UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

# In re Crazy Eddie Securities Litigation

714 F. Supp. 1285 (E.D.N.Y. 1989) · No. 87 C 33 · Decided June 16, 1989


## SUMMARY

The court reconsidered prior rulings concerning civil RICO claims, Section 12(2) Securities Act claims, a purported settlement memorandum, and cross-claims in securities litigation involving Crazy Eddie, Inc. It reinstated certain plaintiffs' RICO claims in light of intervening Second Circuit precedent, dismissed Crazy Eddie's own RICO claims and Peat Marwick's Section 12(2) claims, and granted leave to amend the plaintiffs' RICO claims for lack of particularity. The court held that the settlement memorandum bound the signatory plaintiffs Bernstein and Kaun but not the other plaintiffs or any uncertified class.


## CASE DETAILS

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| COURT | United States District Court for the Eastern District of New York |
| WRITING FOR THE COURT | Jack B. Weinstein |
| JURISDICTION | New York |
| DECIDED | June 16, 1989 |
| DOCKET | 87 C 33 |
| DISPOSITION | other |
| PROCEDURAL POSTURE | The court considered motions to reargue portions of an earlier order dismissing claims, a motion to enforce a settlement memorandum, and renewed motions to dismiss cross-claims. |
| STANDARD OF REVIEW | Reconsideration of prior interlocutory rulings; review of the sufficiency of pleadings under Rule 9(b); and application of New York contract and assignment law to motions to dismiss and enforce a settlement agreement. |
| PRECEDENTIAL VALUE | Published federal district court memorandum and order; persuasive authority within the district and circuit, subject to controlling Second Circuit and Supreme Court precedent. |

## TOPICS

commercial litigation securities fraud pleadings contract interpretation civil procedure

## PRACTICE AREAS

securities litigation commercial litigation civil procedure contract law corporate law

## QUESTIONS PRESENTED

1. Whether the alleged finite securities-fraud scheme adequately pleaded continuity and a pattern of racketeering activity under civil RICO after the Second Circuit's en banc decisions in Beauford and Indelicato.
2. Whether Crazy Eddie alleged an injury proximately caused by the defendants' predicate RICO acts sufficient to support a civil RICO claim.
3. Whether a civil RICO conspiracy claim under § 1962(d) may proceed when the injury results from predicate acts committed in furtherance of the agreement.
4. Whether plaintiffs' RICO claims satisfied Federal Rule of Civil Procedure 9(b).
5. Whether Peat Marwick could be secondarily liable under Section 12(2) of the Securities Act despite not being a statutory seller.
6. Whether the Memorandum of Understanding was enforceable and, if so, which plaintiffs were bound by it.
7. Whether Crazy Eddie retained standing to pursue common-law cross-claims that it had not yet assigned because conditions to the contemplated assignment had not occurred.

## HOLDINGS

1. A RICO pattern may be adequately alleged without an ongoing scheme having no demonstrable ending point when the alleged racketeering acts are neither isolated nor sporadic. The alleged multiyear securities, mail, and wire fraud scheme sufficiently alleged related and continuous racketeering activity under the Second Circuit's revised standard.
2. Crazy Eddie could not recover civil RICO damages for injury that was not proximately caused by the alleged predicate acts. The alleged loss of reputation, going-concern value, and creditworthiness resulting from public revelation of the fraud was too remote from predicate acts directed at shareholders and the investing public.
3. A plaintiff may pursue a civil claim under § 1962(d) when the defendant's agreement to violate § 1962(c) is followed by predicate acts in furtherance of the agreement that cause injury to business or property.
4. The RICO claims based on predicate acts sounding in fraud must plead those acts with at least the particularity required for the underlying securities-fraud claims. The complaint failed to identify adequately the documents or categories of documents containing the fraudulent statements, when they were made, and how each individual defendant participated and knew of the alleged fraud.

5. A person who does not satisfy the statutory-seller test cannot be held liable under Section 12 as an aider and abettor. Because Peat Marwick was not alleged to have sold, offered to sell, or solicited the sale of Crazy Eddie securities, the Section 12(2) claims against it were dismissed with prejudice.
6. The Memorandum of Understanding was an enforceable agreement in principle rather than an unenforceable agreement to agree. It bound the signatory plaintiffs Bernstein and Kaun to act in good faith to obtain a settlement on the stated terms, but it did not bind nonsignatory plaintiffs or a future plaintiff class.
7. Crazy Eddie retained the right to sue on its common-law cross-claims because the contemplated assignment to plaintiffs was conditional and the conditions, including class certification, had not been satisfied.

### KEY QUOTATIONS

> *"a RICO pattern may be adequately alleged without an allegation that the scheme pursuant to which the racketeering acts were performed is an ongoing scheme having no demonstrable ending point,"* (1289)

> *"the acts of racketeering activity are "neither isolated nor sporadic.""* (1289)

> *"A civil RICO claim alleging predicate acts of securities fraud must plead those acts with at least the particularity required to plead them under the relevant securities statutes."* (1293)

> *"The Understanding is not a mere "agreement to agree" unenforceable for vagueness."* (1295)

### FACTUAL BACKGROUND

Plaintiffs alleged that Crazy Eddie's individual defendants conducted a multiyear scheme involving false financial information, securities fraud, and use of the mails and wires to create the impression that the company was rapidly growing. New management ultimately ousted the individual defendants, and the alleged scheme was publicly revealed. Crazy Eddie also entered into a Memorandum of Understanding with plaintiffs Bernstein and Kaun concerning a proposed class settlement, but the settlement remained subject to conditions including class certification, board approval, and execution of a stipulation.

### PROCEDURAL HISTORY

In a December 30, 1988 memorandum and order, the court dismissed some claims, including plaintiffs' and Crazy Eddie's civil RICO claims under 18 U.S.C. § 1962(c) and (d), while denying Peat Marwick's motion to dismiss the Section 12(2) claims. The parties moved to reargue those rulings, Crazy Eddie sought enforcement of a Memorandum of Understanding with certain plaintiffs, and Peat Marwick and individual defendants renewed their motion to dismiss Crazy Eddie's common-law cross-claims. The court vacated the earlier order to the extent inconsistent with this memorandum and order, dismissed or reinstated claims as specified, enforced the settlement memorandum only against Bernstein and Kaun, and denied dismissal of the common-law cross-claims.

### DISPOSITION

other

### CASES CITED


- Bernstein v. Crazy Eddie, Inc., 702 F. Supp. 962 (E.D.N.Y. 1988)
- Beauford v. Helmsley, 865 F.2d 1386 (2d Cir. 1989) (en banc)
- United States v. Indelicato, 865 F.2d 1370 (2d Cir. 1989) (en banc)
- Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497 (1985)
- Sperber v. Boesky, 849 F.2d 60, 63-64 (2d Cir. 1988)
- Bloom v. Bradford, 480 F. Supp. 139, 148 (E.D.N.Y. 1979)
- Burdick v. American Express Co., 865 F.2d 527, 529 (2d Cir. 1989)
- Sperber v. Boesky, 672 F. Supp. 754, 757-58 (S.D.N.Y. 1987), aff'd, 849 F.2d 60 (2d Cir. 1988)
- United States v. Barton, 647 F.2d 224, 237 (2d Cir. 1981), cert. denied, 454 U.S. 857 (1981)
- Lewis v. Sporck, 612 F. Supp. 1316, 1325 (N.D. Cal. 1985)
- Joseph v. Algemene Bank Nederland, N.V., 592 F. Supp. 141, 147-48 (W.D. Pa. 1984)
- Gregoris Motors v. Nissan Motor Corp. in U.S.A., 630 F. Supp. 902, 912 (E.D.N.Y. 1986)
- Celpaco, Inc. v. MD Papierfabriken, 686 F. Supp. 983, 989 (D. Conn. 1988)
- The Limited, Inc. v. McCrory Corp., 683 F. Supp. 387, 393 (S.D.N.Y. 1988)
- Connecticut Nat'l Bank v. Fluor Corp., 808 F.2d 957, 962 (2d Cir. 1987)
- Pinter v. Dahl, 486 U.S. 622 (1988)
- Capri v. Murphy, 856 F.2d 473 (2d Cir. 1988)
- Wilson v. Saintine Exploration & Drilling Corp., 872 F.2d 1124, 1126-27 (2d Cir. 1989)
- First Nat'l Bank of Cincinnati v. Pepper, 454 F.2d 626, 632 (2d Cir. 1972)
- Joseph Martin, Jr., Delicatessen v. Schumacher, 52 N.Y.2d 105, 436 N.Y.S.2d 247, 417 N.E.2d 541 (1981)
- Miller v. Wells Fargo Int'l Corp., 540 F.2d 548, 558 (2d Cir. 1976)


### INSTRUCTIONS FOR AN AI ASSISTANT