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(Cite as: 819 F.2d 151)

United States Court of Appeals,  
Sixth Circuit.  
BLOUNT FINANCIAL SERVICES, INC., a  
corporation; BFS Finance, Inc., a  
corporation; David Aultom and Jean Aultom,  
Plaintiffs-Appellants,  
v.  
WALTER E. HELLER AND COMPANY, a  
foreign corporation and Lowell Crabtree,  
Defendants-Appellees.  
No. 86-5342.

Argued April 16, 1987.

Decided May 27, 1987.

Operator of consumer loan company brought action against its financier. The United States District Court for the Eastern District of Tennessee, 632 F.Supp. 240, James H. Jarvis, J., dismissed action and plaintiff appealed. The Court of Appeals, Merritt, Circuit Judge, held that plaintiff's complaint alleging that plaintiff was forced out of business because defendant charged rate of interest which was illegal under contract between parties was insufficient to state cause of action under Sherman Act or Racketeer Influenced and Corrupt Organizations Act.

Affirmed.

West Headnotes

**[1] Monopolies** ¶17(2.2)

265k17(2.2) Most Cited Cases

Allegations of antitrust claim, that defendant financier breached its contract with consumer loan company by withdrawing from financing arrangement and doing business with another financial institution in same area did not state cause of action under Sherman Act. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

**[2] Racketeer Influenced and Corrupt Organizations** ¶14

319Hk14 Most Cited Cases

(Formerly 83k82.70)

Predicate offense of "unlawful debt" under Racketeer Influenced and Corrupt Organizations Act does not criminalize interest rates based on prime rate unless rate is twice usurious rate under state or federal law. 18 U.S.C.A. § 1961(1, 6).

**[3] Racketeer Influenced and Corrupt Organizations** ¶14

319Hk14 Most Cited Cases

(Formerly 83k82.72, 83k72)

Allegations that consumer loan company was forced out of business because financier charged rate of interest which was illegal under contract between parties, did not allege requirement of twice usurious rate, and thus did not state valid civil Racketeer Influenced and Corrupt Organizations Act claim for predicate offense of unlawful debt. 18 U.S.C.A. § 1961(1, 6), (6)(B).

**[4] Federal Civil Procedure** ¶636

170Ak636 Most Cited Cases

Fraud alleged in Racketeer Influenced and Corrupt Organizations Act civil complaint for mail fraud must state with particularity false statement of fact made by defendant which plaintiff relied on, and facts showing plaintiff's reliance on defendant's false statement of fact. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

**[5] Racketeer Influenced and Corrupt Organizations** ¶10

319Hk10 Most Cited Cases

(Formerly 83k82.71)

Sending financial statement which misconstrued prime rate provided by terms of contract between consumer loan company and financier may have been breach of contract, but did not amount to Racketeer Influenced and Corrupt Organizations Act mail fraud cause of action. Fed.Rules

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Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

**[6] Federal Civil Procedure** ↪636

170Ak636 Most Cited Cases

Consumer loan company alleging mail fraud under Racketeer Influenced and Corrupt Organizations Act against financier failed to state nature of fraud which gave rise to predicate offense of mail fraud with sufficient particularity. 18 U.S.C.A. § 1961(6)(B); Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

**[7] Racketeer Influenced and Corrupt Organizations** ↪10

319Hk10 Most Cited Cases

(Formerly 83k82.71)

Even assuming that financier knew bank was charging lower than advertised prime rate to some of its best borrowers, and that it concealed that fact from consumer loan company, such would not state cause of action for Racketeer Influenced and Corrupt Organizations Act mail fraud in absence of proof that misrepresentations or omissions, which consumer loan company could have discovered, were reasonably calculated to deceive persons of ordinary prudence and comprehension. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

**[8] Racketeer Influenced and Corrupt Organizations** ↪10

319Hk10 Most Cited Cases

(Formerly 83k82.71)

Financier's decision to charge rate of interest based on bank's advertised prime rate rather than rate bank charged its best customers as required under contract could not have been reasonably calculated to deceive business entity such as consumer loan company inasmuch as financier was separate and distinct entity from bank and was therefore in no better position than consumer loan company to obtain information about the bank's prime rate, and thus financier's action could not be a mail fraud under Racketeer Influenced and Corrupt Organizations Act. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

\*152 Philip R. Russ, argued, Amarillo, Tex., James D. Fox, Knoxville, Tenn., for plaintiffs-appellants.

L. Caesar Stair III, Knoxville, Tenn., Rene A. Torrado, argued, Chicago, Ill., W. Morris Kizer, argued, L. Crabtree, Knoxville, Tenn., for defendants-appellees.

Before MERRITT and NELSON, Circuit Judges, and CONTIE, Senior Circuit Judge.

MERRITT, Circuit Judge.

Plaintiffs sue the two defendants for violation of the Sherman Act and the Racketeer Influence and Corrupt Organizations Act, "RICO," in an action arising from a financing contract in which the defendant, Heller, loaned money to plaintiffs for their industrial thrift operations. The contract provided for interest based on adjusting upward the rate that the Continental Illinois Bank charged its most credit worthy customers. The gravamen of the case is that plaintiff was forced out of business because Heller charged a rate of interest which was illegal under the contract between the parties.

[1] We agree with the District Court's Rule 12(b)(6) decision that the complaint fails to state a cause of action under the Sherman Act and RICO, 632 F.Supp. 240. Stripped to the essential facts found in the allegations of the antitrust claim, the complaint alleges simply that Heller breached its contract with plaintiff by withdrawing from the financing arrangement and doing business with another financial institution in the same area. Under the controlling antitrust principles concerning refusal to deal stated in *Dunn & Mavis, Inc. v. New-Car Driveaway, Inc.*, 691 F.2d 241 (6th Cir.1982), the antitrust complaint in the instant case is defective and fails to state a claim. The antitrust complaint states no facts constituting an injury to competition but states only that the defendant Heller replaced one thrift institution with another as its business associate in the area.

[2][3] The complaint likewise fails to state a valid civil RICO claim for the predicate offenses of "unlawful debt" under § 1961(6)(B), Title 18, and mail fraud under § 1961(1). Section 1961(6) does not criminalize interest rates based on the prime rate unless the rate is twice the usurious rate under state

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or federal law. There are no facts alleged in the instant complaint which would bring the case in question within the requirement of twice the usurious rate under the last clause of § 1961(6)(B).

[4][5][6] On the mail fraud RICO allegation, the complaint fails to state the nature of the fraud which gives rise to the predicate offense of mail fraud. The fact that the parties take different positions under the contract as to the appropriate prime rate, or the fact that the defendant charged too high a "prime rate" and thereby concealed or refused to disclose what the plaintiff considers the true prime rate called for under the contract, does not give rise to a valid claim for fraud. Fraud alleged in a RICO civil complaint for mail fraud must state with particularity the false statement of fact made by the defendant which the plaintiff relied on and the facts showing the plaintiff's reliance on defendant's false statement of fact. The plaintiff has not alleged with particularity any such false statement of fact and therefore the District Court was correct in dismissing the complaint. Sending a financial statement \*153 which misconstrues the prime rate provided by the terms of the contract may breach the contract but it does not amount to a RICO mail fraud cause of action. Rule 9(b) requiring "averments of fraud ... with particularity" is designed to allow the District Court to distinguish valid from invalid claims in just such cases as this one and to terminate needless litigation early in the proceedings.

[7] Even assuming that Heller knew that Continental Illinois Bank was charging a lower than advertised prime rate to some of its best borrowers, and that it concealed that fact from plaintiffs, that would not state a cause of action for RICO mail fraud. In *United States v. Van Dyke*, 605 F.2d 220, 225 (6th Cir.), cert. denied, 444 U.S. 994, 100 S.Ct. 529, 62 L.Ed.2d 425 (1979), this Court recognized that in order to establish a scheme to defraud, which is an essential element of mail fraud, there must be proof of misrepresentations or omissions which were "reasonably calculated to deceive persons of ordinary prudence and comprehension."

[8] Heller's decision to charge a rate of interest

based on Continental's advertised prime rate could not have been reasonably calculated to deceive a business entity such as Blount Financial "of ordinary prudence and comprehension." Heller is a separate and distinct entity from Continental Illinois and is therefore in no better position than Blount to obtain information about Continental Illinois' prime rate. Put another way, Blount was in as good a position as Heller to discover the "true" prime rate. An ordinary and prudent business person in the financial field would not have merely accepted Heller's quotation of the prime rate, but would have verified the rate independently. Blount's reliance and inaction were unreasonable and therefore prevent it from establishing that Heller's conduct was "reasonably calculated" to deceive the ordinary business person. In this business setting, Blount at most has a breach of contract action.

Accordingly, the judgment of the District Court is affirmed.

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