UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Sperber v. Boesky

672 F. Supp. 754 (S.D.N.Y. 1987) · No. No. 86 Civ. 9232 (GLG) · Decided November 5, 1987

SUMMARY

The court considers a putative class action asserting that Ivan Boesky's insider trading and related conduct caused artificial inflation in securities prices and injured purchasers. Applying RICO's proximate-cause requirement, the court concludes that the alleged injuries from disclosure of the misconduct and from purported price inflation were not proximately caused by a violation giving rise to liability. The court grants Boesky's Rule 12(b)(6) motion to dismiss.

CASE DETAILS

COURT	United States District Court for the Southern District of New York
WRITING FOR THE COURT	District Judge Goettel
JURISDICTION	New York
DECIDED	November 5, 1987
DOCKET	No. 86 Civ. 9232 (GLG)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Putative class action alleging civil RICO claims arising from alleged insider trading, fraud, and commercial bribery; defendant moved to dismiss under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts the complaint's factual allegations as true and construes them in the light most favorable to the plaintiff; dismissal is proper when the plaintiff can prove no set of facts entitling the plaintiff to relief.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority within the Second Circuit and elsewhere.
PARTIES	Isabel Sperber, Aline K. Halye v. Ivan F. Boesky

TOPICS

commercial litigation · remedies · commercial · corporate law

PRACTICE AREAS

commercial litigation | securities litigation | civil RICO | remedies

QUESTIONS PRESENTED

1. Whether plaintiffs could state a civil RICO claim for injuries allegedly caused by the disclosure of Boesky's RICO violations and the resulting decline in security prices.
2. Whether plaintiffs could state a civil RICO claim for purchasing securities at allegedly artificially inflated prices where the alleged RICO violation was only an indirect or cumulative cause of the market inflation.
3. Whether the complaint adequately alleged proximate causation and a duty sufficient to support civil RICO standing and damages.

HOLDINGS

1. A plaintiff cannot state a civil RICO claim for injuries arising from disclosure of the alleged RICO violation rather than from the commission of the predicate acts themselves.
2. Plaintiffs could not state a civil RICO claim for allegedly inflated security prices because they failed to allege that the RICO violation proximately caused their injuries.
3. The complaint was dismissed because, under the theories advanced, plaintiffs could prove no set of facts entitling them to relief.

KEY QUOTATIONS

> *"An individual cannot state a RICO claim for injuries which admittedly did not arise from the commission of the RICO violation but rather from the fact that the violation was disclosed."* (758)

> *"The issue is not whether the announcement can serve as a shield, but whether it can serve as a sword. We hold that it cannot."* (758)

> *"Their point, apparently, is that the mere fact of actual causation spontaneously generates a duty. It does not."* (759)

FACTUAL BACKGROUND

Plaintiffs purchased shares or call options in six corporations during November 1986 and alleged that Ivan Boesky's reputation for successful risk arbitrage attracted investors and inflated prices in takeover-related securities. Boesky later agreed to plead guilty to insider trading and pay fines and disgorged profits, after which prices of the class securities allegedly declined. Plaintiffs sought civil RICO damages for the alleged inflated purchase prices and for losses associated with the market's reaction to disclosure of Boesky's misconduct.

PROCEDURAL HISTORY

Plaintiffs filed a putative class action on behalf of purchasers of common stock and call options in six corporations. Defendant moved to dismiss for failure to state a claim. The district court granted the motion and dismissed the complaint.

DISPOSITION

dismissed

CASES CITED

- Dahlberg v. Becker, 748 F.2d 85, 88 (2d Cir. 1984), cert. denied, 470 U.S. 1084 (1985)
- Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497 (1985)
- Roeder v. Alpha Industries, Inc., 814 F.2d 22 (1st Cir. 1987)
- Haroco, Inc. v. American National Bank & Trust Co. of Chicago, 747 F.2d 384, 398 (7th Cir. 1984), aff'd, 473 U.S. 606 (1985)
- Terre Du Lac Ass'n, Inc. v. Terre Du Lac, Inc., 772 F.2d 467, 472 (8th Cir. 1985), cert. denied, 475 U.S. 1082 (1986)
- Conley v. Gibson, 355 U.S. 41, 45-46 (1957)
- Wheatley Heights Neighborhood Coalition v. Jenna Resales Co., 447 F. Supp. 838, 842 (E.D.N.Y. 1978)
- Diamond v. Reynolds, No. 84 Civ. 280 (D. Del. Jan. 13, 1986)