

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

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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