

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HARRY M. DEAL : CIVIL ACTION  
 :  
 Plaintiff, : NO. 04-1879  
 :  
 v. :  
 :  
 WILLIAM B. WALDMAN, *et al.* :  
 :  
 Defendants. :

**MEMORANDUM AND ORDER**

Fullam, Sr. J.

December 6, 2004

Plaintiff, a minority shareholder of a closely held corporation, filed suit in the Philadelphia Court of Common Pleas against the majority shareholder, the corporation, and others, alleging that he was "frozen out" of the business. Defendants removed the action to federal court and then moved to dismiss. Because Plaintiff's claims under the RICO statute are time barred, I will grant the motion as to Counts V and VI and remand the state law claims.

The statute of limitations for civil RICO claims is four years. Agency Holding Corp. v. Malley-Duff & Assocs., 483 U.S. 143, 107 S. Ct. 2759 (1987). The Third Circuit has adopted the injury discovery rule, where the limitations period begins to run when a plaintiff knew or should have known of his injury. Forbes v. Eagleson, 228 F.3d 471, 484 (3d Cir. 2000). The Supreme Court explicitly rejected the Third Circuit's "last predicate act" rule in Klehr v. A.O. Smith Corp., 521 U.S. 179,

187, 117 S. Ct. 1984, 1989 (1997). The complaint alleges that the wrongful acts occurred beginning in approximately 1989, and although Plaintiff alleges conduct continuing into at least 2002, he could or should have known of the harm before 2000 (four years before filing suit). The Complaint alleges that over a period of years, he was squeezed out of the business and states that:

Despite repeated requests over the years from Mr. Deal to Mr. Waldman, his accountant, Mr. Waldman's accountant, Benjamin Fishbein, CPA and Richard Mallman, Esq., Waldman's lawyer, Simplicity's secretary and the Trustee for the Waldman Trusts, Mr. Deal was not provided with more than minimal financial information regarding Simplicity until he retained his own counsel in 2002.

Complaint at ¶ 66. If the discovery rule were to rest on when a plaintiff decided to retain counsel, the limitations period would be extended indefinitely. Plaintiff admits to harboring suspicions for years, but he waited until 2002 to consult with an attorney. The RICO claims are time barred.

Defendants cited diversity jurisdiction as the reason for removal, but because they all call Pennsylvania home they cannot remove on this basis. 28 U.S.C. § 1441(b). The RICO claims provided the only basis for federal jurisdiction, and because those claims have been dismissed, the action will be remanded.

An order follows.

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	:	
Defendants.	:	

**ORDER**

AND NOW, this 6th day of December, 2004, upon consideration of Defendants' motion to dismiss and the response thereto,

IT IS HEREBY ORDERED that the motion is GRANTED IN PART. Counts V and VI of the Complaint are DISMISSED with prejudice for failure to state a claim and the case is REMANDED to the Court of Common Pleas of Philadelphia County Pennsylvania. The Clerk is directed to mark the case CLOSED.

BY THE COURT:

/s/John P. Fullam, Sr. J.  
Fullam, Sr. J.