UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Vidurek v. Koskinen

No. 18-2422-cv, United States Court of Appeals for the Second Circuit (October 15, 2019)

SUMMARY

Second Circuit affirmed dismissal of pro se taxpayers' suit against IRS and financial institutions, holding that sovereign immunity barred claims against the IRS and its employees because no statutory waiver applied (FTCA tax exception, failure to exhaust §7433 remedies). The court also upheld dismissal for insufficient service of process (mailing did not comply with Rule 4(e) or state law), failure to state a §1985(3) conspiracy claim (no plausible class-based animus), and failure to state RICO, §1983, or other federal claims against a private bank executive. The district court's filing injunction was not an abuse of discretion given the plaintiffs' extensive litigation history.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Pierre N. Leval; Raymond J. Lohier, Jr.; Richard J. Sullivan
JURISDICTION	Federal
DECIDED	October 15, 2019
DOCKET	18-2422-cv
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the United States District Court for the Southern District of New York granting motions to dismiss under Rules 12(b)(1), (5), and (6), declining supplemental jurisdiction, denying leave to amend, and imposing a filing injunction.
STANDARD OF REVIEW	Dismissal under Rule 12(b)(1): factual findings for clear error, legal conclusions de novo; under Rule 12(b)(5): abuse of discretion; under Rule 12(b)(6): de novo; filing injunction: abuse of discretion.
PRECEDENTIAL VALUE	unpublished
PARTIES	John Vidurek, Kimberly Vidurek v. John Koskinen, Brenda Dial, John/Jane Doe, J. Melendez, Maryellen Benecke, Linda Piack, Jeanette Willet, Daniel H. Schulman, Guy Chiarello, Mary Madden, Michael J. Quinn, Jack Dorsey, United States Internal Revenue Service

TOPICS

civil procedure · subject matter jurisdiction · sovereign immunity · service of process · motions to dismiss · tax · injunctions

PRACTICE AREAS

Tax · Civil Rights · Civil Procedure

QUESTIONS PRESENTED

1. Whether sovereign immunity barred claims against the IRS and its employees.
2. Whether service of process was insufficient under Rule 12(b)(5).
3. Whether the complaint stated a claim under 42 U.S.C. § 1985(3).
4. Whether claims against Michael Quinn were properly dismissed.
5. Whether the District Court abused its discretion in imposing a filing injunction.

HOLDINGS

1. The United States and its agencies and employees acting in official capacities are immune from suit absent an unequivocal statutory waiver. The Vidureks failed to identify any applicable waiver; the FTCA exception for tax claims and failure to exhaust administrative remedies under § 7433 precluded relief.
2. The Vidureks' service by mail did not comply with any method under Rule 4(e)(2) or relevant state law procedures, and they offered no colorable excuse for neglect.
3. The complaint failed to allege any racial or class-based invidiously discriminatory animus, which is an essential element of a § 1985(3) claim. The allegations of animus against the 'Tea Party' were conclusory.
4. Quinn was not a state actor; claims under §§ 241, 242, 1341 do not provide private rights of action; RICO claim failed to plausibly allege an enterprise; and no § 1983 claim pleaded.
5. The District Court properly considered the Eliahu factors and did not abuse its discretion in imposing a filing injunction.

KEY QUOTATIONS

> *"Absent an unequivocally expressed statutory waiver, the United States, its agencies, and its employees (when functioning in their official capacities) are immune from suit based on the principle of sovereign immunity."* (at 4)

> *"To survive a Rule 12(b)(1) motion to dismiss, then, 'the plaintiff bears the burden of establishing that her claims fall within an applicable waiver.'"* (at 5)

> *"[F]or an association of individuals to constitute an enterprise, the individuals must share a common purpose to engage in a particular fraudulent course of conduct and work together to achieve such purposes."* (at 9)

FACTUAL BACKGROUND

The IRS accused John Vidurek of not paying taxes for 2008 and 2009. The Vidureks alleged that the IRS falsely accused him and that banks illegally shared his financial information without consent.

PROCEDURAL HISTORY

The Vidureks filed a complaint in the Southern District of New York against the IRS, its employees, and officers of financial institutions, alleging civil rights violations, RICO violations, and state law claims. The District Court granted motions to dismiss, denied leave to amend, and imposed a filing injunction. The Vidureks appealed.

DISPOSITION

affirmed

CASES CITED

- Makarova v. United States, 201 F.3d 110 (2d Cir. 2000)
- Cty. of Suffolk v. Sebelius, 605 F.3d 135 (2d Cir. 2010)
- Aetna Cas. & Sur. Co. v. United States, 71 F.3d 475 (2d Cir. 1995)
- Dickerson v. Napolitano, 604 F.3d 732 (2d Cir. 2010)
- Meilleur v. Strong, 682 F.3d 56 (2d Cir. 2012)
- Carter v. Inc. Vill. of Ocean Beach, 759 F.3d 159 (2d Cir. 2014)
- Gleason v. McBride, 869 F.2d 688 (2d Cir. 1989)
- Keating v. Carey, 706 F.2d 377 (2d Cir. 1983)
- Graham v. Henderson, 89 F.3d 75 (2d Cir. 1996)
- Forest Park Pictures v. Universal Television Network, Inc., 683 F.3d 424 (2d Cir. 2012)
- Abbas v. Dixon, 480 F.3d 636 (2d Cir. 2007)
- Robinson v. Overseas Military Sales Corp., 21 F.3d 502 (2d Cir. 1994)
- Official Publ'ns, Inc. v. Kable News Co., 884 F.2d 664 (2d Cir. 1989)
- Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164 (1994)
- First Capital Asset Mgmt., Inc. v. Satinwood, Inc., 385 F.3d 159 (2d Cir. 2004)
- Ciambriello v. Cty. of Nassau, 292 F.3d 307 (2d Cir. 2002)
- Eliahu v. Jewish Agency for Israel, 919 F.3d 709 (2d Cir. 2019)
- Happy Age Shops, Inc. v. Matyas, 513 N.Y.S.2d 710 (2d Dep't 1987)