

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second  
2 Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley  
3 Square, in the City of New York, on the 30<sup>th</sup> day of January, two thousand  
4 fourteen.

5  
6 PRESENT: JOHN M. WALKER, JR.,  
7 JOSÉ A. CABRANES,  
8 RAYMOND J. LOHIER, JR.,  
9 *Circuit Judges.*

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11 EDITH RICHMOND,

12  
13 *Plaintiff-Appellant,*

14  
15 v.

No. 13-1702-cv

16  
17 NATIONAL GRID, THE BROOKLYN UNION  
18 GAS COMPANY d/b/a NATIONAL GRID NY,

19  
20 *Defendant-Appellee.*<sup>1</sup>  
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<sup>1</sup> The Clerk of the Court is directed to amend the caption of this case as set forth above.

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2 FOR APPELLANT: ROLAND G. OTTLEY, The Ottley Law Firm, P.C.,  
3 Brooklyn, NY.

4  
5 FOR APPELLEE: ELISA M. PUGLIESE, Cullen and Dykman LLP,  
6 Brooklyn, NY.  
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8 Appeal from a judgment of the United States District Court for the Eastern  
9 District of New York (Dora L. Irizarry, *Judge*).<sup>2</sup>

10 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,  
11 AND DECREED that the judgment of the District Court is AFFIRMED.

12 Plaintiff-appellant Edith Richmond (“Richmond”) filed suit for damages  
13 arising from a natural gas supply agreement initially entered into with US  
14 Energy Savings d/b/a Just Energy of New York (“Just Energy”) and then  
15 transferred to defendant-appellee National Grid, The Brooklyn Union Gas  
16 Company d/b/a National Grid NY (“National Grid”).

17 On November 7, 2013, we dismissed the appeal for lack of appellate  
18 jurisdiction, holding that the District Court’s order was not a “final judgment”  
19 because it dismissed Richmond’s claims only as to National Grid while  
20 proceedings against Just Energy were ongoing. Richmond v. Nat’l Grid, No. 13-  
21 1702-CV, 2013 WL 5943437 (2d Cir. Nov. 7, 2013) (summary order). We also  
22 granted Richmond permission to reinstate the appeal should the District Court  
23 direct entry of a final judgment. Id. at \*2. In December 2013 the District Court  
24 dismissed with prejudice the claims against Just Energy and closed the case. On  
25 January 7, 2014, we reinstated the appeal on the briefs already submitted and the  
26 arguments previously made by the parties. We assume the parties’ familiarity

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<sup>2</sup> On April 19, 2013, the case was reassigned to Judge Pamela K. Chen.

1 with the facts and record of the prior proceedings, to which we refer only as  
2 necessary to explain our decision to affirm.

3 Richmond alleges that Just Energy unfairly imposed an exit fee when she  
4 attempted to cancel the contract, and that after the contract was transferred to  
5 National Grid, National Grid attempted to collect the fee without verifying its  
6 accuracy or informing Richmond that she could dispute the fee while paying the  
7 undisputed portion of the bill. On appeal, Richmond argues that the District  
8 Court improperly dismissed her claims against National Grid for violations of  
9 the Racketeer Influenced and Corrupt Organizations Act (“RICO”), fraudulent  
10 misrepresentation, unjust enrichment, and deceptive practices in violation of  
11 sections 349 and 350 of the New York General Business Law.

12 Richmond claims that National Grid engaged in a pattern of racketeering  
13 activity in violation of the RICO statute, 18 U.S.C. § 1962, by committing mail  
14 and wire fraud in its attempts to collect the exit fee. See DeFalco v. Bernas, 244  
15 F.3d 286, 305-06 (2d Cir. 2001) (listing elements of a RICO claim). We conclude  
16 that the District Court properly dismissed Richmond’s RICO claims because she  
17 failed to plead the elements of fraud with particularity and, in any event, failed  
18 to allege that National Grid’s collection attempts were in furtherance of a  
19 fraudulent scheme. See Lundy v. Catholic Health Sys. of Long Island Inc., 711  
20 F.3d 106, 119 (2d Cir. 2013).

21 Richmond also argues that National Grid’s alleged failure to respond to  
22 her complaints about the exit fee establishes a claim of fraudulent  
23 misrepresentation. However, Richmond did not sufficiently allege that National  
24 Grid’s poor customer service was either “material” or a “false representation,” as  
25 required for a claim of fraudulent misrepresentation under New York law. See

1 Bridgestone/Firestone, Inc. v. Recovery Credit Servs., Inc., 98 F.3d 13, 19 (2d Cir.  
2 1996).

3 We also think the District Court was right to dismiss Richmond's claim of  
4 unjust enrichment based on the exit fee. Richmond failed to allege that she even  
5 paid the exit fee and therefore cannot establish that National Grid benefited from  
6 the fee -- an element of a claim for unjust enrichment under New York law. Kaye  
7 v. Grossman, 202 F.3d 611, 616 (2d Cir. 2000).

8 Finally, Richmond claims that National Grid's allegedly deceptive  
9 practices violated sections 349 and 350 of the New York General Business Law.  
10 Section 349 prohibits "[d]eceptive acts or practices in the conduct of any  
11 business, trade or commerce or in the furnishing of any service in this state."  
12 N.Y. Gen. Bus. Law § 349(a). Section 350 prohibits "[f]alse advertising in the  
13 conduct of any business, trade or commerce or in the furnishing of any service in  
14 this state." Id. § 350. To establish a claim under these sections, a plaintiff must  
15 allege that the defendant's conduct affected consumers generally or the public at  
16 large. Maurizio v. Goldsmith, 230 F.3d 518, 521-22 (2d Cir. 2000). Richmond  
17 alleges, however, that National Grid acted improperly only with respect to  
18 Richmond. Accordingly, Richmond failed to plead a claim under sections 349  
19 and 350. Id. at 521 ("[P]rivate contract disputes, unique to the parties . . . would  
20 not fall within the ambit of the statute." (quotation marks omitted)).

We have considered Richmond's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is **AFFIRMED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court