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LITIGATION PRACTICE GROUP CASE ALERT

US First Circuit Court of Appeals upholds dismissal of RICO, Sherman Act and Bank Holding Company Act claims brought by Iraqi Dinars trader

Eduardo A. Zayas-Marxuach and Alejandro J. Cepeda of our Litigation Practice Group successfully persuaded the U.S. Court of Appeals for the First Circuit to uphold the dismissal of a complaint that raised claims under the Racketeer Influenced and Corrupt Organization Act ("RICO"), the Sherman Antitrust Act ("Sherman Act"), the Bank Holding Company Act ("BHCA"), and Puerto Rico's general tort statute, filed by a trader of Iraqi Dinars against several of Puerto Rico's banking institutions and the operator of a consumer advocacy website. [Méndez Internet Services, Inc. v. Banco Santander, et al.](#)

Plaintiffs claimed that the defendants engaged in a conspiracy to deny them access to banking services with the purpose of putting them out of business. Plaintiffs further claimed that, as part of the conspiracy, the defendants posted statements about the trade of Iraqi Dinars on a consumer advocacy website to discredit their business.

The District Court granted a motion to dismiss the complaint in its entirety. The Court found that the plaintiffs had failed to establish a RICO Act claim because they had failed to sufficiently allege the required predicate acts of racketeering activity. The Court dismissed plaintiffs' Sherman Act claim because the complaint at best established parallel conduct and did not state sufficient facts that could support the claim that a conspiracy existed between the defendants. Finally, the Court dismissed plaintiffs' BHCA claim because they failed to allege that the defendants had tied the provision of banking services to the plaintiffs' either acquiring other services from them or refraining from conducting business with a competitor.

On appeal, plaintiffs abandoned the Sherman Act claim, but argued that they had sufficiently alleged the predicate acts of fraud and extortion in order to support their RICO claim. They further argued that they had sufficiently alleged a tying arrangement under the BHCA. The Court of Appeals affirmed the dismissal of the complaint based on the record and without the need for oral argument.

The Court held that the defendant's statements regarding the reasons for closing plaintiffs' accounts, even if a misrepresentation of their true motives, did not constitute fraud because any harm suffered by the plaintiffs resulted from the denial of banking services and not from the bank's statements. Moreover, the Court held that the banks had not extorted the plaintiffs because there were no allegations that they sought to obtain any property from the plaintiffs. The allegation that the denial of banking services could result in the disruption or closing of plaintiffs' business did not sufficiently establish that the defendants attempted obtain plaintiffs' business, as there were no allegations that the banks intended to enter into the Iraqi dinar business.

Finally, the Court agreed that the BHCA claim failed on its face insofar as the plaintiffs had not alleged that the banks sought to eliminate and replace plaintiffs' suppliers of Iraqi dinars. Also of note in the decision of the Court of Appeals is that it reinforced the legal tenet that a plaintiff is not entitled to discovery if it cannot establish a factual predicate concrete enough to warrant further proceedings.

Should you have any questions or comments, or wish additional information regarding this matter, please contact Francisco G. Bruno, Chair of our Litigation Practice Group at (787) 250-5608 or via email fgb@mcvpr.com. The contact information of our Litigation Practice Group attorneys is available on our [website](#)

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