

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Rose v. Bartle

13 Fed. R. Serv. 3d 430 (3d Cir. 1989) · No. Nos. 88-1634, 88-1646, 88-1650, and 88-1653 · Decided March 20, 1989

SUMMARY

The Third Circuit consolidated appeals by former Montgomery County sheriff's-office employees alleging politically motivated prosecutions and conspiracies violating 42 U.S.C. § 1983 and RICO. The court held that the district court inadequately notified the parties when converting motions to dismiss into motions for summary judgment. It affirmed in part, reversed in part, vacated in part, and remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Judge Greenberg; Chief Judge Gibbons; Judge Rosenn
JURISDICTION	Federal
DECIDED	March 20, 1989
DOCKET	Nos. 88-1634, 88-1646, 88-1650, and 88-1653
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs appealed from four district court orders dismissing their complaints after the district court converted Rule 12(b)(6) and Rule 12(c) motions into motions for summary judgment. The Third Circuit reviewed the conversion and the sufficiency of claims under a Rule 12(b)(6)-equivalent standard.
STANDARD OF REVIEW	Plenary review. Because the conversion of the Rule 12 motions was procedurally defective, the court applied a standard equivalent to Rule 12(b)(6): whether, accepting the complaints' allegations as true and drawing reasonable inferences for plaintiffs, there was no set of facts under which plaintiffs could recover.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joseph Rose, Trudy W. Reed, Frederick B. Hill, Walter Kolimaga v. Paul Bartle, Robert Asher, Joseph A. Smyth, Jr., Bert Goodman, Oscar Vance, Montgomery County, Republican Party of Montgomery

TOPICS

summary judgment section 1983 civil procedure appellate procedure standard of review

PRACTICE AREAS

civil procedure civil rights appellate procedure RICO municipal law

QUESTIONS PRESENTED

1. Whether the district court provided adequate notice and opportunity to submit materials before converting Rule 12(b)(6) and Rule 12(c) motions into motions for summary judgment.
2. Whether the plaintiffs' § 1983 malicious-prosecution claims accrued only when the underlying criminal proceedings terminated in their favor.
3. Whether the plaintiffs' § 1983 false-arrest and abuse-of-process claims accrued when the alleged arrests occurred and were therefore time-barred.
4. Whether prosecutors were absolutely immune from § 1983 liability for alleged solicitation of perjury and disclosure of grand-jury information.
5. Whether the complaints adequately alleged that grand-jury presentments were procured by fraud, perjury, or other corrupt means to overcome the probable-cause effect of the presentments.
6. Whether the complaints adequately pleaded civil RICO claims under 18 U.S.C. § 1962(c) and § 1962(d).
7. Whether the complaints adequately pleaded a RICO § 1962(a) claim and whether macing could constitute RICO racketeering activity.

HOLDINGS

1. A district court may not convert a Rule 12(b)(6) or Rule 12(c) motion into a summary judgment motion without unambiguous notice of the conversion and a reasonable opportunity to submit materials pertinent to Rule 56. The orders here were ambiguous and did not provide adequate notice.
2. In the Third Circuit, a § 1983 malicious-prosecution claim accrues when the underlying criminal proceedings terminate in the plaintiff's favor because favorable termination is an element of the constitutional tort.
3. The plaintiffs' § 1983 false-arrest and abuse-of-process claims accrued when the alleged arrests occurred, because the plaintiffs then had reason to know of the injuries encompassed by those torts. The claims were therefore time-barred.
4. Prosecutors are absolutely immune from § 1983 damages claims based on alleged solicitation or coercion of testimony for use in grand-jury proceedings when the conduct is part of the preparation and presentation of the prosecution.

5. The pleadings did not establish as a matter of law that prosecutors were absolutely immune for allegedly disclosing grand-jury information to political and county officials. However, the disclosures, as pleaded, did not independently state a § 1983 claim, and the prosecutors remained immune from liability for damages resulting from the malicious prosecution.
6. A grand-jury presentment ordinarily supplies prima facie evidence of probable cause, but plaintiffs may rebut that effect by sufficiently specific allegations that the presentment was procured by fraud, perjury, or other corrupt means. The allegations here were insufficiently specific, but Rose, Hill, and Kolimaga were entitled to seek amendment.
7. The § 1962(a) claims were properly dismissed because the complaints did not allege injury caused by the use or investment of racketeering income. The § 1962(c) claims against Asher, Bartle, and the Republican Party, and the § 1962(d) conspiracy claims, were adequately pleaded and could not be dismissed for insufficiency at the pleading stage. Macing could not constitute a RICO racketeering activity because it was punishable by no more than one year.

KEY QUOTATIONS

“when a district court converts Rule 12(b)(6) and Rule 12(c) motions into summary judgment motions, the procedures of Rule 56 govern.” (871 F.2d at 339)

“when no hearing is conducted, the court's order converting Rule 12(b)(6) and Rule 12(c) motions into summary judgment motions must be unambiguous.” (871 F.2d at 340)

“the elements of liability for the constitutional tort of malicious prosecution under section 1983 coincide with those of the common law tort.” (871 F.2d at 348)

“The determination of whether RICO pleadings are sufficient should not rest on whether the relevant allegations contain the correct talismanic language.” (871 F.2d at 359)

“There is no magical qualifying number.” (871 F.2d at 364)

FACTUAL BACKGROUND

The plaintiffs were employees or former officials in the Montgomery County, Pennsylvania, sheriff's office. After a grand jury investigated alleged political fundraising and criminal activity involving sheriff's-office personnel, the grand jury issued presentments naming the plaintiffs, several of whom were fired or defeated in an election and later prosecuted. The plaintiffs alleged that county and Republican Party officials corrupted the grand jury process and criminal prosecutions to force political and employment changes. The criminal charges were ultimately dismissed or resulted in acquittals.

PROCEDURAL HISTORY

Four plaintiffs brought related actions under 42 U.S.C. § 1983, RICO, and pendent state law theories arising from alleged politically motivated criminal investigations and prosecutions. The Eastern District of Pennsylvania dismissed the complaints, treating motions challenging the pleadings as motions for summary judgment without adequately notifying the parties or giving them a reasonable opportunity to submit summary-judgment materials.

The Third Circuit affirmed some dismissals, reversed others, vacated the dismissals of certain malicious-prosecution claims, and remanded for further proceedings and possible amendment.

DISPOSITION

other

REMAND INSTRUCTIONS

The district court must remand for further proceedings consistent with the opinion. It must allow Rose, Hill, and Kolimaga to seek amendment of their § 1983 malicious-prosecution and conspiracy-to-maliciously-prosecute claims to plead with specificity how the grand-jury presentment was procured by fraud, perjury, or other corrupt means. The court may exercise supplemental jurisdiction over the pendent state-law claims. If summary judgment is again considered, the parties must receive a reasonable opportunity for discovery and to submit materials before ruling. The district court may not again dismiss the adequately pleaded § 1962(c) and § 1962(d) claims for pleading insufficiency.

CASES CITED

- *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 443-44 (3d Cir. 1977)
- *Season-All Industries, Inc. v. Turkiye Sise Ve Cam Fabrikalari, A.S.*, 425 F.2d 34, 39-40 (3d Cir. 1970)
- *Castle v. Cohen*, 840 F.2d 173, 179-80 (3d Cir. 1988)
- *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976)
- *Helstoski v. Goldstein*, 552 F.2d 564, 566 (3d Cir. 1977) (per curiam)
- *Deary v. Three Un-named Police Officers*, 746 F.2d 185, 197 n.16 (3d Cir. 1984)
- *Lee v. Mihalich*, 847 F.2d 66, 69-70 (3d Cir. 1988)
- *Sandutch v. Muroski*, 684 F.2d 252, 254 (3d Cir. 1982) (per curiam)
- *Powers v. Coe*, 728 F.2d 97, 103, 105 (2d Cir. 1984)
- *Darr v. Wolfe*, 767 F.2d 79, 81 (3d Cir. 1985)
- *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496-98 (1985)
- *Paradise Hotel Corp. v. Bank of Nova Scotia*, 842 F.2d 47, 53 (3d Cir. 1988)
- *Petro-Tech, Inc. v. Western Co. of North America*, 824 F.2d 1349, 1359-61 (3d Cir. 1987)
- *United States v. Forsythe*, 560 F.2d 1127, 1137 (3d Cir. 1977)
- *Barticheck v. Fidelity Union Bank/First National State*, 832 F.2d 36, 39-40 (3d Cir. 1987)
- *Marshall-Silver Construction Co. v. Mendel*, 835 F.2d 63, 66-67 (3d Cir. 1987)
- *Environmental Tectonics v. W.S. Kirkpatrick, Inc.*, 847 F.2d 1052, 1063 (3d Cir. 1988)
- *Seville Industrial Machinery Corp. v. Southmost Machinery Corp.*, 742 F.2d 786, 790, 792 n.8 (3d Cir. 1984)
- *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1348 (3d Cir. 1989)