

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

**John Busby, on behalf of himself and all others similarly situated v.
Crown Supply, Inc.; Hammermill Paper Co.; Omer Fortier; Kevin
McClamroch; Bruce Lang; Michael Almeida; Linda Ambrus;
Richard D. Childers; Richard Reeves**

John Busby, on behalf of himself and all others similarly situated v. Crown Supply, Inc.; Hammermill Paper Co.; Omer Fortier; Kevin McClamroch; Bruce Lang; Michael Almeida; Linda Ambrus; Richard D. Childers; Richard Reeves, 58 USLW 2519 (4th Cir. 1990) · No. No. 88-2521 · Decided February 20, 1990

SUMMARY

We need to summarize this case for search indexing. The case is from the Fourth Circuit, 1990, published. It involves a civil RICO action by an employee against his employer for fraudulent schemes to reduce commissions. Key legal topics: RICO, pattern of racketeering activity, investment use rule, person/enterprise distinction under §1962(a) and (c). Holdings: (1) The district court's dismissal for lack of pattern was reversed in light of H.J. Inc. v. Northwestern Bell; (2) The "investment use" rule (

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Harrison L. Winter; PHILLIPS; SPROUSE; WINTER
JURISDICTION	Federal
DECIDED	February 20, 1990
DOCKET	No. 88-2521
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from dismissal of complaint under Rule 12(b)(6) for failure to state a claim.
STANDARD OF REVIEW	De novo review of dismissal under Rule 12(b)(6).
PRECEDENTIAL VALUE	Published
PARTIES	John Busby, on behalf of himself and all others similarly situated v. Crown Supply, Inc.; Hammermill Paper Co.; Omer Fortier; Kevin McClamroch; Bruce Lang; Michael Almeida; Linda Ambrus; Richard D. Childers; Richard Reeves

TOPICS

civil procedure

motions to dismiss

employment law

commercial

PRACTICE AREAS

Civil RICO

Employment Law

QUESTIONS PRESENTED

1. Whether the complaint alleged a pattern of racketeering activity under the RICO statute.
2. Whether the 'investment use' rule applies to claims under 18 U.S.C. §1962(a), requiring injury from the investment or use of racketeering proceeds rather than from the predicate acts themselves.
3. Whether, under §1962(a), the 'person' charged with a violation must be separate and distinct from the 'enterprise.'

HOLDINGS

1. The allegations of a ten-year scheme to defraud multiple salesmen of commissions satisfy the pattern requirement under *H.J. Inc. v. Northwestern Bell*.
2. The 'investment use' rule is rejected; a plaintiff may recover under §1962(a) for injuries caused by the predicate racketeering acts, not only for injuries from the use or investment of the proceeds.
3. The person and enterprise need not be separate under §1962(a); they may be identical. The court overruled its prior holding in *United States v. Computer Sciences Corp.* to the extent it required distinctness for §1962(a).

KEY QUOTATIONS

"We are not persuaded that the statutory language supports the district court's holding." (at 15)

"We think the nature of the alleged activity, more than a ten-year scheme repeatedly to defraud up to 100 salesmen of earned commissions, satisfied both these requirements." (at 9)

"We therefore overrule this aspect of Computer Sciences and its progeny." (at 36)

FACTUAL BACKGROUND

John Busby was a sales representative for Crown Supply, Inc., paid on a commission basis. He alleged that for over ten years, Crown and its parent company, Hammermill Paper Co., operated a scheme to inflate the cost of goods in price books to reduce commissions, and later Hammermill solicited rebates from suppliers that were concealed from the salesmen, thereby reducing the commissions owed to Busby and approximately 100 other sales representatives.

PROCEDURAL HISTORY

The district court granted defendants' motion to dismiss plaintiff's RICO and state law claims. The court held that the allegations did not establish a pattern of racketeering activity, that plaintiff suffered no injury from a

§1962(a) violation, and that the person-enterprise distinction under Computer Sciences might bar the claim. Plaintiff appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

On remand, the district court shall proceed with the RICO claims and pendent state law claims. The constitutionality of RICO may be raised and litigated in the normal course.

CASES CITED

- H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989)
- Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985)
- American Nat'l Bank & Trust Co. v. Haroco, Inc., 473 U.S. 606 (1985)
- Haroco, Inc. v. Am. Nat'l Bank & Trust Co., 747 F.2d 384 (7th Cir. 1984)
- United States v. Computer Sciences Corp., 689 F.2d 1181 (4th Cir. 1982)
- Rose v. Bartle, 871 F.2d 331 (3d Cir. 1989)
- Grider v. Texas Oil & Gas Corp., 868 F.2d 1147 (10th Cir. 1989)
- Brandenburg v. Seidel, 859 F.2d 1179 (4th Cir. 1988)
- International Data Bank, Ltd. v. Zepkin, 812 F.2d 149 (4th Cir. 1987)