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***Anza et al.* v. *Ideal Steel Supply Corp.*, No. 04-433 (U.S. June 5, 2006)**

On June 5, 2006, the Supreme Court of the United States decided *Anza* v. *Ideal Steel Supply Corp.*[1] Applying principles that it had earlier set forth in *Holmes* v. *Securities Investor Protection Corp.*,[2] the Court emphasized the importance of the proximate-cause requirement in respect of civil actions under the Racketeer Influenced and Corrupt Organization Act ("RICO").[3] Stating that "[w]hen a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries,"[4] the Court vacated the judgment of the United States Court of Appeals for the Second Circuit sustaining plaintiff's complaint because it found that the alleged violation did not directly lead to plaintiff's injuries.

Characterizing the Court's proximate-causation requirement as "stringent"[5] Justice Thomas in dissent suggests that "[t]oday . . . the Court not only eliminates private RICO actions in some situations Congress may have inadvertently regulated, but it substantially limits the ability of civil RICO to reach even those cases that motivated Congress' enactment of this provision in the first place."[6]

I. THE FACTS

Plaintiff, Ideal Steel Supply Corporation ("Ideal"), brought a civil RICO action against National Steel Supply, Inc. ("National"), owned by the Anza family, in the United States District Court for the Southern District of New York. The case was brought pursuant to 18 U.S.C. § 1964(c), which

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1 No. 04-433, slip op. (U.S. June 5, 2006).

2 503 U.S. 258, 268 (1992).

3 18 U.S.C. §§ 1961-68 (2000 ed. and Supp. III).

4 *Anza*, No. 04-433, slip op. at 9 (U.S. June 5, 2006).

5 *Anza*, No. 04-433, slip op. at 1 (Thomas, J., dissenting).

6 *Id.* at 10.

creates a private civil right of action under RICO for "[a]ny person injured in his business or property by reason of a violation," provided that the alleged violation was the proximate cause of the injury. Because the case arose from a motion to dismiss, the Court accepted as true the factual allegations in the complaint.

Both Ideal and National are in the business of purchasing and selling steel mill products in the New York region and possess retail outlets in Queens and the Bronx. Ideal and National are the only substantial competitors in the New York area and primarily compete against one another on the basis of price. Ideal alleged that National failed to collect sales taxes on sales to cash-paying customers and, furthermore, failed to report those sales to New York taxing authorities in an effort to conceal its actions. Ideal alleged that this scheme created an unfair competitive advantage over Ideal, allowing National to reduce its prices without altering its profit margin. Ideal argued that National's scheme amounted to mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.15, and that such conduct constituted an unlawful "pattern of racketeering activity" in violation of the RICO statute.

Ideal asserted violation of § 1962(c), alleging that National operated by creating a competitive business advantage over Ideal through a pattern of racketeering activity. Ideal also alleged that National used the money saved from its fraudulent scheme to open a new location, in violation of § 1962(a) pertaining to the use of income received from a pattern of racketeering activity.

II. PROCEDURAL HISTORY

The United Stated District Court for the Southern District of New York (Berman, D.J.) dismissed plaintiff's complaint, holding that plaintiff lacked standing to bring the action. The district court maintained that a civil RICO plaintiff who alleges predicate acts of mail or wire fraud must have directly relied on the fraudulent communications in order to recover.

The Court of Appeals for the Second Circuit vacated the decision of the district court, concluding that plaintiff did have standing to assert its civil RICO claim.[7] The Court of Appeals found that because plaintiff was the "intended victim" of defendant's scheme, plaintiff could establish that the failure to collect taxes and filing false returns was the proximate cause of any business harm it suffered.

The Supreme Court of the United States granted *certiorari* to determine two issues: (1) whether a plaintiff must prove reliance on the alleged fraudulent acts in order to recover under civil RICO when such a claim is predicated on acts of mail and wire fraud; and (2) if so, whether plaintiff must prove that it directly relied on the fraud or whether it is sufficient that plaintiff was injured by a third party's

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7 *Ideal Steel Supply Corp*. v. *Anza et al*., 373 F.3d 251, 263 (2d. Cir. 2004).

reliance on the fraudulent act. Because the Court found that Ideal had not satisfied the proximate-cause requirement, it did not address the substantial question whether a showing of reliance is required.[8]

III. RATIONALE OF THE COURT

A. The Opinion of the Court (per Kennedy, J.)

In *Holmes*, the Court rejected a reading of the RICO statute that would have permitted civil recovery under a "but for" analysis because of the "likelihood that Congress meant to allow all factually injured plaintiffs to recover."[9] The Court reached its result based on a review of the statutory history of the RICO statute, which revealed that Congress modeled the RICO statute on the civil-action provision of the federal antitrust laws which requires that a plaintiff demonstrate that the defendant's violation not only was a "but for" cause of his injury, but was the proximate cause as well.[10]

In *Anza* the Court applied these principles, finding as a matter of law that the directness requirement is the crucial component in a civil RICO action. The Court concluded that Ideal's claim did not satisfy the directness requirement because the asserted RICO violation, *i.e.*, the failure to charge sales tax and the concealment to taxing authorities, did not directly harm Ideal. Rather, "[t]he direct victim of this conduct was the State of New York, not Ideal."[11] The Court noted that the "cause of Ideal's asserted harms . . . is a set of actions (offering lower prices) entirely distinct from the alleged RICO violation (defrauding the State)."[12] Finding the attenuation between the fraudulent conduct and the injury too great, the Court cautioned that in order to recover it is insufficient for a company to complain that a competitor's tactics gave the rival a competitive advantage.

The Court explained that if Ideal was permitted to bring suit without proving proximate causation, a court would have difficulties calculating the damages.[13] A court would have to calculate the "portion of National's price drop attributable to the alleged pattern of racketeering activity" and "next

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8 *Anza*, No. 04-433, slip op. at 9 (U.S. June 5, 2006).

9 503 U.S. at 266.

10 *See Associate General Contractors of California, Inc.* v. *Carpenters*, 459 U.S. 519, 534 (1983); *Holmes*, *supra*, 503 U.S. at 268.

11 *Anza*, No. 04-433, slip op. at 6 (U.S. June 5, 2006).

12 *Id.* at 6.

13 *Id.* at 8.

would have to calculate the portion of Ideal's lost sales attributable to the relevant part of the price drop."[14] The element of proximate cause is meant to prevent such difficulties.

The Court recognized that, because § 1962(c) and § 1962(a) set forth distinct prohibitions, "it is at least debatable whether Ideal's two claims should be analyzed in an identical fashion for proximate-cause purposes."[15] The Court chose, however, not to address the issue because the Court of Appeals did not address the proximate cause issue in respect of Ideal's claim under § 1962(a). The Court vacated the Court of Appeals' judgment and remanded the matter to the Court of Appeals for determination whether Ideal's alleged violation of § 1962(a) proximately caused the injuries Ideal asserts.

B. The Concurring Opinion of Justice Scalia

Justice Scalia joined the opinion of the Court, emphasizing in a two-sentence concurrence that "it is inconceivable that the injury alleged in [plaintiff's § 1962(c)] claim at issue here is within the zone of interests protected by the RICO cause of action for fraud perpetrated upon New York State."

C. The Dissenting Opinion of Justice Thomas

Justice Thomas dissented from the majority's proximate-cause analysis. In his view, "[t]he Court's stringent proximate-causation requirement . . . eliminates recovery for plaintiffs whose injuries are precisely those that Congress aimed to remedy through the authorization of civil RICO suits."[16] Noting that "[j]udicial sentiment that civil RICO's evolution is undesirable is widespread,"[17] Justice Thomas maintained that the majority's opinion was nevertheless overbroad in that it will prevent those individuals who are legitimately injured by organized crime from seeking redress in court.

Because he concluded that Ideal had sufficiently pleaded proximate cause, Justice Thomas proceeded to answer the question avoided in the majority opinion — whether reliance is a required element of a RICO claim predicated on mail or wire fraud and, if it is, whether that reliance must be by the plaintiff. Justice Thomas disagreed with the conclusion that reliance is required at all, relying on the fact that the Government can prosecute a person for engaging in a pattern of racketeering in violation of § 1962(c) without proof of reliance. Justice Thomas read the RICO statute as permitting no different conclusion when an individual brings a civil action against such a RICO violator.

D. The Opinion of Justice Breyer

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14 *Id.*

15 *Id*. at 10.

16 *Id.* at 1 (Thomas, J., dissenting).

17 *Id.* at 10 (Thomas, J., dissenting).

Justice Breyer did not agree with the majority insofar at it believed that its decision was virtually dictated by the Court's decision in *Holmes*. While finding the causal connection at issue in some ways more direct than in *Holmes*, Justice Breyer expressed the view that "the civil damages remedy in the [RICO statute] does not cover claims of injury by one competitor where the legitimate pro-competitive activity of another competitor immediately causes that injury."[18] The "serious problems of administrability"[19] raised by the majority were of concern to Justice Breyer, as was the fact that the State of New York had standing to vindicate the law's purpose. He concluded that the antitrust nature of the RICO treble-damage provision's source, taken together with RICO's basic objectives and administrative concerns, "implies that a cause is 'indirect,' *i.e*., it is not a 'proximate cause,' if the causal chain from forbidden act to the injury caused a competitor proceeds through a legitimate business's ordinary competitive activity."[20] Price competition is ordinary competitive activity. Thus, to Justice Breyer's thinking, the ordinary competitive activity of National's lowering prices cut the direct causal link between Ideal's injuries and the forbidden acts.

IV. SIGNIFICANCE OF DECISION

Proximate cause in civil RICO litigation has been a matter of debate and confusion.[21] In *Anza*, the Court makes clear that traditional notions of "direct injury" are required. The Court's direct proximate-cause requirement serves to prevent "intricate, uncertain inquiries from overrunning RICO litigation" and preserves a bright "line between RICO and the antitrust laws."[22] In this regard, the Court's decision in *Anza* evidences concerns not unlike those it recently expressed in *Dura Pharmaceuticals, Inc.* v. *Broudo* where the Court emphasized that private securities fraud actions permit recovery only where plaintiffs adequately allege and prove traditional elements of causation and loss.[23]

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or e-mail Charles A.

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18 *Id*. at 1 (Breyer, J., dissenting).

19 *Id*. at 6 (Breyer, J., dissenting).

20 *Id*. at 4 (Breyer, J., dissenting).

21 *See, e.g*., C. Loewenson, Civil RICO and Proximate Cause, New York Law Journal (Apr. 25, 2006).

22 *Anza*, No. 04-433, slip op. at 8 (U.S. June 5, 2006).

23 See *Dura Pharmaceuticals, Inc*. v. *Broudo*, 544 U.S. 336 (2005), emphasizing that without the requirement that private securities fraud plaintiffs must prove the defendant's misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's economic loss, the securities laws would be inappropriately transformed into a "partial downside insurance policy." *Anza* and *Dura* demonstrate the Court's reluctance to allow plaintiffs, absent the clearest of congressional intent, to proceed without establishing the traditional elements of causation and loss.

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