev'd on other grounds, 473 U.S. 207 (1985)
- *Chism v. National Heritage Life Insurance Co.*, 637 F.2d 1328, 1331 (9th Cir. 1981)
- *Foman v. Davis*, 371 U.S. 178, 182 (1962)
- *Klamath-Lake Pharmaceutical Ass'n v. Klamath Medical Service Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983), cert. denied, 464 U.S. 822 (1983)
- *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 829 (9th Cir. 1986)
- *International Data Bank, Ltd. v. Zepkin*, 812 F.2d 149, 154 (4th Cir. 1987)
- *Superior Oil Co. v. Fulmer*, 785 F.2d 252, 257 & n.7 (8th Cir. 1986)
- *Madden v. Gluck*, 815 F.2d 1163 (8th Cir. 1987)
- *Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928-29 (10th Cir. 1987)
- *Condict v. Condict*, 815 F.2d 579, 583-85 (10th Cir. 1987)
- *Roeder v. Alpha Industries, Inc.*, 814 F.2d 22, 30-31 (1st Cir. 1987)
- *Morgan v. Bank of Waukegan*, 804 F.2d 970, 975-76 (7th Cir. 1986)

- Marks v. Pannell Kerr Forster, 811 F.2d 1108, 1110-12 (7th Cir. 1987)
- United States v. Ianniello, 808 F.2d 184, 192 (2d Cir. 1986), cert. denied, 107 S. Ct. 3229 (1987)
- Bank of America National Trust & Savings Ass'n v. Touche Ross & Co., 782 F.2d 966, 971 (11th Cir. 1986)

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