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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN MARIANA ISLANDS

JAMES H. GRIZZARD, Plaintiff v. KIYOSHIGE TERADA, MINORU IMAI, and KABUSHIKI KAISHA HYAKUMATA CO., LTD., Defendants	Civil Action No. 99-0055 ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S "RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS ACT" CLAIMS FOR RELIEF and SETTING SETTLEMENT/ STATUS CONFERENCE

THIS MATTER came before the court on August 7, 2003, for hearing of defendants' motion for summary judgment on plaintiff's claim for relief based on the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.* Plaintiff appeared by and through his attorney, William M. Fitzgerald; defendants Terada and Hyakumata (a Japanese corporation)

appeared by and through their attorneys, Eric S. Smith (who argued), H. Douglas Galt (who argued), and Mark K. Williams; and, defendant Minoru Imai appeared by and through his attorney, Perry B. Inos.

THE COURT, having considered the written and oral arguments of counsel, rules as follows:

Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure states, in part, that judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

The party seeking summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the matters on record which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corporation v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986).

The non-moving party must set forth by affidavit or as otherwise provided in Rule 56 specific facts showing that there is a genuine issue of

material fact for trial. Kaiser Cement Corp. v. Fischbach & Moore, Inc., 793 F.2d 1100, 1103-1104 (9th Cir.), *cert. denied*, 107 S.Ct. 435 (1986).

The court must view the evidence in the light most favorable to the non-moving party; if direct evidence from both parties conflicts, summary judgment must be denied. Matsushita Electrical Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). However, although a trial court may not weigh conflicting versions of fact on a motion for summary judgment, Baxter v. MCA, Inc., 812 F.2d 421, 424 (9th Cir.), *cert. denied*, William v. Baxter, 484 U.S. 954, 108 S.Ct. 346 (1987), *citing* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986), and although all inferences are drawn in favor of the non-moving party, United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993 (1962), the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electrical, 475 U.S. at 586. The summary judgment standard is the same as that for judgment as a matter of law under Fed.R.Civ.P. 50(a): whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. Blue Ridge Ins. Co. v. Stanewich, 142 F.3d 1145, 1149

n.4 (9th Cir. 1998), *quoting* Anderson v. Liberty Lobby, Inc., 477 U.S. at 250-252, 106 S.Ct. at 2511-12 (1986). If the factual context makes the non-moving party's claim implausible, then that party must come forward with more persuasive evidence than otherwise would be necessary to show that there is a genuine issue for trial. *See* Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. at 587, 106 S.Ct. at 1356 (1986).

RICO Allegations in the Complaint

In the first amended complaint, plaintiff alleges that all defendants engaged in a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c) and that defendants Terada and Imai engaged in a conspiracy in violation 18 U.S.C. § 1962(d). The goal of these allegedly criminal activities was to defraud plaintiff in regards to his ownership interest in Suwaso Corporation "by overstating administrative and general expenses, overstating loans payments due, and hiding or disguising unauthorized disbursements of funds by Imai to himself and his cronies." First Amended Complaint, ¶ 31 (Jan. 18, 2000). Defendants are also accused of "knowingly and willfully transport[ing] money...knowing that such money had been taken by fraud." *Id.* at ¶ 33. Plaintiff alleges that the sum of defendants' acts meets the "pattern of racketeering activity" requirement

of 18 U.S.C. § 1962(c). Plaintiff's second claim for relief alleges a conspiracy between Terada and Imai to "conduct and participate directly and indirectly in the affairs of the Suwaso Enterprise through a pattern of racketeering activity," which included creation and submission of false representations as to the amount of money used to benefit Suwaso Corporation, the creation and submission of false books, records, loan documents, and financial reports, illegal cash transfers out of the Commonwealth to Japan, and conversion of corporate property to their own use, all in violation of 18 U.S.C. § 1962(d). *Id.* at ¶¶ 41-42.

Given the uncontroverted affidavits[1] and overwhelming documentary evidence placed before the court by defendants, combined with plaintiff's inability to meet his burden of presenting plausible evidence to show a genuine issue of material fact, and, more so, because the factual context makes plaintiff's claim inherently and extremely unlikely, which required him to present "more persuasive evidence than otherwise would be necessary to show that there is a

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[1] Defendants' motion to strike portions of the affidavits of Tim Goodwin, Robert Campbell, and Goo Ho Cho was conceded by plaintiff to be well-taken and the portions of the affidavits objected to are deemed stricken and offer no support for plaintiff's opposition to the motion for summary judgment.

genuine issue for trial," and which he failed to do, defendants' motion for summary judgment is granted.

Findings of Fact[2]

1. Suwaso Corporation ("Suwaso") was incorporated in 1985 to construct, own, and operate Coral Ocean Point Resort Club, comprising a golf course and country club.

2. Plaintiff, now deceased, was and remains a minority shareholder in Suwaso. He initially owned ten percent of the corporation but his ownership interest was later reduced, in documents he prepared, to 2.5 percent. (Plaintiff conceded at oral argument that his ownership interest is now only 2.5 percent and defendants acknowledged that plaintiff still owns a 2.5 percent interest in

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[2] The district court is not required to make findings of fact and conclusions of law on a motion for summary judgment, but such findings and conclusions are helpful to the reviewing court. *See e.g.* Underwager v. Channel 9 Australia, 69 F.3d 361, 366 n.4 (9th Cir. 1995), *citing*, Gaines v. Haughton, 645 F.2d 761, 768 n.13 (9th Cir. 1981), *cert. denied*, 454 U.S. 1145, 102 S.Ct. 1006 (1982). Of course, "findings of fact" on a summary judgment are not findings in the strict sense that the trial judge has weighed the evidence and resolved disputed factual issues; rather, they perform the narrow function of pinpointing for the reviewing court those facts which are undisputed and indicate the basis for summary judgment. All Hawaii Tours, Corp. v. Polynesian Cultural Center, 116 F.R.D. 645 (D.Haw. 1987), *reversed on other grounds*, 855 F.2d 860 (9th Cir. 1988).

the corporation.)

3. Defendant Hyakumata Corporation owns 90 percent of the shares and defendant Terada owns the remainder. Hyakumata is the only shareholder who paid for his shares of Suwaso stock and he was the sole financier of the Coral Ocean Point project.

4. Plaintiff was the attorney for the corporation, both pre- and post-incorporation, serving in that capacity from 1985 through 1997. He prepared the articles of incorporation, was an original incorporator, an original shareholder, an original corporate officer, a member of the initial board of directors, and served as the corporation's registered agent. During the time plaintiff served as corporate legal counsel, Suwaso leased the land for the Coral Ocean Point project, which included a hotel, restaurant, golf course, and supporting buildings. In addition to his ownership interest in the corporation, plaintiff was paid $2,000.00 per month as a retainer for his legal services. This sum was increased to $3,000.00 per month in 1994.

5. The exhibits entered in support of defendants' motion for summary judgment show that during the time plaintiff was the corporation's legal counsel, all financial details, including the loan information which is a vital

component of plaintiff's claims for relief, was disclosed in the corporate records, annual reports, and corporate reports and tax returns filed with the Commonwealth government. Presumptively, plaintiff had access to these documents and more than likely prepared most of them. These documents were reviewed by Deloitte, Touche & Tohmatsu, an independent international accounting firm.

6. As the corporation's legal counsel, a director and corporate officer, as well as a shareholder, plaintiff had, or certainly should have had, personal, direct, timely, and unrestricted knowledge of all aspects of the corporation's operations, including the financing.

Conclusions of Law

1. The court has federal question jurisdiction pursuant to 18 U.S.C. § 1331, diversity jurisdiction pursuant 18 U.S.C. § 1332, and supplemental jurisdiction pursuant to 18 U.S.C. § 1367.

2. The court has personal jurisdiction over all the parties.

3. Venue is proper in this court in that all defendants reside in, can be found in, have agents in, and/or transact or have transacted business within this judicial district.

4. The elements of a civil RICO action are: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity (*i.e.* a pattern of predicate acts), (5) causing injury to plaintiff's business or property. Grimmett v. Brown, 75 F.3d 506, 510 (9th Cir. 1996), *citing* 18 U.S.C. §§ 1962(c), 1964(c), and Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, 105 S.Ct. 3275, 3284-85 (1985).

5. None of the elements of a civil RICO action have been shown to exist by plaintiff. Plaintiff failed to meet his burden of presenting credible, plausible, direct evidence in opposition to the affidavits and exhibits presented by defendants in their motion for summary judgment on the RICO claims. Matsushita Electrical, 475 U.S. at 586. All of the documentary evidence presented supported defendants' assertions; plaintiff's submissions were simply unsupported suppositions, amorphous expressions of doubt, and unsubstantiated statements. Plaintiff presented nothing to raise a sufficient disagreement to require submission to a jury; the evidence was so overwhelmingly one-sided in favor of defendants on the RICO claims for relief that they must prevail as a matter of law. Blue Ridge Ins. Co. v. Stanewich, 142 F.3d at 1149 n.4, *quoting* Anderson v. Liberty Lobby, Inc., 477 U.S. at 250-252,

106 S.Ct. at 2511-12 (1986).[3]

FOR THE FOREGOING REASONS, defendants' motion for summary judgment on plaintiff's two RICO claims for relief is granted and those claims are dismissed with prejudice. The court defers ruling on whether or not it will retain supplemental jurisdiction over the common law claims.

IT IS ORDERED that the parties and their attorneys shall attend a settlement/status conference on Friday, October 10, 2003, at 9:00 a.m.

DATED this 17th day of September, 2003.

ALEX R. MUNSON
Judge

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[3] Although not a basis for the court's decision on this summary judgment motion, the court notes that plaintiff appears to be stymied by the RICO statute of limitations. In the Ninth Circuit, the four-year civil RICO statute of limitations begins to run "when a plaintiff knows or should know of the injury which is the basis for the action." Stitt v. Williams, 919 F.2d 516, 525 (9th Cir. 1990). Here, due to plaintiff's intimate and active participation in the affairs of the corporation as shareholder, director, officer, and legal counsel, and further due to his role in the preparation of many of the legal documents of the corporation, he knew or should have known well before November 30, 1995 (the date four years prior to the filing of this lawsuit), of the malfeasance he now alleges.