

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 31 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

A. FARBER AND PARTNERS, INC., in its capacity as Canadian Court-Appointed Interim Receiver over the assets of Salim Damji, Strategic Trading Systems Instant White a/k/a STS Systems a/k/a Strategic Trade Systems a/k/a STS, Inc., Jem Holdings, a division of 1289629 Ontario, Inc., Izmo,

Plaintiff - Appellant,

v.

MAYNARD HAL GARBER, a/k/a Chuck Garber, Hal Maynard Garber Nigel Roberts, Robert Albert Fox and Robert Fox; et al.,

Defendants - Appellees,

CDG PARTNERS II LTD., a California limited partnership; et al.,

Defendants - Appellees,

and

No. 07-55004

D.C. No. CV-05-02776-JFW

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

OFFSHORE EXPERTS COMPANY,
LTD., a Belize corporation DOUGLAS
SINGH; et al.,

Defendants,

MONTANAS MAGICAS DEL SUR S.A.,
a Costa Rican corporation MONTANAS
MAGICAS DEL SUR S.A., a Belize
corporation; et al.,

Defendants.

A. FARBER AND PARTNERS, INC., in
its capacity as Canadian Court-Appointed
Interim Receiver over the assets of Salim
Damji, Strategic Trading Systems Instant
White a/k/a STS Systems a/k/a Strategic
Trade Systems a/k/a STS, Inc., Jem
Holdings, a division of 1289629 Ontario,
Inc., Izmo,

Plaintiff - Appellant,

v.

MAYNARD HAL GARBER, a/k/a Chuck
Garber, Hal Maynard Garber Nigel
Roberts, Robert Albert Fox and Robert
Fox; et al.,

Defendants - Appellees,

and

No. 07-55856

D.C. No. CV-05-02776-JFW

MONTANAS MAGICAS DEL SUR S.A.,
a Costa Rican corporation MONTANAS
MAGICAS DEL SUR S.A., a Belize
corporation; et al.,

Defendants.

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted December 9, 2008
Pasadena, California

Before: NOONAN and SILVERMAN, Circuit Judges, and CONLON,^{**} District
Judge.

Appellant A. Farber & Partners, Inc. (the “Receiver”) was appointed interim receiver over the assets of Salim Damji and Strategic Trading Systems Instant White (“STS”) by an order issued by the Ontario Superior Court of Justice. The Receiver’s appointment followed a Canadian class action by a group of investors against Damji for fraud. Acting under the order, the Receiver brought this RICO action against Maynard Garber and the other defendants. The Receiver now appeals the district court’s order granting summary judgment on the ground that the Receiver lacked standing to bring a RICO action.

^{**} The Honorable Suzanne B. Conlon, United States District Judge for the Northern District of Illinois, sitting by designation.

Under RICO's civil suit provision, "any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district." 18 U.S.C. § 1964(c). The Receiver has alleged that the defendants violated several provisions of § 1962 as part of a large-scale money laundering scheme that involved transfers of approximately \$34 million out of Canada to various straw companies and illegal gambling operations. The only issue before this court is whether the Receiver has standing under 18 U.S.C. § 1964(c) to assert these RICO claims against the defendants.

Section 7(e) of the Canadian receivership order authorizes the Receiver "to initiate, prosecute and continue the prosecution of any and all proceedings as may in its judgment be necessary or desirable to properly protect or realize upon the Property." E.R. 8: 1464. By the terms of this section of the court's order, the Receiver is not the personal representative of Damji and does not stand in his shoes. The Receiver's power springs from its appointment to collect and preserve the Property. The "Property" is defined in the order as "all of the present and future assets, undertaking and property of [Damji and STS] and any funds, proceeds or other assets directly or indirectly related to the funds allegedly raised by [Damji and STS] as alleged in [the Canadian class action complaint]." E.R. 8:

1462-63. This RICO action was authorized by the Canadian receivership order and approved by the Ontario Superior Court of Justice.

The Receiver's averments that (1) the defendants participated in a conspiracy to launder funds over which the Receiver has legal control, and (2) that the Receiver suffered injury when the funds under its protection were transferred by the defendants' RICO violations, sufficiently allege that the Receiver was injured in its property by reason of a violation of section 1962. 18 U.S.C. § 1964(c). Accordingly, we find that the district court erred in holding that the Receiver did not have standing to bring its RICO claims under § 1964(c).

When the district court ruled in favor of Garber, there was a motion pending for terminating sanctions filed by the Receiver against Garber. The magistrate judge had heard oral arguments on the sanctions motion, but had not yet issued a ruling. Because we find that the Receiver has standing to bring this action, the terminating sanctions motion remains active before the magistrate judge.

The judgment of the district court is REVERSED and REMANDED for proceedings in accordance with this decision.