

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

REGSCAN, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
DEAN MARK BREWER, et al.	:	NO. 04-6043

MEMORANDUM

Baylson, J.

April 13, 2005

Plaintiff RegScan, Inc. (“RegScan”) filed this action against Defendants Dean Mark Brewer, Kevin Spence, Bruce Regan, Gary Tabbert, and Citation Publishing, Inc. (“Defendants”) on December 28, 2004. Counts I, II, and III set forth claims of violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1964(c), by the individual defendants. Counts IV-VII set forth claims of Unjust Enrichment, Violation of the Lanham Act, 15 U.S.C. § 1125(a), Unfair Competition, and Violation of Arizona’s Uniform Trade Secrets Act, 44 A.R.S. § 401(4), respectively, against Defendant Citation Publishing, Inc.

This Court has jurisdiction over the RICO claims under 18 U.S.C. § 1964(a), and over the Lanham Act claim pursuant to 29 U.S.C. § 1331. The Court exercises supplemental jurisdiction over the state law claims.

Presently before the Court is Defendants’ Motion to Dismiss, filed on February 18, 2005. Plaintiff filed a response on March 4, 2005, and Defendants filed a reply brief on March 14, 2005.

Defendants’ motion argues that RegScan’s complaint should be dismissed because the Court has no subject matter jurisdiction under the Rooker-Feldman doctrine (discussed below) due to judicial decisions in pending state court litigation currently underway in the Lycoming

County Court in Williamsport, Pennsylvania, RegScan, Inc. v. Citation Publishing, Inc., No 02-01,152 (C.C.P. Lycoming Co.). Defendants' motion also argues that RegScan's RICO claims are legally insufficient because RegScan has not properly alleged a compensable injury to its business or property, and because RegScan cannot demonstrate that a pattern of racketeering activity proximately caused its injury. The motion also argues that RegScan's claims for unjust enrichment and violations of Arizona's Trade Secrets Act have been waived, and that RegScan's claims for violations of the Lanham Act and for Unfair Competition fail to state a claim. The motion also asks that, for any claims not dismissed, certain allegedly scandalous and impertinent allegations be stricken under Rule 12(f).

This Court, after consultation with counsel, agreed to decide the jurisdictional Rooker-Feldman issue before turning to the merits of Plaintiff's claims. In support of its motion to dismiss on the basis of Rooker-Feldman, Defendants' motion describes the following proceedings in the state court: On July 9, 2002, RegScan filed the Lycoming County Action against Richard Martin, a Citation employee, and by subsequent amendment to the complaint, added Citation Publishing, Inc. as a defendant. On December 24, 2003, RegScan moved to amend the state court complaint to add causes of action under RICO. After a hearing on the merits of the proposed amendment, the state court denied RegScan's motion to amend on February 27, 2004.

RegScan argues that the state court simply denied its Motion to Amend to add the RICO claims because the court considered the RICO claims a separate claim, and thus the state court's decision regarding the RICO claims was interlocutory and procedural, and Rooker-Feldman should not apply. RegScan relies on a statement made by the state judge during oral argument on

the Motion to Amend on February 27, 2004, in which the judge suggested in relation to the RICO claims that RegScan's counsel had "a right to go ahead and try to get jurisdiction wherever, through the federal court or anything." RegScan claims that the sanctions later imposed upon RegScan by the state court for its attempt to raise the RICO claims were based solely on the state court's finding that those claims were brought for an improper purpose and did not address the merits of the RICO claims.

Defendants argue that Rooker-Feldman applies to the state court's refusal to allow RegScan to amend its complaint to include the RICO claims because the state court made it clear, when it imposed sanctions on RegScan, that it had denied RegScan's Motion to Amend for substantive as well as procedural reasons. Specifically, Defendants contend that the sanctions were imposed both because the sought-after amendment was improperly motivated and because the RICO claims were meritless and not warranted by existing law. (Reply Brief, pp. 2-3). Defendants rely on the August 27, 2004 decision regarding sanctions in which the state court judge stated that "the claims in the Motion to Amend are not warranted by existing law . . . Neither does the Court find in these circumstances any non-frivolous argument for the extension or modification of existing law. Third, [counsel for RegScan] provided the Court with no basis to find he had evidentiary support for the factual allegations made in the Motion to Amend." (Reply Brief, p. 3). Defendants therefore argue that the state court's decision on the motion for sanctions requires the conclusion that the motion to amend was denied based on a determination of the merits of the RICO claims and thus precludes this Court's jurisdiction under Rooker-Feldman.

In their reply brief, Defendants relied on the Third Circuit opinion ITT Corp. v. Intelnet

Inter'l Corp., 366 F.3d 506 (3d Cir. 2004), which also involved a state court's decision not to allow an amended complaint adding RICO claims. In ITT, the state court's decision not to allow the amendment of the complaint was more clearly based on the merits of the RICO claims. Defendants argue that under ITT, Rooker-Feldman applies here because the state court's sanctions order addressed the merits of the RICO claims and made it clear that the denial of the Motion to Amend was not simply procedural. Defendants assert that the statements by the judge relied upon by Plaintiff – that Plaintiff's counsel could try to get jurisdiction in federal court – were made during an oral argument regarding the Motion to Amend in which the judge also made it clear that he thought the RICO claims were meritless. However, the judge's later decision regarding sanctions implies that he was rejecting the addition of the RICO claims for substantive reasons, as well as because he felt they were filed for an improper purpose.

The Court requested that Plaintiff file a sur reply brief addressing Defendants' arguments under ITT Corp. Plaintiff filed the requested sur reply brief on March 18, 2005, and Defendants responded on March 24, 2005.

On March 30, 2005, however, the Supreme Court decided Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 2005 WL 711586 (2005), which directly addressed the scope of the Rooker-Feldman doctrine. In light of this decision, this Court requested that the parties address the significance of Exxon to the motion before it. In a letter dated April 5, 2005, Plaintiff argues that Exxon definitively foreclosed the possibility of this Court's application of Rooker-Feldman, as a judgment has not yet been rendered in the state court. In a letter dated April 7, 2005, Defendants argue that Exxon is distinguishable because when the federal claims were filed in Exxon, there was no state court judgment or decision that would have been subject to review by the federal

court, whereas in this case the state court had already disallowed the RICO claims when this federal complaint was filed.

The Exxon holding makes it clear, however, that the Supreme Court intended to restrict the Rooker-Feldman doctrine “to cases . . . brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” Exxon, 2005 WL 711586 *4. Here, there has been no judgment rendered in the state court proceedings. The Exxon Court clarified that 28 U.S.C. § 1257, which precludes a district court from exercising jurisdiction in the limited circumstances that arose in Rooker and Feldman, does not “stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court.” Id. at *8. Even if the state court were to render judgment while this Court exercised jurisdiction, this Court “may be bound to recognize the claim- and issue-preclusive effects of a state-court judgment, but federal jurisdiction over an action does not terminate automatically on entry of judgment in the state court.” Id.

Exxon also states, however, that while “the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction[, c]omity or abstention doctrines may, in various circumstances, permit or require the federal court to stay or dismiss the federal action in favor of the state-court litigation.” Id. at *7 (citations omitted). So, while Exxon makes it clear that the Rooker-Feldman doctrine cannot be applied here, applying abstention principles might be appropriate.

The Third Circuit has followed the Supreme Court’s direction in requiring that the following three prongs must be met in order for a federal court to abstain under the Younger

doctrine: (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims. Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982). Even if the necessary three predicates exist, however, Younger abstention is not appropriate if the state proceedings are being undertaken in bad faith, or if there are other extraordinary circumstances, such as where the state proceedings are based on a flagrantly unconstitutional statute. Id. at 435.

Although Defendants mention Younger and the possibility of abstention in a footnote in their letter regarding Exxon, neither party has briefed the issue. In its original opposition to the motion to dismiss, Plaintiff merely noted that Defendants had not pursued the Younger theory and thus requested that the Court ignore the issue.

The Court therefore denies Defendants' Motion to Dismiss as to the Rooker-Feldman doctrine, based on the Supreme Court's decision in Exxon, and a conference call will be scheduled to consider further proceedings.

An appropriate order follows.

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ORDER

AND NOW this 13th day of April, 2005, for the reasons stated in the foregoing Memorandum, and upon consideration of the Motion to Dismiss of Defendants (Docket No. 11), and the responses thereto, it is ORDERED that Defendants' contention that the Rooker-Feldman doctrine requires dismissal for lack of subject matter jurisdiction is denied. The Court will have a telephone conference with counsel to discuss further proceedings on April 20, 2005. Counsel shall discuss this issue among themselves prior to the conference and attempt to reach agreement as to procedural and scheduling matters.

BY THE COURT:

/s/ Micheal M. Baylson
Michael M. Baylson, U.S.D.J.

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