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Recent Developments: Sedima, S.P.R.L. v. Imrex Company, Inc.: The Supreme Court Gives Its Approval to the Use of The Civil Rico Provisions

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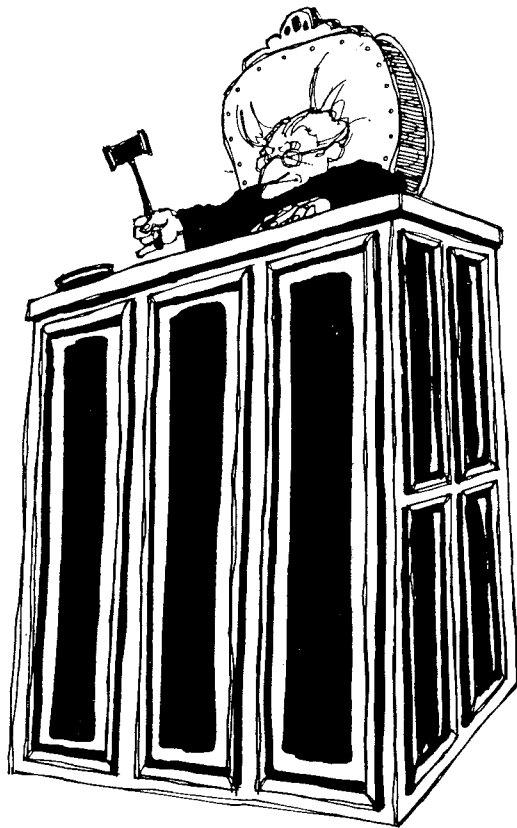
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again, made reference to the scope provision of Rule 741(a)(3), noting that in reenactment the provision had been moved from subsection (a)(3) to subsection (g) and now reads "obligations of the State's Attorney under *this Rule*." Md. Rule 4-263(g) (emphasis added). "This change merely presents more clearly the intent of the predecessor, Md. Rule 741(a) and does not represent an enlargement of the obligations of a State's Attorney in furnishing disclosure." 303 Md. at 651, 496 A.2d at 668.

Finally, the state argued that the trial court did not abuse its discretion in deciding to admit Officer Jenkin's testimony and in permitting prosecutor's reference to it in his opening remarks. Alternatively, the state claimed that if there was error, it was not prejudicial. The court, once again, rejected this contention, drawing an analogy between this case and *Colter v. State*, 297 Md. 423, 466 A.2d 1286 (1983). *Colter* involved the portion of the discovery rule dealing with the identity of alibi witnesses and rebuttal-to-alibi witnesses. The court held that the practice of the judge excluding testimony from these nondisclosed witnesses was an abuse of discretion. In the instant case, however, the trial judge ruled there was no discovery violation, the question was never reached as to what sanction, if any, should be applied. The court went on to explain that there was a discovery violation in this case and whether

or not it was prejudicial, turns on two things. The first is whether Bailey would have moved to suppress upon obtaining the statements; the second is whether that motion to suppress would have been successful.

Based on the above reasoning, the court remanded the case without affirmance or reversal, mandating that the trial court undertake a process potentially involving three steps. First, the trial judge will realize that there was a discovery violation. He shall consider the defendant's objection as of the time it was made and then determine the appropriate remedy. If exclusion is the proper remedy, then a new trial will be granted. If exclusion is not necessary, then the judge proceeds to step two.

Next, a suppression hearing should be held if the defendant moves to suppress on other grounds. At that hearing, a determination of whether to exclude or not must be made. Again, if exclusion is the appropriate remedy a new trial must be granted.

Step three involves the determination of prejudice. If exclusion was not the appropriate remedy in the suppression hearing, the state must then prove beyond a reasonable doubt that there was no prejudice or the judge shall grant a new trial.

The court's holding in *Bailey* serves two purposes. First, it furthers the rationale behind Md. Rule 4-263; that of requiring the state to disclose statements, therefore apprising the defendant of the evidence

against him, and forcing the defense to file motions to suppress prior to trial. Second, the ruling clearly lays out a three step analysis for the trial court to follow in evaluating possible discovery violations under the rule.

—Lori S. Simpson

***Sedima, S.P.R.L. v. Imrex Company, Inc.*: THE SUPREME COURT GIVES ITS APPROVAL TO THE USE OF THE CIVIL RICO PROVISIONS**

In *Sedima, S.P.R.L. v. Imrex Company, Inc.*, 105 S.Ct. 3275 (1985), the Supreme Court examined the utilization of the private civil action provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO" or "Act"), 18 U.S.C. §§ 1961-1968 (1970). The Court reversed the decision of the Court of Appeals of the Second Circuit and may serve to greatly expand the use of the private civil action provisions of RICO.

In 1979, *Sedima*, a Belgian corporation, entered into a joint venture agreement with *Imrex* to provide electronic components to another Belgian corporation. Under the terms of the agreement, the buyer was to order the parts through *Sedima*, and then *Imrex* was to obtain the parts in this country and ship them to Europe. The net proceeds were to be split between *Sedima* and *Imrex*. However, *Sedima* became convinced that *Imrex* was presenting inflated bills, thereby cheating *Sedima* out of its fair share of the proceeds by collecting for nonexistent expenses.

In 1982, *Sedima* filed suit in the Federal District Court for the Eastern District of New York against *Imrex*, setting forth several common law claims. In addition, *Sedima* filed claims under the civil action provisions of RICO, pursuant to § 1964(c). Two counts alleged violations of § 1962(c), based on the predicate acts of mail and wire fraud. The third count alleged a conspiracy to violate § 1962(c).

The district court dismissed the RICO counts for failure to state a claim. The court held the requirement of § 1964(c) that the jury be "by reason of a violation of section 1962", means that it must be different in kind from the direct injury resulting from the predicate acts of racketeering activity. *Sedima, S.P.R.L. v. Imrex Company, Inc.*, 574 F. Supp. 963 (E.D.N.Y. 1983). The court further held the complaint must allege a "RICO-type injury", which was some type of distinct racketeering or competitive injury. *Id.* at 965.

The Court of Appeals for the Second Circuit affirmed the district court's decision

in determining that Sedima's complaint was defective in two regards. *Sedima, S.P.R.L. v. Imrex Company, Inc.*, 741 F.2d 482 (2d Cir. 1984). The first defect, according to the court, was that the complaint failed to allege an injury "by reason of a violation of section 1962." The court determined that the intent of Congress was to compensate victims of organized crime and not to provide additional remedies for injuries which were already compensable. The court also found the complaint to be defective because it failed to allege that the defendants had already been criminally convicted of the predicate acts of mail and wire fraud, or of a RICO violation. In reaching its conclusion, the court indicated its distress at the "extraordinary, if not outrageous" uses to which the private civil action provisions of RICO have been put. *Id.* at 487.

The Supreme Court, in a five to four decision, reversed the decision of the lower court. Justice White, writing the majority decision, found two basic reasons for the Court's holding. First, he determined that there is no requirement that a private civil action under § 1964(c) may only be implemented against a defendant who has previously been convicted of a predicate act or of a RICO violation. Second, the Court found no requirement that in order for a plaintiff to proceed under § 1964(c), it must first establish a "racketeering injury", not merely an injury resulting from the predicate acts themselves.

The Supreme Court found numerous reasons for rejecting the requirement that a private civil action could only be maintained against a defendant who has already been convicted of a predicate act, or of a RICO violation. First, the Court examined the statutory language of the RICO Act and determined it gave no such indication. The Court noted the term "conviction" does not appear in any relevant part of the statute. It was also noted the definition of "racketeering activity" does not include acts for which the defendant has been convicted, but rather acts for which he could be convicted. Second, the Court examined the legislative history of the Act and found that if Congress had intended to impose such a requirement, there would have been some mention of it there. Finally, the Court determined such a requirement would be inconsistent with Congress' policy concerns by severely handicapping potential plaintiffs and by only allowing actions to be brought against those persons who had already been brought to justice.

In reaching its conclusion that a plaintiff must first establish a "racketeering injury" and not merely an injury resulting from the predicate acts themselves, the Court

relied primarily upon an interpretation of the statutory language. It was determined the language of the statute belies the requirement that there must be a "racketeering injury" which is separate from the harm caused by the predicate acts. Justice White set forth the following elements involved in a violation of section 1962(c), which must be alleged by the plaintiff in order to state a claim: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity. The Court held any damages occurring due to a violation of section 1962(c) will flow from the commission of the predicate acts.

In one dissenting opinion Justice Powell expressed his "disagreement with the Court's conclusion that the statute must be applied to authorize the types of private civil actions now being brought frequently against respected businesses to redress ordinary fraud and breach of contract cases." *Id.* at 3288 (J. Powell dissenting).

In a separate dissenting opinion, Justice Marshall disagreed with the majority's reading of the statute. He stated that, "I believe that the statutory language and history discloses a narrower interpretation of the statute that fully effectuates Congress' purposes, and that does not make compensable under civil RICO a host of claims that Congress never intended to bring

within RICO's purview." *Id.* at 3293 (J. Marshall dissenting).

RICO was developed as an aggressive step on the part of Congress to supplement the existing remedies and to develop new methods for fighting crime, particularly organized crime. For a number of years after its enactment, RICO was used primarily to deal with organized crime and its private civil action provisions were generally ignored. However, beginning in the 1980's these provisions began to develop in a rapid manner. Although the Supreme Court recognized the private civil action provisions of RICO have evolved into something quite different from the original concept of Congress, the Court has accepted this evolution. According to Justice White, the fact that RICO has been applied in situations which were not anticipated by Congress demonstrates the breadth of the Act, not necessarily the Act's ambiguity. The logical conclusion that can be drawn from this decision is that, barring a change of heart by the Supreme Court, the private civil action provisions of RICO will become more frequently used and provide an additional cause of action for those persons who may otherwise have only been able to bring common law claims.

—Marc Minkove

