UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Securities & Exchange Commission v. Tome

833 F.2d 1086 (2d Cir. 1987) · Decided November 20, 1987

SUMMARY

The Second Circuit affirmed a judgment finding Giuseppe B. Tome, affiliated Panamanian corporations, and other defendants liable for insider trading in violation of Sections 10(b) and 14(e) of the Securities Exchange Act and related SEC rules. The court rejected challenges concerning personal jurisdiction and service by publication, admissibility of co-conspirator deposition testimony, sufficiency of the evidence, and disgorgement. The district court had imposed injunctions and ordered disgorgement of trading profits with prejudgment interest.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Irving R. Kaufman Lumbard, Circuit Judge; Cardamone, Circuit Judge; Lumbard, Circuit Judge; Oakes, Circuit Judge
JURISDICTION	Federal
DECIDED	November 20, 1987
DISPOSITION	affirmed
PROCEDURAL POSTURE	The SEC obtained a bench-trial judgment in the Southern District of New York finding defendants liable for insider trading and violations of Sections 10(b) and 14(e) of the Securities Exchange Act and Rules 10b-5 and 14e-3. The district court imposed injunctions and ordered disgorgement exceeding $2.7 million plus prejudgment interest. The Panamanian corporations, Leati, and Lombardfin appealed.
STANDARD OF REVIEW	The court reviewed the district court's personal-jurisdiction and service-of-process ruling for legal correctness, reviewed the evidentiary ruling for abuse of discretion, reviewed the sufficiency of the evidence supporting the findings and injunction, and reviewed the equitable disgorgement remedy for legal error.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	Trasatlantic Financial Co., S.A., Nayarit Investments, S.A., Finvest Underwriters and Dealers Corp., Paolo Mario Leati, Lombardfin, S.p.A. v. Securities and Exchange Commission

TOPICS

commercial litigation · service of process · evidence · injunctions · remedies

PRACTICE AREAS

securities litigation · federal civil procedure · evidence · equitable remedies

QUESTIONS PRESENTED

1. Whether service by publication and related notice satisfied due process and gave the district court personal jurisdiction over Leati and Lombardfin.
2. Whether Dionisio Csopey's deposition testimony was admissible under the coconspirator exception to the hearsay rule.
3. Whether the evidence supported the findings that the defendants traded on material nonpublic information in violation of the federal securities laws.
4. Whether the evidence supported injunctive relief against Leati and Lombardfin.
5. Whether the district court had equitable authority to order disgorgement of profits without proof of identifiable investor damages.

HOLDINGS

1. Service by publication in the International Herald Tribune, together with the defendants' actual knowledge of the action and opportunity to appear, satisfied due process and supported personal jurisdiction where the SEC reasonably treated them as unknown defendants because their own misleading submissions concealed their identities and involvement.
2. The district court properly admitted Csopey's deposition testimony under the coconspirator exception to the hearsay rule.
3. The evidence amply supported the district court's findings that the defendants traded on material nonpublic information in breach of fiduciary duties and violated the federal securities laws.
4. The district court properly enjoined Leati and Lombardfin because the record established a reasonable likelihood that their past violations would recur.
5. Once the SEC established violations of the securities laws, the district court had equitable authority to order disgorgement of the defendants' illegal profits without determining whether identifiable private investors suffered compensable damages.

KEY QUOTATIONS

> *"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."* (833 F.2d at 1093)

> *"The paramount purpose of enforcing the prohibition against insider trading by ordering disgorgement is to make sure that wrongdoers will not profit from their wrongdoing."* (833 F.2d at 1096)

FACTUAL BACKGROUND

Giuseppe B. Tome had a confidential business relationship with Edgar Bronfman and Seagram and obtained nonpublic information that Seagram was preparing a tender offer for St. Joe Minerals. On March 10, 1981, one day before the public announcement, Tome and associated entities purchased large quantities of St. Joe stock and call options and urged others, including Leati and Lombardfin, to trade. After the announcement caused the stock price to rise, the traders liquidated their positions for substantial profits and attempted to conceal their conduct. Leati and Lombardfin later submitted misleading information to the SEC and declined to participate in the litigation despite actual knowledge of the action.

PROCEDURAL HISTORY

The SEC initially sued unidentified purchasers of St. Joe securities and later amended its complaint as defendants were identified. The district court authorized service by publication, conducted a bench trial, admitted the deposition testimony of Dionisio Csopey under the coconspirator exception, found violations of the federal securities laws, issued injunctions, and ordered disgorgement. The Second Circuit affirmed; it had previously dismissed Tome's appeal because he was a fugitive but addressed the appeals of the Panamanian defendants, Leati, and Lombardfin.

DISPOSITION

affirmed

CASES CITED

- Wuchter v. Pizzutti, 276 U.S. 13, 24 (1928)
- Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-320 (1950)
- Mennonite Board of Missions v. Adams, 462 U.S. 791, 800 (1983)
- Grannis v. Ordean, 234 U.S. 385, 394 (1914)
- United States v. Rahme, 813 F.2d 31, 35-36 (2d Cir. 1987)
- United States v. Mangan, 575 F.2d 32, 44 (2d Cir.), cert. denied, 439 U.S. 931 (1978)
- Dirks v. SEC, 463 U.S. 646, 660 (1983)
- SEC v. Bausch & Lomb, Inc., 565 F.2d 8, 18 (2d Cir. 1977)
- SEC v. American Board of Trade, Inc., 751 F.2d 529, 537-538 (2d Cir. 1984)
- SEC v. Commonwealth Chemical Securities, Inc., 574 F.2d 90, 102 (2d Cir. 1978)
- SEC v. Blavin, 760 F.2d 706, 713 (6th Cir. 1985)
- Tull v. United States, 481 U.S. 412, 107 S. Ct. 1831, 1839 (1987)
- SEC v. Tome, 638 F. Supp. 596 (S.D.N.Y. 1986)
- SEC v. Tome, 638 F. Supp. 629 (S.D.N.Y. 1986)