

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

MARK JACKSON,
Plaintiff,

v.

ROHM & HAAS COMPANY, et al.,
Defendants.

Civil Action No. 03-5299

OPINION

June 30, 2005

Before this court is defendants' motion to dismiss plaintiff's amended complaint for lack of subject matter jurisdiction under Rule 12(b)(1) or for failure to state a claim upon which relief can be granted under Rule 12(b)(6). Because plaintiff lacks standing to bring a claim under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. ("RICO"), which is the only independent basis for federal jurisdiction, defendants' motion will be granted.

I.

This federal action arises out of a discovery dispute between plaintiff and several of the named defendants in a prior state court proceeding. In 1999, Mark Jackson sued his employer, Rohm & Haas Company ("R&H") and co-workers Michael McLaughlin, Celia

Joseph, and Wayne Davis for invasion of privacy and intentional infliction of emotional distress. He also sued co-worker June McCrory for defamation. In his amended federal complaint, Jackson alleges that defendants formed a civil conspiracy to alter and/or manufacture fraudulent evidence in that state case.

In June 1998, Jackson, an accountant at R&H, went on a date with June McCrory, a secretary at R&H.¹ That evening they had sexual intercourse, which Jackson claims was consensual. McCrory subsequently told a friend, and former co-worker, that Jackson had sexually assaulted her. That friend encouraged McCrory to report the alleged assault and took her to R&H's human resources department where she was interviewed by David Gartenberg, a former R&H Human Resources Representative; Royce Warrick, an in-house employment attorney; and Celia Joseph, Assistant General Counsel, Corporate EEO/Diversity Manager, and Employment Law Manager for R&H. During that interview, Gartenberg, Warrick, and Joseph each took handwritten notes. (Am. Compl. at ¶61). Following the McCrory interview, Jackson was called in to meet with Michael McLaughlin, an in-house litigation attorney, and Wayne Davis, Director of Corporate Security. Jackson alleges that the two men questioned him about every aspect of the evening, including "the most intimate details of the sexual encounter." (Am. Compl. at ¶71).

A. State Court Proceedings

¹McCory has since left R&H and Jackson is on disability leave.

In 1999, Jackson filed two actions in the Court of Common Pleas of Pennsylvania. First, he sued R&H claiming that the detailed way in which McLaughlin and Davis questioned him about the sexual encounter was an invasion of privacy and amounted to intentional infliction of emotional distress. Second, he sued McCrory for defamation based on her allegation of sexual assault. The two actions were consolidated before Judge Mary Colins.

(1) *The Alleged Fraud*

Jackson's federal complaint arises out of a discovery dispute regarding a set of notes taken during the interview with McCrory. Pursuant to a discovery request that defendants produce all notes taken during that interview, Jackson learned that all but one set of notes, taken by Royce Warrick, had been shredded or lost. Just prior to Warrick's deposition, defendants gave Jackson a photocopy of her interview notes. During the deposition, Warrick claimed that the notes were an identical copy of the original notes she took during the interview. According to Jackson, the copy appeared to be redacted or otherwise altered. When asked, Warrick claimed that the original notes had been turned over to Morgan, Lewis, & Bockius, outside counsel hired to represent R&H in the state court action.

Defendants subsequently served Jackson with an affidavit from Warrick notifying him that the original notes could not be located, but that the photocopy produced at the deposition was identical to the original. On May 21, 2001 – after the deadline for expert

discovery had passed – defendants notified Jackson that the original notes had been located and were available for inspection. Jackson alleged that the document that was then produced did not appear to be the *true* original and that there were a number of inconsistencies between the “original”² and the photocopy provided by Warrick. Jackson further alleges that defendants altered the notes, and offered perjured testimony regarding their authenticity, in order to support a work-relatedness defense under the Pennsylvania Workers’ Compensation Act (“WCA”). In so doing, he argues that R&H, their employees, and attorneys formed a conspiracy to defraud both him and the court. However, Jackson alerted the state court to the alleged fraud and conspiracy at each stage of the pre-trial, trial, and appellate proceedings.

Jackson petitioned the Court of Common Pleas repeatedly to permit him to take expert discovery in order to pursue his fraud theory. On June 5, 2001, he filed a Motion for Extraordinary Relief in the Court of Common Pleas to reopen expert discovery. In that motion, Jackson set forth his theory that:

Warrick’s interview notes were altered in an illegitimate, misguided, after-the-fact effort to change the record of events, to justify defendants’ invasion of plaintiff’s privacy, to advance and protect defendants’ interests in the instant litigation, and to cover-up defendants’ unlawful conduct. If, as plaintiff contends, the notes are not authentic or have been altered in any respect, then defendants have committed multiple acts of fraud upon plaintiff and upon the Court, and their attorneys may have engaged in unethical conduct. (Ex. 4).

That motion, which included a preliminary report by a forensic document examiner who

²The parties also refer to the “original” as the “Red Felt-Tip Pen” version.

had analyzed photocopies of both sets of notes, was denied.

Jackson's attorney next alerted the court to the alleged fraud and conspiracy in a September 17, 2001 letter written in anticipation of a settlement conference. The letter reads, in pertinent part:

In addition to the underlying conduct, the Court should be aware that the plaintiff will be advancing substantial evidence of cover-up, including an initial cover-up, a subsequent effort to cover-up the cover-up, which entails both the alteration and fabrication of the most important documentary evidence in the case, as well as perjured testimony with respect to the authenticity of the documents. . . . At this juncture, we are concerned that a fraud is being perpetrated on the Court. . . . (Ex. 6) (Emphasis in the original).

Jackson also presented his fraud allegations against the defendants throughout the state court trial.³

³In his opening statement, plaintiff's counsel told the jury that it would be presented with evidence that Warrick's notes were altered:

We are going to show you that information was added, that information was redacted or removed. We are going to show you that information within the notes was changed, all in an effort to change the record of what June McCrory reported to the company. . . . We are going to show you that they did that because they realized what they did was wrong and they had to change the record in order to at least make it look like they should have did what they had done. And that's going to be a big part of this case. (Ex. 8 at 48-49).

Plaintiff's counsel cross-examined Warrick at length regarding the allegedly altered notes, and the court permitted him to introduce enlarged copies of the two sets of notes as exhibits over defendants' objection. (See Ex. 9; Ex. 10, 1-57). In his closing statement, plaintiff's counsel concluded, "Ladies and Gentleman, they had to change the record because they knew that the information they obtained did not support their actions. They knew it. And it is outrageous to alter evidence and then present it in this court as original." See Ex. 12 at 95.

On October 19, 2001, the jury returned a verdict in favor of Jackson, finding R&H liable for invasion of privacy and awarding him \$150,000 in damages.⁴ On April 10, 2002, however, Jackson was stripped of the verdict when Judge Colins granted R&H's motion for judgment notwithstanding the verdict ("JNOV"), finding that Jackson's invasion of privacy claim was barred by the exclusivity provision of Pennsylvania's Workers' Compensation Act ("WCA"), 77 Pa..C.S.A. § 1, et seq.⁵ See *Jackson v. Rohm & Haas Co.*, 56 Pa. D. & C. 4th 449 (Pa. Com. Pl. 1999). As Judge Colins explained, under that provision, an "employee gives up his or her common-law right to damages for any injury occurring in the course of employment in exchange for the exclusive statutory right to compensation for all injuries. *Socha v. Metz*, 385 Pa. 632, 637, 123 A.2d 837, 839 (1956). . . . The exclusive effect of the Act is to immunize an employer from civil suits brought by their employees for work-related injuries. *Kline v. Arden H. Verner Co.*, 503 Pa. 251, 469 A.2d 158 (1983). This not only includes negligence claims, but also intentional tort claims against an employer. See *Poyser v. Newman & Co., Inc.*, 514 Pa. 32, 36, 522 A.2d 548, 550 (1987)." *Id.* at 453-54. In that same opinion, the court

⁴The jury also found that McCory had defamed plaintiff but did not award damages on that claim.

⁵Section 303 of the Act, states:

The liability of an employer under this Act shall be exclusive and in place of any and all other liability to such employes [sic] . . . otherwise entitled to damages in any action at law or otherwise on account of any injury or death defined in [section 411]. 77 P.S. § 481.

affirmed its previous ruling granting non-suit as to Jackson's punitive damages claim based on the alleged fraud and cover-up. The court stated:

The trial court properly ruled as a matter of law, that plaintiff failed to present sufficient evidence to allow punitive damages to be presented to the jury. . . . Mr. Jackson's claim that punitive damages should be allowed to be presented to the jury with regard to R&H stemmed from the allegation that there were a couple additions to the notes taken from the interview. [Citations to transcript omitted]. A couple numbers and a circle were added to the notes. These notations or additions were insubstantial and in no way changed the substance of the notes. The evidence was not sufficient to sustain a claim that R&H acted with an evil motive or reckless indifference. *Id.* at 464-65.

On October 2, 2002, Jackson filed an appeal in the Superior Court of Pennsylvania where he renewed his allegation that "Rohm & Haas Company Committed a Fraud on the Court." *See* Ex. 2 at 39-55. On July 31, 2003, the Pennsylvania Superior Court affirmed the trial court's decision. Jackson subsequently filed a petition for a rehearing en banc, which was denied. On October 31, 2003, he filed a Petition for Allowance to Appeal with the Pennsylvania Supreme Court. On May 4, 2004, that petition was denied.

B. Federal Court Proceedings

On September 19, 2003, Jackson filed the present action in federal court. On February 19, 2004, he filed an amended complaint alleging violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. ("RICO") and several pendent state law claims.⁶ Jackson alleges that R&H employees and their legal

⁶Jackson's complaint includes state claims for: Abuse of Process (Count II); Wrongful Use of Civil Proceedings (Count III); Fraud (Count IV); Fraudulent Misrepresentation (Count V); Fraudulent Concealment (Count VI); Negligent

counsel altered and manufactured the Warrick interview notes, offered perjured testimony with respect to those notes, and then advanced the notes and perjured testimony throughout discovery, trial, and appeal in a scheme to defraud the court.

Defendants have filed a motion to dismiss the amended complaint arguing that: (1) the *Rooker-Feldman* doctrine deprives this court of subject matter jurisdiction; (2) the plaintiff lacks standing under RICO; and (3) each of the eight pendent state claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). Because Jackson lacks standing under RICO, the only independent basis for federal jurisdiction, the amended complaint will be dismissed in its entirety.

II.

The *Rooker-Feldman* doctrine, which derives its name from two Supreme Court decisions – *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) – bars lower federal courts from reviewing state court decisions. The doctrine is grounded in 28 U.S.C. § 1257, which limits federal appellate jurisdiction to review state court judgments to the Supreme Court.

In a recent decision, *ExxonMobil Corp. v. Saudi Basic Industries Corp.*, the Supreme Court confined the scope of the *Rooker-Feldman* doctrine to “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before

Misrepresentation (Count VII); Intentional Infliction of Emotional Distress (Count VIII); Civil Conspiracy (Count IX).

district court proceedings commenced and inviting district court review and rejection of those judgments.” 125 S.Ct. 1517, 1521-22 (2005). The Court went on to explain, “*Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state courts.” *Id.* at 1522. Although *ExxonMobil* involved concurrent litigation in the state and federal courts, the Court made clear that the holding applies to successive litigation as well:

Nor does § 1257 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. If a federal plaintiff “presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.” *GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993); accord *Noel v. Hall*, 341 F.3d 1148, 1163-1164 (9th Cir. 2003).

ExxonMobil, at 1527. *ExxonMobil* applies squarely to the present case. In his federal complaint, Jackson presents an independent claim under RICO, albeit one that denies the legal conclusion the state court reached with regard to punitive damages. (See *supra* p. 7). The *ExxonMobil* decision explicitly draws on two circuit court cases – *GASH Assocs. v. Village of Rosemont* and *Noel v. Hall* – which, read together, offer further insight into the meaning of the phrase “injuries caused by state-court judgments.” In those cases, the Seventh and Ninth Circuits respectively distinguished between a case in which the plaintiff complains of a legal injury caused by a state court judgment due to a legal error committed by the court, which is barred by *Rooker-Feldman*, and one in which the

plaintiff complains of a legal injury caused by the adverse party, which is not. Because Jackson's federal complaint alleges an injury caused not by the state court's legal error but by the defendants' alleged fraud, the *Rooker-Feldman* doctrine is not a bar to this court's subject-matter jurisdiction.⁷

III.

Civil RICO standing is viewed as a 12(b)(6) question of stating an actionable claim, rather than one of subject matter jurisdiction under 12(b)(1). *Anderson v. Ayling*, 396 F.3d 265, 269 (3d. Cir. 2005). The court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. *Angelaastro v. Prudential-Bache Sec., Inc.*, 764 F.2d 939, 944 (3d. Cir. 1985).

IV.

To have standing to bring a civil RICO claim, a plaintiff is required to show that: (1) he has suffered an injury to his business or property, and (2) the alleged injury was

⁷The Third Circuit's recent decision applying the *Rooker-Feldman* doctrine in *Knapper v. Bankers Trust Co.*, 407 F.3d 573 (3d. Cir. 2005) is not inconsistent with this holding. In that case, the state court had entered two default judgments against the plaintiff after she failed to answer foreclosure complaints involving two properties she owned. "Knapper never appeared in state court to strike or open either default judgment. Instead, she filed four prior unsuccessful bankruptcy petitions under Chapter 13 in an effort to prevent the foreclosure of her properties." *Id.* at 576. Presented with her fifth bankruptcy petition, in which she sought to have the sheriff's sales vacated on the grounds that she was not properly served with the foreclosure complaints, the Third Circuit held that the bankruptcy court lacked subject matter jurisdiction under *Rooker-Feldman*. In contrast to Jackson, Knapper challenged the constitutionality of the state court judgment itself, claiming service of the complaint was invalid.

proximately caused by racketeering activity. *See Mehling v. New York Life Ins. Co.*, 163 F. Supp. 2d 502, 506 (E.D. Pa. 2001) (citing *Maio v. Aetna, Inc.*, 221 F.3d 472, 483 (3d Cir. 2000)). Jackson's loss of the \$150,000 jury verdict constitutes an injury to property that fulfills the first requirement. However, defendants argue that there is an insufficient nexus between that injury and the alleged fraud to satisfy the proximate cause requirement. This court agrees.

Jackson contends that defendants manufactured or otherwise altered the Warrick notes to make their questions and conduct during the interview with Jackson appear more defensible. However, both the Pennsylvania Court of Common Pleas and Superior Court found that, *even assuming* defendants invaded his privacy, Jackson's claim was barred by the exclusivity provision of the WCA. As the Court of Common Pleas stated when it granted the JNOV:

The injuries for which plaintiff sought recovery against defendant R&H stemmed from R&H's interview and the manner in which the interview was conducted. Were it not for the employer-employee relationship between Mr. Jackson and R&H, R&H never would have interviewed Mr. Jackson. . . . Mr. Jackson claimed that since the evening was social and not work-related, R&H employees had no right to ask him about it. The sexual encounter in question took place outside the workplace and was unrelated to work. Mr. Jackson, therefore, felt that R&H invaded his privacy. However, the evidence showed that the company, R&H, had a federally mandated duty to investigate and follow up on June McCrory's report of sexual harassment. The company was simply fulfilling its duty as required by law. Even if Mr. Jackson's privacy was invaded by R&H, his claim for invasion of privacy was barred by the WCA.." *Id.* at 455-577.⁸

⁸Similarly, in affirming the trial court's decision to grant a JNOV for defendants, the Superior Court stated:

The determination that Jackson's claims were barred by the WCA was based wholly on the employer-employee relationship that existed between Jackson and R&H and between McCrory and R&H. Defendants' conduct during the interview and the actual content of their notes were irrelevant to the court's analysis. Accordingly, even if all of Jackson's allegations about defendants' fraudulent conduct are true, that conduct cannot be said to be the proximate cause of the court's decision to grant the JNOV and vacate the \$150,000 jury verdict.

In response to defendants' proximate cause argument, Jackson contends that a judgment obtained by fraud is void and unenforceable. As a general matter, Jackson is correct. In the case at bar, however, the argument lacks merit because the JNOV was not obtained by fraudulent means. First, as discussed above, the alleged fraudulent conduct was entirely irrelevant to the state court's determination that Jackson's claims were barred by the exclusivity provision of the WCA. Second, Jackson explicitly and repeatedly alerted the state court to the alleged fraud from the very beginning of the proceedings and

It is clear that the injuries for which Jackson sought recovery arose in the course of employment and were related thereto. They solely stemmed from R&H's interview and the manner in which the interview was conducted as well as the way in which McCrory's complaints were handled within the company. Jackson claims of no injury occurring outside the workplace, either during or after the alleged "date." The fact of the matter remains that Jackson would not have filed the instant lawsuit against R&H had it not been for the actions of his employer that he alleges 'injured' him. Moreover, it is abundantly clear that R&H would never have an investigation into the matter had Jackson and McCrory not been employees of the company. We are hard-pressed to define this injury as anything other than one arising out of the course of Jackson's employment.

those allegations became an integral part of the litigation. *See supra* pp. 4-7. Despite this awareness, neither the Court of Common Pleas nor the Superior Court altered their judgment that entering the JNOV for defendants was proper in light of the WCA exclusivity provision.

V.

Accordingly, Jackson's civil RICO claim will be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6). This court declines to exercise pendent jurisdiction over the remaining state claims.

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Defendants.

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ORDER

June 30, 2005

For the reasons set forth in the accompanying opinion, it is hereby ORDERED that plaintiff's amended complaint is DISMISSED.

BY THE COURT:

Pollak, J.