IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3298

BILLY R. WHALEN,

Plaintiff-Appellant,

versus

PRENTISS H. CARTER, JR., ET AL.,

Defendants-Appellees.

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CLAUDE SHARKEY,

Plaintiff-Appellant,

versus

THE BANK OF GREENSBURG, ET AL.,

Defendants - Appellees.

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JOHN FUSSELL,

Plaintiff-Appellant,

versus

THE BANK OF GREENSBURG, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for
the Middle District of Louisiana
(CA 88 739 BM 1)

(April 28, 1994)

Before REAVLEY and JOLLY, Circuit Judges, and PARKER[*], District Judge.

PER CURIAM:[**]

BACKGROUND

The background of this case is sufficiently set forth in Whalen v. Carter, 954 F.2d 1087 (5th Cir. 1992) ("Whalen I"). We add little to those facts. Although this case has limped forward for several years, it has never come to trial. It has previously eluded resolution, but the time has now come.

The appellants' claims arose out of alleged fraudulent transactions that involved the Bank of Greensburg, Carter Mobile Homes, Inc. (CMH), a Louisiana corporation, and Prentiss H. Carter, Jr. and Associates (PHC & Associates), a real estate partnership in commendam. At the time of the suits the appellants owned debentures that CMH had issued, were shareholders in CMH, and were partners in PHC & Associates.

The appellants alleged in their complaints that the defendants conspired to complete certain improper preferential transfers of money shortly before CMH went bankrupt, which allegedly caused a decrease in the value of the appellants' investment. The appellants sought individual damages under state

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[*] Chief Judge of the Eastern District of Texas, sitting by designation.

[**] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

tort theories and then took the grand route for damages under RICO for the diminution in value of their interest in PHC & Associates and the loss in value of their debentures and stock. The district court granted summary judgment in favor of the defendants. (The specifics of the district court's actions are set forth in Whalen I.)

On appeal in Whalen I, we affirmed most of the district court's judgment but reversed and remanded the case to the district court with instructions that it only determine whether the appellants, as limited partners, had satisfied statutory RICO standing requirements. On remand, the district court concluded that the plaintiffs did not have standing as limited partners to sue under RICO because the plaintiffs did not demonstrate that they suffered injuries "by reason of" the commission of predicate acts which constitute a violation of 18 U.S.C. § 1962. The court then again granted the defendants' motion for summary judgment. We affirm.

DISCUSSION

RICO provides that any person injured in his business or property *by reason of* a violation of 18 U.S.C. § 1962 may sue for the damages he sustains. The Supreme Court interpreted this provision only weeks after Whalen I was decided in Holmes v. Securities Investor Protection Corp., 112 S. Ct. 1311 (1992). In Holmes, the Court applied a proximate cause test which mandates that some *direct relation* is required between the injurious conduct alleged and the injury asserted by a plaintiff in a RICO

claim. Id. at 1318. See also Ocean Energy II, Inc. v. Alexander & Alexander, Inc., 868 F.2d 740, 744 (5th Cir. 1989) (applying a proximate cause test to determine whether a person is injured "by reason of" a RICO violation). The Court opined that allowing suits by those injured only indirectly would open the door to "massive and complex damages litigation" which would burden the courts and "undermine the effectiveness of treble-damages suits." Id. at 1321, citation omitted.

The reasoning in Holmes applies here. The appellants only demonstrate that they might have been injured indirectly through acts directed toward the partnership. As the district court pointed out, the only act alleged by the appellants which arguably may have *directly* injured them is their claim that the defendants "procured substantial funds from plaintiffs through false statements for the purported operation of the partnership when it was not required and was controlled and used for the personal benefit of these defendants." The appellants' case hangs by a thin thread; even if this allegation could satisfy the requirement of multiple acts under RICO, the appellants did not proffer any evidence to support this allegation other than Whalen's single affidavit which averred that the appellants were required to make unnecessary payments to the partnership "from time to time." Furthermore, the appellants' complaint does not demonstrate how they were actually injured by the alleged misrepresentations. Summary judgment was appropriate because the record taken as a whole could not lead a rational trier of fact

to find for the appellants. Rodriguez v. Pacificare of Texas, Inc., 980 F.2d 1014, 1019 (5th Cir.), cert. denied, 113 S. Ct. 2456 (1993).

The appellants complain that they should have been allowed further discovery in order to substantiate this and other claims, but we agree with the district court that additional discovery was not justified. In Whalen I, we recognized that the district court would abuse its discretion by denying discovery requests (on remand) if it determined that the plaintiffs have statutory standing to assert their RICO claims. 954 F.2d at 1098 n. 11. As the district court determined, however, the appellants do not have statutory standing. The appellants cannot now seek to go on a fishing expedition in order to substantiate RICO claims that have failed to reach fruition after years of contention in the courts.

In Whalen I, we also instructed the district court to consider whether it could exercise jurisdiction over the state law claims asserted by Whalen, and the district court properly concluded that it should not do so.[1] Once the district court determined that no federal claims remained, it was within the court's discretion to refuse to entertain the state claims.

Finally, the appellants complain that the district court improperly refused to allow them to amend their complaint and

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[1] In Whalen I, we stated that the district court possibly had jurisdiction over the state claims because "Whalen might have the requisite standing to assert his RICO claims . . . ." 954 F.2d at 1097.

realign the parties under F.R.C.P. 17(a) so that the partnership, which arguably suffered a direct injury, could be added as a plaintiff. Our review is limited to determining whether the trial court's denial was an abuse of discretion. Gregory v. Mitchell, 634 F.2d 199, 203 (5th Cir. 1981). The district court's decision to dispose of this ancient case instead of casting it in an entirely new and questionable light cannot be deemed an abuse of discretion.

AFFIRMED.