

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Beauford v. Helmsley

865 F.2d 1386 (2d Cir. 1989) · Decided January 13, 1989

SUMMARY

The Second Circuit, sitting en banc, held that plaintiffs sufficiently pleaded a pattern of racketeering activity under civil RICO based on allegedly fraudulent mailings relating to the conversion of Parkchester apartments into condominiums. The court vacated the prior panel decision and the district court's judgment dismissing the complaint, and remanded for further proceedings. The court noted that the pleading might not satisfy Federal Rule of Civil Procedure 9(b) and suggested that plaintiffs be allowed to file a more particularized complaint.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Kearse, Circuit Judge; Altimari; Cardamone; Feinberg; Kearse; Lumbard; Mahoney; Meskill; Miner; Newman; Oakes; Pierce; Pratt; Winter
JURISDICTION	Federal
DECIDED	January 13, 1989
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed dismissal of an amended civil RICO complaint for failure to state a claim. A Second Circuit panel affirmed, and the appeal was reheard en banc.
STANDARD OF REVIEW	De novo review of dismissal for failure to state a claim.
PRECEDENTIAL VALUE	Published en banc federal appellate decision; precedential within the Second Circuit.
PARTIES	Roslyn O. Beauford, et al. v. Helmsley, Parkchester Apartments Co. partners, the sponsor's sales agent, the engineering firm, the individual engineer

TOPICS

- commercial litigation
- real estate
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the amended complaint adequately pleaded a RICO pattern of racketeering activity based on numerous allegedly fraudulent mailings made pursuant to a single condominium-conversion scheme.
2. Whether RICO requires multiple schemes, multiple episodes, temporal separation of racketeering acts, or an open-ended scheme to establish continuity.
3. Whether the amended complaint adequately pleaded the RICO enterprise element.
4. Whether the complaint's allegations were sufficient at the pleading stage despite potential deficiencies under Federal Rule of Civil Procedure 9(b).

HOLDINGS

1. A RICO pattern may be established without multiple schemes, multiple episodes, multiple transactions, or racketeering acts widely separated in time or space. Each individual racketeering act should be separately counted.
2. The amended complaint adequately pleaded a RICO pattern because the alleged mail frauds were interrelated and the allegations supported continuity or a threat of continuity, notwithstanding that the alleged scheme had a finite objective.
3. The amended complaint adequately pleaded the RICO enterprise element by alleging the sponsoring partnership and an association of the defendants as enterprises within the statutory definition.
4. Although the court found the RICO pattern allegations sufficient at the pleading stage, it expressed doubt that the complaints satisfied Rule 9(b) and suggested that the district court permit plaintiffs to file a new pleading complying with the Federal Rules of Civil Procedure.

KEY QUOTATIONS

"We impose no multiple episode requirement, and we conclude that for a determination of whether there is a RICO pattern, each individual racketeering act should be separately counted." (865 F.2d at 1391)

"What is required is that the complaint plead a basis from which it could be inferred that the acts of racketeering activity were neither isolated nor sporadic." (865 F.2d at 1392)

"The decision of the panel is vacated; the judgment of the district court is vacated, and the matter is remanded to the district court for further proceedings not inconsistent with this opinion." (865 F.2d at 1393)

FACTUAL BACKGROUND

The case concerned the conversion of the Parkchester apartment complex in the Bronx into condominiums. Plaintiffs alleged that the sponsors and engineering defendants concealed structural defects, asbestos, and the need to replace plumbing and electrical systems through misrepresentations and omissions in an offering plan and subsequent amendments. They alleged that defendants mailed the allegedly fraudulent materials to tenants of 8,286 apartments and other potential purchasers, artificially inflating condominium prices.

PROCEDURAL HISTORY

The Southern District of New York dismissed the amended complaint, concluding that the alleged fraudulent mailings did not establish a RICO pattern, and declined to exercise pendent jurisdiction over state-law claims. The district court also denied leave to file a second amended complaint. A Second Circuit panel affirmed but recommended en banc rehearing to clarify circuit law. On rehearing en banc, the court vacated both the panel decision and the district court judgment and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to conduct further proceedings not inconsistent with the opinion. The court suggested that plaintiffs be allowed an additional opportunity to file a new pleading complying with the Federal Rules of Civil Procedure, including Rules 9(b) and 8(a).

CASES CITED

- Beauford v. Helmsley, 843 F.2d 103, 110 (2d Cir. 1988)
- United States v. Indelicato, 865 F.2d 1370 (2d Cir. 1989)
- Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 489, 497-99 (1985)
- United States v. Ianniello, 808 F.2d 184, 190-92 (2d Cir. 1986)
- Beck v. Manufacturers Hanover Trust Co., 820 F.2d 46, 51 (2d Cir. 1987)
- Furman v. Cirrito, 828 F.2d 898, 902-03 (2d Cir. 1987)
- Albany Insurance Co. v. Esses, 831 F.2d 41, 44 (2d Cir. 1987)
- Creative Bath Products, Inc. v. Connecticut General Life Insurance Co., 837 F.2d 561, 564 (2d Cir. 1988)
- United States v. Benevento, 836 F.2d 60, 72 (2d Cir. 1987)
- Badders v. United States, 240 U.S. 391, 394 (1916)
- United States v. Eskow, 422 F.2d 1060, 1064 (2d Cir. 1970)
- United States v. Turkette, 452 U.S. 576, 586-87 (1981)