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14-529

No. _____

In the Supreme Court of the United States

VITTORIO INFANTI,

Petitioner,

v.

GEORGE SCHARPF, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner, Vittorio Infanti, sued Respondents under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), *see* 18 U.S.C. § 1964(c). He claimed that Respondents engaged in a pattern of racketeering activity that caused him injury in the form of (1) lost compensation as President and CEO of a corporation that Respondents unlawfully set out to destroy; (2) lost opportunity to consummate the settlement of a dispute with a competitor that would have resolved a $15 million judgment against him personally; and (3) the pecuniary loss associated with the repayment of a loan to the corporation that Respondents induced Infanti to personally guarantee.

The Second Circuit Court of Appeal held that Infanti lacked standing to bring a civil RICO suit because the injuries were inflicted upon the corporation, not Infanti.

The question presented is:

1. Did Infanti suffer an injury to "business or property by reason of a violation" of RICO, such that he would have standing to bring suit under 18 U.S.C. § 1964(c)?

PARTIES TO THE PROCEEDING

All parties named in the caption of this petition were parties to the proceeding in the court of appeals. Infanti International, Inc. was a plaintiff in the district court and was a named plaintiff-appellant in the court of appeals, but is not a party in this Court and has no interest in the outcome of the petition. In addition, the following parties were defendants in the district court, defendant-appellees in the circuit court of appeals, and are Respondents herein: George Scharpf Holdings LLC, Stanley Koreyva, Jr.; Amboy National Bank; Elizabeth Kavlakian; EKI, LLC; The Board of Directors of Amboy National Bank; and Peter W. Davis.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Vittorio Infanti, has no corporate ties that would bring him within the purview of Supreme Court Rule 29.6. Respondent Amboy Bank is the wholly owned operating subsidiary of Amboy Bancorporation. Amboy Bancorporation is a Subchapter S corporation. Amboy Bancorporation does not have a parent company and no publicly held corporation owns 10% or more of Amboy Bancorporation's stock. To Petitioner's knowledge, none of the remaining respondents have a parent company, and no publicly held company owns 10% or more of their stock.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Vittorio Infanti, respectfully petitions this Court for a writ of certiorari to review the Summary Order issued by the United States Court of Appeals for the Second Circuit affirming the entry of summary judgment in favor of the Respondents.

DECISIONS BELOW

The Second Circuit's Summary Order is reported at 570 Fed. Appx. 85 and reproduced in the Petition Appendix ("App.") at App. 1-8. The United States District Court for the Eastern District of New York, in two unreported orders, granted summary judgment in favor of Respondents. Those orders are reproduced at App. 11-17 and App. 18-36. The district court entered judgment on May 9, 2013. App. 10.

STATEMENT OF JURISDICTION

Second Circuit entered its Summary Order on June 17, 2014. App. 1. On September 3, 2014, Justice Ginsburg extended the time to file this Petition until November 6, 2014.

The district court had jurisdiction under 28 U.S.C. § 1331, as Mr. Infanti raised a claim under 18 U.S.C. § 1964(c). The Second Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. Jurisdiction lies in this Court. 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 1964(c) provides:

> 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 court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

STATEMENT OF THE CASE

This case arises out of a suit brought under RICO, *see* 18 U.S.C. § 1964(c), and state tort law. Vittorio Infanti owned a chair manufacturing company that went bankrupt after a trade dress infringement suit brought by the Gasser Chair Company ("Gasser") resulted in a $15 million dollar judgment against Infanti's company and Infanti personally. App. 11-12.

After this litigation, Infanti left the United States and began living in Argentina. App. 21. Infanti claimed that Respondent George Scharpf, a banker, called him in Argentina to induce Infanti to return to Staten Island and rebuild his chair manufacturing business. *Id.* Infanti alleged that Scharpf promised that he would outfit the building that housed Infanti's previous manufacturing enterprise with machinery so that Infanti could recommence manufacturing chairs in the United States. *Id.* at 20, 22. In reliance on this promise, Infanti formed Infanti International, Inc., and

personally guaranteed a loan to the corporation of $1,355,000. App. 3, 21. In 2002, Infanti was elected President and CEO of Infanti International, Inc. App. 26.

According to Infanti, Scharpf, in conjunction with the other Respondents, secretly set up a competing chair manufacturing company called EKI, LLC. App. 34. Infanti alleged that, through racketeering activities, Respondents took control of Infanti's corporation, diverted its income, and invested the diverted funds in EKI, LLC, all with the objective "that EKI would flourish" and Infanti's business "would be destroyed." App. 25. Infanti also claimed that the Respondents interfered with an oral agreement Infanti had with Gasser that would result in the satisfaction of Gasser's judgment against him personally.

The district court granted summary judgment in favor of the Respondents. App. 11-17; App. 18-36. Although Infanti adduced evidence that the corporation suffered nearly $400,000 in lost profits and that he personally suffered the loss of over $1.5 million dollars in lost compensation, the district court concluded that Infanti lacked standing to sue under RICO because he was not a director or shareholder of the corporation. App. 26. The district court also found that the loss of the $1,355,000 dollars that Infanti suffered because he personally guaranteed a loan to Infanti International was insufficient to confer standing. *Id.*

On appeal, Infanti argued that the district court erred in its analysis because Infanti suffered an injury to his business and property when the respondents prevented him from consummating the settlement, thereby forcing him to continue to bear the burden of

Gasser's $15 million dollar judgment against him. Pl. Br. at 50-51. Infanti further argued that he suffered an injury to his property because he became personally responsible for the repayment of the $1,355,000 dollar loan as a consequence of the RICO conspiracy. *Id.* at 51. Finally, Infanti claimed that the racketeering activities were the proximate cause of his injuries because the Respondents directly targeted him and induced him to personally guarantee the loan to Infanti International, Inc. *Id.* at 54.

The Second Circuit rejected these arguments. Like the district court, it held that Infanti lacked standing to pursue his RICO claims because the harm did not affect him directly, even though he lost compensation in connection with his role as the CEO and President of Infanti International, Inc., and became personally responsible for the repayment of the $1,355,000 dollar loan. App. 6.

Infanti now submits this timely petition and asks this Court to grant a writ of certiorari to review the decision of the Second Circuit.

REASON FOR GRANTING THE WRIT

I. LOWER COURTS NEED GUIDANCE ON THE PROPER SCOPE OF RICO STANDING

This case presents an opportunity to resolve two of the thorniest problems in civil RICO standing jurisprudence. RICO confers a private right of action on any person injured in his (1) "*business or property*"; (2) "*by reason of a violation*" of the statute. 18 U.S.C. § 1964(c) (emphasis added). Each of these clauses relates to a distinct limitation on a plaintiff's ability to sue under 18 U.S.C. § 1962(c).

Courts have generally construed the "business or property" clause as a limitation on a party's standing to raise claims for injuries that are personal in nature. *See, e.g., Doe v. Roe*, 958 F.2d 763, 767–68 (7th Cir. 1992); *Grogan v. Platt*, 835 F.2d 844, 847 (11th Cir. 1988) (noting that "the ordinary meaning of the phrase 'injured in his business or property' excludes personal injuries, including the pecuniary losses therefrom").

But the scope of this limitation is far from clear. The Seventh and Second circuits have read the "business or property" clause to exclude any claim derived from a personal injury. *Evans v. City of Chicago*, 434 F.3d 916, 924-25 (7th Cir. 2006) *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013) (Congress did not intend for RICO suits to "compensate plaintiffs for pecuniary losses, such as loss of income, stemming from what is essentially a personal injury *like the inability to work or seek employment*") (emphasis added); *Bankers Trust Co. v. Rhoades*, 741 F.2d 511, 515 (2d Cir. 1984), *vacated on other grounds*, 473 U.S. 922. The Eleventh Circuit and Sixth Circuit also subscribe to this narrow view of RICO standing. *Jackson v. Sedgwick Claims Management Services, Inc.*, 731 F.3d 556 (6th Cir. 2013) (en banc); *Grogan v. Platt*, 835 F.2d at 847.

The Ninth Circuit has adopted a far less restrictive approach. It has held that plaintiffs have standing to bring suit under RICO where the injuries suffered arise from lost employment opportunities during false imprisonment, *Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005) (en banc), or even where workers receive a decrease in their wages as a consequence of a scheme to hire undocumented workers, *Mendoza v. Zirkle Fruit*

Co., 301 F.3d 1163 (9th Cir. 2002). On this view, the decrease in wages or lost employment opportunity amount to a pecuniary property loss that is redressable through a civil RICO suit, even though lost wages flow from a personal injury.

In a well-reasoned concurrence, Judge Kleinfeld, joined by Judge Reinhardt and Judge Berzon, specifically criticized the approach of the Seventh and the Eleventh circuits: "A careful reading of the statute cannot be reconciled with the 'personal injury' exclusion of the Seventh and Eleventh Circuit." *Diaz*, 420 F.3d at 903. According to Judge Kleinfeld, the RICO statute itself "tells us what kinds of injuries give rise to RICO claims. Some are in the nature of 'personal injury' claims, and some are not." *Id.* Thus, on this view, the arbitrary bar on claims derived from personal injuries "strain[s] RICO's statutory language." *Id.*

This case presents an opportunity to resolve the conflict between these competing approaches. Under Ninth Circuit precedent, Mr. Infanti's injuries—lost compensation as a business executive, the lost opportunity to settle the outstanding judgment against him and build his business, and the pecuniary loss associated with his personal guarantee of the loan to Infanti International—all are property losses that are redressable through a civil RICO suit. But, under the approach employed by the Second Circuit, these injuries do not suffice to confer RICO standing.

If this Court were to grant certiorari, Mr. Infanti would argue that the view of Judge Kleinfeld is the correct reading of the RICO statute, as it hews closest to the statutory text. This case presents a perverse

outcome: the alleged racketeering activity is described almost verbatim in 18 U.S.C. § 1962(a). The Respondents were alleged to have "received . . . income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt. . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." 18 U.S.C. § 1962(a). Mr. Infanti served as CEO and President of Infanti International, and claimed his business was destroyed through Respondents' unlawful diversion of income from his company to a competing enterprise engaged in interstate commerce. RICO was enacted to confer standing to remedy just such a harm.

However, the Second Circuit held, with no analysis of the statutory text, that the injury alleged did not confer standing under RICO. The Court should grant a writ of certiorari to review that decision.

This case also presents an opportunity to resolve another problematic aspect of RICO standing: proximate causation. This Court held in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992) and reiterated in *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006) that the "by reason of" clause in § 1964(c) requires plaintiffs to establish that the RICO violations were the proximate cause of the injuries alleged. Under *Anza*, the "by reason of" clause constitutes a "demand for some direct relation between the injury asserted and the injurious conduct alleged." 547 U.S. at 461.

Applying the "direct relation" test posed difficulties, however, which prompted this Court to address the issue again in *Hemi Group, LLC v. City of New York*, 559 U.S. 1 (2010). In *Hemi Group*, a four-justice plurality of the Court concluded that proximate causation in RICO cases depends on "the directness of the relationship between the conduct and the harm," 559 U.S. at 12, while a three-justice dissent urged the adoption of a forseeability test, *id.* at 23-24.

Unfortunately, the failure to command a majority appears to have engendered confusion. In this case, for instance, the Second Circuit made no mention of *Holmes*, *Anza* or *Hemi Group*, and instead, applying its own precedent, categorically concluded that "shareholders, officers, and employees lack standing to bring a civil RICO claim for harm to their corporation." App. 6 (citing *Manson v. Stacescu*, 11 F.3d 1127, 1130-33 (2d Cir. 1993)).

This holding conflicts with the "direct relation" test, because Infanti was injured as a direct result of the actions of Respondents. The Second Circuit reasoned that Infanti International's corporate existence deprived Infanti of standing. However, the court failed to recognize that Infanti (1) suffered an injury because Respondents caused him to lose his compensation as President and CEO of the corporation; (2) suffered an injury because Respondents scuttled Infanti's settlement of the dispute with Gasser; and (3) suffered an injury because Respondents induced him to personally guarantee the loan to Infanti International.

These injuries all bear a direct relationship to the alleged conduct of Respondents. However, the Second Circuit, without any reference to this Court's

controlling authority, found that Mr. Infanti lacked standing to bring a RICO claim.

The Second Circuit's decision exemplifies the increasing frequency with which the appellate courts seem willing to graft judicially-imposed limitations on RICO claims without regard to the statutory text. It is important to remember that "RICO is to be read broadly." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497 (1985). The justification for broad statutory construction is two-fold. First, Congress wrote the RICO statute with "self-consciously expansive language and overall approach." *Id.* at 498 (citing *United States v. Turkette*, 452 U.S. 576, 586–87 (1981)). Second, Congress admonished "that RICO is to 'be liberally construed to effectuate its remedial purposes.'" *Id.* (quoting Pub. L. No. 91–452, § 904(a), 84 Stat. 947). The remedial purpose of RICO is "nowhere more evident than in the provision of a private action for those injured by racketeering activity." *Id.*

Yet, with increasing regularity, the circuit courts of appeal have sought to limit the availability of RICO suits, notwithstanding the self-consciously expansive language used by Congress. *See, e.g., Jackson v. Sedgwick Claims Management Services, Inc.*, 731 F.3d 556 (6th Cir. 2013) (en banc). "It is not for the judiciary to eliminate the private action in situations where Congress has provided it." *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 660 (2008) (quoting *Sedima*, 473 U.S. at 499-500).

This Court should intercede and provide guidance on the proper scope of RICO standing.

CONCLUSION

For the reasons described herein, the Petitioner respectfully requests that this Court grant his petition for a writ of certiorari, and review the proceedings below.

Respectfully submitted on this 6th day of November, 2014.

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