

SUPREME COURT OF THE UNITED STATES

American Nat. Bank & Trust Co. of Chicago v. Haroco, Inc.

473 U.S. 606 (1985) · No. No. 84-822 · Decided July 1, 1985

SUMMARY

The Supreme Court affirmed the Seventh Circuit in a private civil action under RICO alleging that a bank fraudulently charged excessive interest through a scheme involving mail fraud. The Court held that, consistent with its decision in *Sedima*, injury from the predicate offenses was sufficient and rejected the asserted requirement of a distinct RICO injury. The Court declined to consider a late-raised argument concerning whether the bank conducted an enterprise through a pattern of racketeering activity.

CASE DETAILS

COURT	Supreme Court of the United States
JURISDICTION	Federal
DECIDED	July 1, 1985
DOCKET	No. 84-822
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondents brought a private civil action under RICO alleging that petitioners fraudulently charged excessive interest rates through a mail-fraud scheme. The United States District Court for the Northern District of Illinois dismissed the complaint for failure to state a claim. The Seventh Circuit reversed in relevant part, and the Supreme Court granted certiorari.
STANDARD OF REVIEW	Review on certiorari of dismissal for failure to state a claim; the Court considered whether the complaint alleged an injury cognizable under RICO § 1964(c).
PRECEDENTIAL VALUE	binding precedent
PARTIES	American National Bank & Trust Company of Chicago, Petitioners v. Haroco, Inc., Respondents

TOPICS

- commercial litigation
- remedies
- damages
- statutory interpretation

PRACTICE AREAS

RICO

commercial litigation

statutory interpretation

civil remedies

QUESTIONS PRESENTED

1. Whether a private RICO claim under 18 U.S.C. § 1964(c) requires injury caused by the defendant's conduct of an enterprise through a pattern of racketeering activity, or whether injury caused directly by the predicate offenses alone is sufficient.
2. Whether the Court should consider petitioners' argument that the complaint failed to allege that the enterprise was conducted through a pattern of racketeering activity when that argument was not presented below and was not included in the question presented in the certiorari petition.

HOLDINGS

1. A private civil RICO claim does not require a distinct injury caused by the defendant's conduct of an enterprise through racketeering activity; injury caused by the prescribed predicate offenses alone is sufficient.
2. The Court declined to consider the argument because it was not presented below, was not addressed by the Court of Appeals, and was not included in or fairly included within the question presented in the certiorari petition.

KEY QUOTATIONS

“The submission that the injury must flow not from the predicate acts themselves but from the fact that they were performed as part of the conduct of an enterprise suffers from the same defects as the amorphous and unfounded restrictions on the RICO private action we rejected in that case.” (609)

“With regard to the question presented, we view the decision of the court below as consistent with today's opinion in Sedima, and it is accordingly Affirmed.” (609)

FACTUAL BACKGROUND

Respondents alleged that the petitioner bank and several officers fraudulently charged excessive interest rates on loans by misrepresenting the bank's prime rate. The loan rates charged to respondents were pegged to that prime rate, so the alleged misrepresentation resulted in excessive interest charges. The alleged scheme was carried out through the mails and was pleaded as a pattern of racketeering activity under 18 U.S.C. § 1962(c); the excessive interest charges were the only injuries alleged.

PROCEDURAL HISTORY

The District Court dismissed the complaint, reasoning that a cognizable RICO injury must be caused by the RICO violation itself rather than merely by predicate offenses such as mail fraud. The Seventh Circuit reversed in relevant part and rejected a distinct-RICO-injury requirement. The Supreme Court affirmed the Seventh Circuit's decision as consistent with its contemporaneous decision in *Sedima, S.P.R.L. v. Imrex Co.*

DISPOSITION

affirmed

CASES CITED

- Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985)

OPINION

PER CURIAM.

473 U.S. 606 (1985) AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO ET AL. v. HAROCO, INC., ET AL. No. 84-822. Supreme Court of United States. Argued April 17, 1985 Decided July 1, 1985 CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT Donald E. Egan argued the cause for petitioners. With him on the briefs were Michael Wm. Zavis, Francis X. Grossi, Jr., and Lee Ann Watson.

Aram A. Hartunian argued the cause for respondents. With him on the brief was Joel Hellman.[*] *607 PER CURIAM. This is a private civil action brought under the Racketeer Influenced and Corrupt Organizations Act (RICO), Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U.S. C. §§ 1961-1968. Respondents' complaint alleged that petitioner bank and several of its officers had fraudulently charged excessive interest rates on loans.

The gist of the claim was that the bank had lied with regard to its prime rate and that the rate charged to respondents, which was pegged to the prime, was therefore too high. The complaint alleged that this scheme to defraud, which was carried on through the mails, violated 18 U.S. C. § 1962(c), in that the mailings constituted a pattern of racketeering activity by means of which petitioners conducted, or participated in the conduct *608 of, the bank.

The only injuries alleged were the excessive interest charges themselves. The District Court dismissed on the ground that the complaint did not state a claim. 577 F. Supp. 111 (ND Ill. 1983). In its view, "to be cognizable under RICO [the injury] must be caused by a RICO violation and not simply by the commission of predicate offenses, such as acts of mail fraud."

Id., at 114. The Court of Appeals for the Seventh Circuit reversed in relevant part, 747 F.2d 384 (1984), rejecting various formulations of a requirement of a distinct RICO injury. We granted certiorari, 469 U.S. 1157 (1984), to consider the question whether a claim under § 1964(c) requires that the plaintiff have suffered damages by reason of the defendant's violation of § 1962 through the prescribed predicate offenses, or whether injury from those offenses alone is sufficient.[*] In their brief, and at oral argument, petitioners have argued primarily that respondents' complaint does not adequately allege a violation of § 1962(c).

In particular, they assert that respondents have not shown that the enterprise was "conducted" through a pattern of racketeering activity. Petitioners do not appear to have made this precise

argument below, it was not addressed by the Court of Appeals, and it quite clearly is not included in the question presented by their petition for certiorari.

Although we have the authority to waive it, this Court's Rule 21.1(a) provides that only the question set forth in the petition for certiorari or fairly included therein will be considered, and we therefore do not consider petitioners' late-blooming argument that the complaint failed to allege a violation of § 1962(c). *609 To the extent petitioners' argument is a variation on the racketeering injury concept at issue in *Sedima, S. P. R. L. v. Imrex Co.*, ante, p. 479, it is inconsistent with that decision.

The submission that the injury must flow not from the predicate acts themselves but from the fact that they were performed as part of the conduct of an enterprise suffers from the same defects as the amorphous and unfounded restrictions on the RICO private action we rejected in that case. With regard to the question presented, we view the decision of the court below as consistent with today's opinion in *Sedima*, and it is accordingly Affirmed.

[For dissenting opinion of JUSTICE MARSHALL, see ante, p. 500.] NOTES [*] John J. Gill, Johanna M. Sabol, Michael F. Crotty, and Edward F. Mannino filed a brief for the American Bankers Association as amicus curiae urging reversal. Briefs of amici curiae urging affirmance were filed for the State of Arizona et al. by the Attorneys General for their respective States as follows: Robert K. Corbin of Arizona, Norman C. Gorsuch of Alaska, John Van de Kamp of California, Duane Woodard of Colorado, Joseph Lieberman of Connecticut, Joe Smith of Florida, Michael Lilly of Hawaii, Jim Jones of Idaho, Neil Hartigan of Illinois, Linley E. Pearson of Indiana, David L. Armstrong of Kentucky, William J. Guste, Jr., of Louisiana, Frank J. Kelley of Michigan, Edward L. Pittman of Mississippi, William L. Webster of Missouri, Mike Greely of Montana, Brian McKay of Nevada, Irwin L. Kimmelman of New Jersey, Paul Bardacke of New Mexico, Lacy H. Thornburg of North Carolina, Nicholas J. Spaeth of North Dakota, Anthony Celebrezze of Ohio, Michael Turpen of Oklahoma, David Frohnmayer of Oregon, Dennis J. Roberts II of Rhode Island, T. Travis Medlock of South Carolina, Mark V. Meierhenry of South Dakota, W. J. Michael Cody of Tennessee, David L. Wilkinson of Utah, John J. Easton of Vermont, Kenneth O. Eikenberry of Washington, Charlie Brown of West Virginia, Bronson C. La Follette of Wisconsin, and Archie G. McClintock of Wyoming; for the State of New York by Robert Abrams, Attorney General, Robert Hermann, Solicitor General, and R. Scott Greathead, First Assistant Attorney General; for the City of Chicago et al. by James D. Montgomery, Frederick A. O. Schwarz, Jr., Barbara W. Mather, and Leonard Koerner; for the County of Suffolk, New York, by Mark D. Cohen; for the Interinsurance Exchange of the Automobile Club of Southern California by James M. Fischer and Patrick Mesisca, Jr.; and for John Grado et al. by James S. Dittmar. [*] The question presented was: "Whether a civil claim for treble damages under the Racketeer Influenced And Corrupt Organizations Act ('RICO') requires that the plaintiff suffer damages by reason of the defendant acquiring, maintaining control or an interest in, or conducting

the affairs of an `enterprise' through the commission of statutorily prescribed offenses as opposed to being damaged solely by reason of the defendant's commission of such offenses."

Pet. for Cert. i.

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