

UNPUBLISHED

*failure to est. pattern
of racketeering under
RICO*

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 86-3140

EL-HOSS ENGINEERING AND TRANSPORT CO., W.L.L.

Plaintiff - Appellant

v.

AHMED AKHAVAN; ALEXANDER S. WILNER

Defendants - Appellees

and

BONTECH CORP.; MAMUN M. SYED; KAVEH ZAMANI

Defendants

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Albert V. Bryan, Jr., Chief
District Judge. (C/A No. 86-219)

Submitted: June 16, 1987

Decided: October 2, 1987

Before MURNAGHAN, ERVIN, and WILKINS, Circuit Judges.

(Judith Christine Foster for Appellant. Ahmed Akhavan and
Alexander S. Wilner, Appellees Pro Se.)

PER CURIAM:

El-Hoss Engineering and Transport Company, W.L.L., appeals from an adverse directed verdict order entered on one count of its suit. At the close of El-Hoss's evidence the district court directed a partial verdict against El-Hoss, finding that the evidence was insufficient to show a pattern of racketeering activity to support its civil RICO claim. The sole question presented in this appeal is whether the district court was correct in directing a verdict on the RICO count. We affirm because we agree with the district court that El-Hoss failed to introduce any evidence of a pattern of racketeering.

The circumstance giving rise to this suit was El-Hoss's order of a single shipment of Caterpillar-brand oil and fuel filters in June 1984. The defendants filled this order with non-conforming parts but sent packing lists showing that Caterpillar-brand parts had been shipped. When the defendants failed either to compensate El-Hoss for the improper filters or to remedy the situation by other means, El-Hoss brought this diversity action alleging state law claims for breach of contract and fraud and a federal claim pursuant to 18 U.S.C. § 1961 for engaging in a pattern of racketeering activity. At the close of El-Hoss's case, the district court granted the defendants' motion for directed verdict on the RICO claim, ruling that "[t]his is one transaction, and I don't believe that it can be enlarged into any

enterprise, a pattern of racketeering." While El-Hoss prevailed on the breach of contract and common law fraud claims, it now seeks review of the directed verdict order on the RICO claim.

The test for the granting of a directed verdict is whether, without weighing the evidence, "there can be but one conclusion as to the verdict that reasonable jurors could have reached." Alexander v. Curtis, 808 F.2d 337, 338-39 (4th Cir. 1987) (quoting Wheatley v. Gladden, 660 F.2d 1024, 1027 (4th Cir. 1981)). To avoid a directed verdict, a plaintiff must present sufficient evidence to establish a prima facie case. Alexander, 808 F.2d at 339.

This Court recently held that a "pattern of racketeering activity," 18 U.S.C. § 1961(5), is not established by proving a "single, limited scheme" involving one transaction. International Data Bank, Ltd. v. Zepkin, 812 F.2d 149, 154 (4th Cir. 1987). To hold otherwise would eliminate the pattern requirement altogether, and undermine Congress's intent that RICO serve as a weapon against ongoing unlawful activities, because it is "the unusual fraud that does not enlist the mails and wires in its service at least twice." Zepkin, 812 F.2d at 154-55.

El-Hoss has alleged and proven only a "single, limited scheme." The district court properly found that El-Hoss had failed to prove a "pattern of racketeering activity" and correctly withdrew this claim from the jury.

Accordingly, the judgment of the district court is affirmed. We dispense with oral argument because the dispositive issues recently have been decided authoritatively.

AFFIRMED.

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

*Civil RICO
- New standard
for "pattern" of
illegal activity.*

No. 86-1730

JAMES F. CAMPBELL,

Plaintiff - Appellant,

versus

INTERNATIONAL DEVELOPERS, INC.;
MONTEBELLO DEVELOPMENT CORPORATION;
MONTEBELLO REALTY, INC.;
MONTEBELLO ASSOCIATES,

Defendant - Appellee,

and

GUISEPPE CECCHI;
PAUL S. CLOHAN;
BENJAMIN LISS;
MONTEBELLO CONDOMINIUM UNIT OWNER ASSOCIATION;
ALBERT W. HIGHSMITH,

Defendant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Claude M. Hilton, District
Judge. (CA-86-1183-A).

Argued: June 30, 1987 Decided: September 15, 1987

Before PHILLIPS, ERVIN, and WILKINSON, Circuit Judges.

William Steven Paleos (Paleos & Kurlansky on brief) for
Appellant; Ronald Lee Lord (David G. Fiske; John E. Coffey;
Thomas & Fiske, P.C. on brief) for Appellees.

PER CURIAM:

James F. Campbell appeals the district court's dismissal of his complaint alleging that appellees, International Developers, Inc., et al., violated the provisions of RICO, 18 U.S.C. 1962(c) and (d). Because the complaint fails to allege a pattern of racketeering activity necessary to maintain an action under the RICO statute, we affirm.

I.

Appellant Campbell purchased a condominium unit at the Montebello development in Fairfax County, Virginia, through the sales office of appellee Montebello Associates. Campbell alleges in his complaint that, based on appellees' false and fraudulent assurances of the availability of ample outdoor parking, he purchased the condominium unit without purchasing additional parking spaces. Appellees' false representations were allegedly part of a scheme to sell for higher prices their condominium units by concealing the inadequacy of parking spaces and by discouraging the purchase of indoor spaces to avoid running out of such spaces before all units were sold. Appellees effectuated this alleged scheme by mailing several letters negotiating and concluding the sale.

Appellees, International Developers, Inc., et al., moved to dismiss the complaint pursuant to Rule 12(b)(6). The

district court granted the appellees' motion and dismissed the case because the complaint alleged no pattern of racketeering as is necessary to maintain an action under RICO.

II.

Campbell contends that the allegations in the complaint, if accepted as true, set forth activities on the part of appellees that establish a pattern of racketeering sufficient to support a RICO action. Thus, Campbell argues that the district court erred in dismissing the case.

We disagree. In Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479 (1985), the Supreme Court emphasized that a pattern is established by the combination of factors establishing "continuity plus relationship" of racketeering activity. 473 U.S. at 496 n.14. This court, in International Data Bank, Ltd. v. Zepkin, 812 F.2d 149 (4th Cir. 1987), held that to satisfy this requirement "the predicate activities must be related and must be part of a continuous criminal endeavor." 812 F.2d at 154. The activities alleged in appellant's complaint amount to a single, limited fraudulent scheme by the owners of a single condominium development to negotiate and effectuate the sale of units. This isolated fraudulent scheme does not approach the "dimension and degree" of criminal activity to which RICO is directed. Such "ordinary claims of fraud" are best addressed by the state common law of fraud. 812 F.2d at 155. Because the activities alleged in appellant's complaint do not establish a

pattern of activity sufficient to bring this case within the
ambit of RICO, the judgment of the district court is

AFFIRMED.