# SUPREME COURT OF THE UNITED STATES

No. 98–1480

ROBERT A. BECK, II, PETITIONER *v.* RONALD M. PRUPIS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

April 26, 2000

JUSTICE STEVENS, with whom JUSTICE SOUTER joins, dissenting.

For the purpose of decision, I assume– as I think the Court does– that petitioner has alleged an injury proximately caused by an overt act in furtherance of a conspiracy that violated 18 U. S. C. §1962(d). In my judgment, the plain language of the Racketeer Influenced and Corrupt Organizations Act (RICO) makes it clear that petitioner therefore has a cause of action under §1964(c), whether or not the overt act is a racketeering activity listed in §1961(1). The common-law civil conspiracy cases relied upon by the Court prove nothing to the contrary.

A "conspiracy" is an illegal agreement. There is, of course, a difference between the question whether an agreement is illegal and the question whether an admittedly illegal agreement gives rise to a cause of action for damages. Section 1962(d), which makes RICO conspiracies unlawful, addresses the former question;[1] §1964(c),

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[1] Those who participate in an illegal agreement to violate the substantive provisions of §1962(a), (b), or (c) have engaged in a conspiracy in violation of §1962(d). See *Salinas* v. *United States*, 522 U. S. 52, 63–65 (1997). Although "[t]here is no requirement of some overt act" to violate §1962(d), *id.*, at 63, that, of course, does not mean that an agreement alone gives rise to civil liability under §1964(c).

which imposes civil liability, concerns the latter. Section 1964(c) requires a person to be "injured in his business or property" by a violation before bringing an action for damages. And because that kind of injury only results from some form of overt act in furtherance of the conspiracy, liability under §1964(c) naturally requires injury via an overt act.[2] But there is nothing in either §1962(d) or §1964(c) requiring the overt act to be a racketeering activity as defined in §1961(1).[3]

The Court's central premise is that common-law civil conspiracy cases support the notion that liability cannot be imposed unless the overt act that furthered the conspiracy and harmed the plaintiff was a *particular kind* of overt act, namely, an act of a tortious character. But the cases cited by the Court do not support that point. First, no case cited by the majority actually parallels the Court's premise. That is, no case involved a situation in which (a) there was an illegal agreement, (b) there was an injury to the plaintiff proximately caused by an overt act in furtherance of that agreement, but (c) there was a refusal to impose civil liability because the overt act was not itself tortious.

Of the dozen cases cited by the Court, *ante*, at 7–9, half of them rejected liability because they did not satisfy condition (a) above, *i.e.*, there was either no agreement or nothing illegal about the agreement that was made. See *Satin* v. *Satin*, 69 App. Div. 2d 761, 762, 414 N. Y. S. 2d 570 (1979) (Memorandum Decision) ("Here, the only such wrongful action is pleaded against [one defendant] alone. . . . In any event, it is doubtful that there could here

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[2] Of course, under *Holmes* v. *Securities Investor Protection Corporation,* 503 U. S. 258, 268 (1992), the overt act must be the proximate cause of the plaintiff's injury.

[3] "[R]acketeering activity" is defined in §1961(1) to include a slew of state and federal crimes such as murder, bribery, arson, and extortion.

be a conspiracy between this individual and his own corporation"); *Mills* v. *Hansell*, 378 F. 2d 53, 54 (CA5 1967) *(per curiam)* ("[W]e feel that the able trial judge correctly concluded that . . . there was no misconduct on the part of [the defendants]"); *Lesperance* v. *North American Aviation, Inc.*, 217 Cal. App. 2d 336, 346, 31 Cal. Rptr. 873, 878 (1963) ("[E]mployer . . . had the right (so far as appears) to terminate [plaintiff's] services without committing a civil wrong"); *Chapman* v. *Pollock*, 148 F. Supp. 769, 772 (WD Mo. 1957) ("The fatal defect in plaintiff's action for conspiracy is that the act committed by defendants . . . was lawful in its nature, . . . and violated no right of plaintiff"); *Olmsted, Inc.* v. *Maryland Casualty Co.*, 218 Iowa 997, 1003, 253 N. W. 804, 807 (1934) ("A conspiracy is not established by the record. There is no direct evidence that such a conspiracy was formed. A conspiracy cannot be inferred from the record, because nothing was done by the alleged conspirators which was unlawful"); *Royster* v. *Baker*, 365 S. W. 2d 496, 500 (Mo. 1963) ("[T]he petition does no more than allege that the defendants agreed, or if the term is preferred, conspired, to accomplish lawful acts in a lawful manner").

Three more cases refused to impose liability because condition (b) was missing; that is, because the plaintiff did not actually suffer any harm. See *Earp* v. *Detroit*, 16 Mich. App. 271, 280–282, 167 N. W. 2d 841, 847–848 (1969) (Plaintiff waived any cause of action for conspiracy to invade his privacy by disclosing private information); *J. & C. Ornamental Iron Co.* v. *Watkins*, 114 Ga. App. 688, 691–692, 152 S. E. 2d 613, 615 (1966) ("Plaintiff does not allege that it . . . was injured in any way. . . . [T]he petition contains no allegations of fact showing that plaintiff was injured in any way . . . . Thus the petition fails to state a cause of action upon any theory"); *Adler* v. *Fenton*, 24 How. 407, 411–413 (1861). The remaining three cases found that the plaintiff *did* state a cause of action and therefore

the court did *not* refuse to impose liability on that ground. See *Cohen* v. *Bowdoin*, 288 A. 2d 106, 110 (Me. 1972) ("We decide that the complaint states a claim upon which relief can be granted"); *Middlesex Concrete Products & Excavating Corp.* v. *Carteret Indus. Assn.*, 37 N. J. 507, 516, 181 A. 2d 774, 780 (1962) ("[S]o much of defendants' motion as sought a dismissal of the complaint as being insufficient in law must fail," but sustaining defendants' unrelated privilege defense); *Halberstam* v. *Welch*, 705 F. 2d 472, 489 (CADC 1983). The cases cited, in short, simply do not do the work the Court would have them do.[4]

Furthermore, at least some of the cases cited by the Court speak generally of harm via any overt act, and not exclusively of tortious acts.[5] Indeed, some of the sources

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[4] The Court suggests that three of the cases cited deny recovery because there was no actionable tort– and not, as I have suggested, because there was no illegal agreement or because there was no injury. See *ante*, at 10–11, n. 8. At best, the Court's reading only demonstrates that in these cases the question whether the harmful overt act was a tort, on the one hand, and the question whether there was any illegal agreement or harm, on the other hand, are questions of overlapping substance. To the extent that is true, however, the point does not support the Court's view. Rather, it only proves that the cases cited do not parse out elements (a), (b), and (c) as the Court suggests they do. Moreover, as I stated at the outset, both the Court and I assume that there has been an illegal conspiracy in this case. If the cases the Court cites show that there was no illegal agreement at all because there was no actionable tort, then the cases cited by the Court simply contradict the central premise of the present case, and are therefore inapposite.

[5] See *Earp* v. *Detroit*, 16 Mich. App. 271, 275, 167 N. W. 2d 841, 845 (1969) ("There is no civil action for conspiracy alone. . . . It must be coupled with the commission of acts which damaged the plaintiff"); *Lesperance* v. *North American Aviation, Inc.*, 217 Cal. App. 2d 336, 345, 31 Cal. Rptr. 873, 878 (1963) ("'It is the wrong done and the damage suffered pursuant to . . . the conspiracy itself . . . . [T]he complaint must state facts which show that a civil wrong was done'"); *Chapman* v. *Pollock*, 148 F. Supp. 769, 772 (WD Mo. 1957) ("There can be no recovery for the simple existence of a civil conspiracy. The action is for

cited recognize that, at least in certain instances, the agreement *itself* can give rise to liability for civil conspiracy.[6] And of the nine cases cited in which liability is rejected for failure to state a cause of action, four are the opinions of intermediate state courts and one is the three-page opinion of a Federal District Court– hardly strong evidence of the "widely accepted" premise on which the Court relies. *Ante*, at 7. Thus, the cases cited by the Court do not at all place its conclusion on any firm footing.

Nevertheless, based on its understanding of the common law, the Court concludes that "a RICO conspiracy plaintiff [must] allege injury from an act that is analogous to an 'ac[t] of a tortious character.'" *Ante*, at 12. Even assum-

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damages caused by acts committed pursuant to a formed conspiracy. . . . Unless something is actually done by the conspirators pursuant to their combination . . . no civil action lies against anyone"); *Adler* v. *Fenton*, 24 How. 407, 410 (1861) ("[I]t must be shown that the defendants have done some wrong"); *Royster* v. *Baker*, 365 S. W. 2d 496, 499 (Mo. 1963) ("The gist of the action is not the conspiracy, but the wrong done by acts in furtherance of the conspiracy"); *Halberstam* v. *Welch*, 705 F. 2d 472, 487 (CADC 1983) ("[A] conspiracy requires: an agreement to do an unlawful act or a lawful act in an unlawful manner; an overt act in furtherance of the agreement by someone participating in it; and injury caused by the act").

[6] See *Cohen* v. *Bowdoin*, 288 A. 2d 106, 110, n. 4 (Me. 1972) ("We are aware that in particular extraordinary circumstances there has been recognized the existence of a separate self-sufficient and independent tort of 'conspiracy,' as a substantive basis of civil liability"); *Halberstam*, 705 F. 2d, at 477, n. 7; W. Prosser, Law of Torts §46, p. 293 (4th ed. 1971) ("[I]t now seems generally agreed . . . that there are certain types of conduct, such as boycotts, in which the element of combination adds such a power of coercion, undue influence or restraint of trade, that it makes unlawful acts which one man alone might legitimately do. It is perhaps pointless to debate whether in such a case the combination or conspiracy becomes itself the tort, or whether it merely gives a tortious character to the acts done in furtherance of it. On either basis, it is the determining factor in liability"). See also *Snipes* v. *West Flagler Kennel Club, Inc.*, 105 So. 2d 164, 165–167, and n. 1 (Fla. 1958), where the court upheld liability *exclusively* on precisely that premise.

ing that statement is correct, though, it is not at all clear to me why an overt act that "injure[s]" a person "in his business or property" (as §1964(c) requires) would not be "analogous to an 'ac[t] of a tortious character'" simply because the overt act is not listed in §1961(1). Nor do I understand why the only qualifying "tortious act" must be "an act that is *independently wrongful under RICO.*" *Ibid.* (emphasis added).

And if one assumes further that the Court is correct to say that the only qualifying "'ac[t] of a tortious character'" is "an act that is independently wrongful under RICO," the analogy does not actually support what the Court has held. The majority holds that §1964(c) liability could be imposed if the overt acts injuring the plaintiff are among those racketeering activities listed in §1961(1)– such as murder, bribery, arson, and extortion. Racketeering activities, however, are *not* "independently wrongful under RICO." They are, of course, independently wrongful under other provisions of state and federal criminal law, but RICO does not make racketeering activity *itself* wrongful under the Act. The only acts that are "independently wrongful under RICO" are violations of the provisions of §1962. Thus, even accepting the Court's own analogy, if petitioner were harmed by predicate acts defined in §1961(1), that still would not, by itself, give rise to a cause of action under §1964(c). Only if those racketeering activities *also* constituted a violation of §1962(a), (b), or (c) would petitioner be harmed by "an act that is independently wrongful under RICO." And, of course, if petitioner were already harmed by conduct covered by one of those provisions, he would hardly need to use §1962(d)'s conspiracy provision to establish a cause of action.

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The plain language of RICO makes it clear that petitioner's civil cause of action under §1964(c) for a violation

of §1962(d) does not require that he be injured in his business or property by any particular kind of overt act in furtherance of the conspiracy. The Court's recitation of the common law of civil conspiracy does not prove otherwise, and, indeed, contradicts its own holding.

For these reasons, I respectfully dissent.