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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

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THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

DAVID ANDERSON, et al.,
Plaintiffs,
vs.

SACR-10-00031-JVS

CHRISTOPHER COX, et al.,
Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Santa Ana, California
August 2, 2010

SHARON A. SEFFENS, RPR
United States Courthouse
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1 SANTA ANA, CALIFORNIA; MONDAY, AUGUST 2, 2010; P.M. SESSION

2 THE CLERK: Item No. 15, SACV-10-00031-JVS, David
3 Anderson, Lt. Col., et al., versus Christopher Cox, et al.

4 Counsel, please step forward and state your
5 appearances for the record.

6 MR. HODGES: Good afternoon, Your Honor. A.
7 Clifton Hodges on behalf of the plaintiffs.

8 MR. STAUB: Good afternoon, Your Honor. assistant
9 United States Attorney Keith Staub on behalf of the federal
10 defendants.

11 THE COURT: Good afternoon.

12 Have you both had a change to review the
13 tentative?

14 MR. STAUB: Yes.

15 THE COURT: Mr. Hodges, I think I would like to
16 hear from you first, please.

17 MR. HODGES: Your Honor, first of all, let me
18 concede a point raised in your tentative that this is not
19 your usual Bivens case. That's clear to everyone I think.

20 As a housekeeping matter, I would indicate on page
21 one there is a typographical error. In the middle
22 paragraph, the administrative law judge finding was in 2005,
23 not in 2010.

24 THE COURT: Thank you.

25 MR. HODGES: Having said that, let me turn to the

1 second issue raised by the government first, and that's the
2 question about whether or not there are property rights at
3 issue in this case. Very simply what we have alleged is
4 that -- let me back up a second. We have alleged a scheme
5 in effect that is a sting operation judged from the outside
6 and not from the inside. Basically the sting operation was
7 an operation put into effect through the Department of
8 Homeland Security, the Department of Justice, and the SEC
9 commissioners.

10 What we have alleged is that the SEC commissioners
11 as opposed to the Agency itself coordinated with these other
12 institutions and at their request and in concert with them
13 began a program whereby this company was raided. The SEC
14 Commission was fully aware at all times of the amount of
15 naked shorting that was going on in this company. The then
16 chairman of the Commission has been quoted on several
17 occasions as saying this was the most heavily naked shorted
18 company in the history of the world.

19 As we have alleged in our complaint, on one day,
20 which I believe was sometime in April of 2005, more than
21 90 billion shares of this company traded in one day. I have
22 testimony from -- which is not alluded to in our current
23 complaint, but I can provide testimony from registered ANSD
24 companies that were in business at this time who report that
25 they were told it's free money. You can sell as many shares

1 as you can find buyers for and put all of the money in your
2 pocket. You don't have to ever buy the shares. They were
3 on a no borrow list to begin with at that point in time,
4 which was in 2005 primarily, and if you were going to borrow
5 shares as a legitimate broker at that point in time they had
6 a \$2.50 requirement for buying -- or for borrowing.

7 You can imagine what -- I think the average during
8 that period was 17 billion shares a day being sold. This is
9 an enormous amount of money for people to be borrowing
10 shares to be sold into the market. They were being sold for
11 nothing. That's how they drove this company into the
12 ground. They did it because there was evidence by the
13 government and by others associated both directly and
14 indirectly with the government that this money was being
15 sent offshore. It was being accumulated by hedge funds
16 offshore. It was being sent to Iraq. It was being sent to
17 Iran. It was being sent to Afghanistan. This is one of the
18 means which these terrorist organizations were utilizing to
19 fund their operation.

20 Having said that, I recognized when I prepared
21 this complaint that at the time the company was delisted,
22 and at the time that this original agreement was made we did
23 not have a basis to sue the SEC, the SEC commissioners, or
24 anybody else because in fact as the Court correctly pointed
25 out in that regard -- the Broad versus Sealaska case I think

1 says that shareholders don't have the right. They don't
2 have a property interest. They did not have that right at
3 the time the agreement was made and at the time the original
4 criminal acts by these commissioners took place. However,
5 what this complaint speaks to is at quite a later date after
6 the company was delisted in October 2005 and they stipulated
7 to that delistment.

8 Then we go forward, and what immediately happened
9 was a task force, including one of the primary and past
10 board of director members, Mr. Bob Maheu, who is no longer
11 with us unfortunately, became the head of that task force.
12 His appointed duties -- his task force appointed duties were
13 to have the shareholders have full copies of their shares,
14 full certificates for every share that was legitimately then
15 owned because it had been bought and paid for and based upon
16 that share certificate pool to then around and liquidate the
17 company.

18 At the time that the company decided it was going
19 to liquidate itself and distribute its remaining assets to
20 its shareholders, the property rights attached to each of
21 the shareholders because at that point in time, which was in
22 early 2006, they had a right to believe that what was in
23 their future was a prorata per share distribution for the
24 assets that the company then owned. The company then owned
25 all of these monies that had been accumulated and put in the

1 trust. The company also owned shares of stock in a company
2 called Entourage, and they had other assets. They did not
3 have any substantial liabilities, so the shareholders from
4 that point forward had a property right that is protectable
5 under the Constitution. It is that claim that we are making
6 in our complaint.

7 Having said that, once we get past the property
8 right issue, I certainly understand the Court's concern and
9 I have reviewed my complaint about perhaps the use of some
10 inartful language when I referred to the SEC rather than
11 specifying that it was the SEC commissioners that we are
12 aiming this at. The reason we are aiming it only at the SEC
13 commissioners is because under the statutory scheme that was
14 set up after the first great depression the SEC Commission
15 and the commissioners individually have the sole and
16 exclusive right to make the decisions.

17 For example, with this firm, when this company was
18 delisted in October 2005, it was pursuant to an
19 administrative law hearing that took place here in
20 Los Angeles all day down in the Federal Court that I
21 attended. The administrative law judge then rendered a
22 tentative decision. It was her decision, but it was
23 tentative in the sense that it had no power and had no
24 effect. The only time that it became effective and the
25 company became delisted was on October 24th or 25th of that

1 year when the Commission met and together agreed that this
2 company should be delisted.

3 They are the only people who have the power to
4 make these kinds of decisions. They are the people who
5 spoke to the other governmental agencies and to the people
6 representing ostensibly the company at that point in time
7 when this agreement to utilize this company without
8 knowledge of the shareholders in part of a sting operation
9 to trap all these hedge fund people, which started way back
10 in 2004, but it was those commissioners acting in an
11 improper and probably criminal way because their mandate
12 under the law is to protect shareholders. They were doing
13 exactly the opposite. They were entering into an agreement
14 they knew was going to damage the shareholders. It was
15 going to drive this company out of business, which it did,
16 and without notice. It was a big secret.

17 It was only those commissioners who took that
18 action that we are aiming this complaint at. We have named
19 the commissioners who have sat since that time, because it
20 is our position that having denied these people payment,
21 these commissioners have signed on, ratified the acts of
22 their fellow criminals, and at the end of the day refused to
23 release this money, money that has been collected. We are
24 not suing the SEC. We are not suing the government.

25 THE COURT: Who in your analysis is the trustee of

1 the funds? Who holds the funds?

2 MR. HODGES: There are actual several trustees who
3 hold the funds, one is whom currently is the DTCC, and I
4 only say that because I know the funds are deposited with
5 the DTCC.

6 THE COURT: Spin that out for me, that acronym.

7 MR. HODGES: The Depository Trust Clearing
8 Corporation. They are the clearing house for all of the
9 financial transactions basically that take place in the
10 United States.

11 THE COURT: Private or public?

12 MR. HODGES: It is a private company, but they act
13 as a public one.

14 THE COURT: Well, as opposed to a governmental
15 agency.

16 MR. HODGES: It's not a governmental agency in the
17 same sense that the federal reserve banks are not
18 governmental agencies.

19 THE COURT: What document governs the terms under
20 which they hold those funds?

21 MR. HODGES: A trust agreement.

22 THE COURT: Between?

23 MR. HODGES: Between the people who originally set
24 this up, one of whom was Bob Maheu.

25 THE COURT: As an employee of the SEC?

1 MR. HODGES: Not as an employee of the SEC in any
2 sense of the word. He was at one time on the board of
3 directors of the company CMKM Diamonds. He never acted on
4 behalf of the SEC.

5 THE COURT: What control does the SEC have over
6 this trust fund?

7 MR. HODGES: They don't have any direct control
8 over the trust fund. The agreement, however, that was
9 originally entered into as I understand the testimonial
10 evidence that I have been able to accumulate without the
11 opportunity to do actual discovery -- my understanding is
12 that Bob Maheu and several of his associates entered into a
13 deal first with the Department of Justice. They got the SEC
14 on board through the commissioners by talking to several
15 defendants, primarily Christopher Cox who is a named
16 defendant.

17 The essence of the agreement they made was that in
18 order to make this thing effective the company would go and
19 pump its stock up, which it did. The government would
20 assist in that operation, which it did.

21 THE COURT: How?

22 MR. HODGES: There is evidence that they paid for
23 some of the expenses associated with a drag racing car that
24 had CMKX painted on the outside of it that was being very
25 publicly bantied about on the Internet and raced in various

1 jurisdictions. One of their ex-employees, a gentleman named
2 Roger Glenn, who was an attorney or used to be an attorney
3 in New York with the law firm of Angels & Edwards, signed on
4 to increase the stock at the request of the SEC I am told.

5 He came into CMKX in 2004, and when he arrived
6 there, the number of authorized shares of the company were
7 on the order of either 100 billion or 200 billion. I forget
8 exactly what. When he left some nine or ten months later,
9 the authorized shares had illegally and improperly under
10 every law I am aware of had been raised to 800 billion
11 shares. This company eventually sold some 700 billion
12 shares of stock, and there is over that many outstanding at
13 the moment, 703 billion plus.

14 THE COURT: Why isn't your claim against the
15 clearing house asking the trustee for these funds?

16 MR. HODGES: Because that would be like suing the
17 escrow company.

18 THE COURT: But if the escrow company has the
19 funds --

20 MR. HODGES: Here is the simple answer as I
21 started to say a few minutes ago, and I probably did not
22 finish. The original agreement -- there was a war that
23 ensued after the sting got under operation, because what the
24 sting always contemplated was that Mr. Maheu would collect
25 all of these bad doers -- the hedge fund people and the

1 people like Waterhouse and all the other stockbrokerage
2 houses around who were naked shorting this company, collect
3 them all in a big room and offer them a deal for two
4 reasons: first of all, to collect money for CMKX for what
5 had been done to them in effect; second of all, to teach
6 these people a lesson that there were people out there
7 watching what was going on, and hopefully that would head
8 them off in continuing in such illicit, illegal, and
9 improper behavior.

10 That was in fact done, and I have a witness who
11 was there when it was done. They had a room about three
12 times the size of your courtroom in which they had
13 representatives from all these brokerages from all over the
14 world who were there present. They watched a video
15 presentation, because Mr. Maheu as the Court may be aware
16 was at one time closely associated with the CIA and Howard
17 Hughes and all kinds of other people.

18 THE COURT: I was going to ask you if it was the
19 same Robert Maheu.

20 MR. HODGES: It is indeed the same one, a
21 gentleman I happened to make acquaintanceship with in the
22 '70s. At any rate, all of these people were accumulated in
23 this room, and they were shown a video and a slide
24 presentation of all of the evidence of their wrongdoing, and
25 they were offered an opportunity that you could either step

1 up and sign away your money and pay a reasonable amount for
2 each transaction that you did illegally and improperly, or
3 you can walk out of here and get prosecuted and go to jail
4 because what you did is criminal. Every single person in
5 that room stepped and made a deal.

6 After that time, they became a big conflict
7 between the SEC commissioners and the other governmental
8 entries who were supporting the SEC commissioners about who
9 was going to have the right to release this money to the
10 shareholders and when. My understanding is this went on for
11 some number of months, but ultimately the SEC commissioners
12 prevailed and convinced Mr. Maheu and his associates that it
13 had to be their decision because only they and the rest of
14 the government could determine whether the sting had
15 fulfilled its function.

16 That was the basis upon which he gave them the
17 power to make this decision about when the money is to be
18 released. It's my understanding that every trust that is
19 currently being held for release of this money is being held
20 by a person who was sworn to observe that requirement, that
21 the SEC and the U.S. Government, whoever is going to make
22 this payment, goes first. My information is that it was the
23 SEC commissioners who have this power, and that's why they
24 are defendants in this case.

25 THE COURT: Let's return to your Bivens theory.

1 It's a taking claim.

2 MR. HODGES: It is. This money was supposed to
3 have been released within a year of the time that the
4 company was originally delisted in October 2005. This is
5 now almost October of 2010, some four years past that time.
6 It is a taking only because they refuse -- notwithstanding
7 information that they have continued to give to various
8 shareholders, they continue to refuse to release this money.
9 If they don't release the money, then it's a taking because
10 they are preventing what is rightfully ours for us to
11 receive. That's why it is a taking.

12 THE COURT: Thank you.

13 Mr. Staub.

14 MR. STAUB: Thank you, Your Honor.

15 I'll submit that much of what I have just heard I
16 have heard for the first time because most of it wasn't pled
17 in the complaint.

18 THE COURT: I found it very educational.

19 MR. STAUB: Indeed. True or not, I don't know,
20 but we are here to discuss what's in the complaint today.
21 We are not here to give oral argument and present testimony
22 about facts that no one has any idea about, certainly not
23 myself. We are here to talk about what's in the complaint,
24 whether it's properly pled under Rule 8, under the Iqbal
25 decision, and under Twombly. As this Court pointed out in

1 the tentative, it's not properly pled.

2 THE COURT: I'm satisfied with that in the
3 tentative. The best case for the plaintiff here would be
4 to dismiss with leave to replead. I guess what I am really
5 interested in is whether this is a Bivens claim given the
6 nature of the asset and whether sovereign immunity applies.

7 MR. STAUB: I suppose you could sue a government
8 officical under Bivens for any violation of civil rights
9 whether it has to do with money or not. I don't know that.
10 I don't know any distinguishing facts in this case that
11 would prevent them from being sued individually under Bivens
12 if there are sufficient facts pled.

13 THE COURT: Well, do you concede in theory that a
14 constitutional violation of a taking clause could be
15 asserted against an individual government worker in his
16 individual capacity?

17 MR. STAUB: I haven't researched that, so I don't
18 know the answer to that specifically. I think we asserted
19 in our brief that there is no vested property right because
20 pursuant to the complaint the SEC had the discretion to
21 release funds if in fact there are these funds in existence.
22 That discretion alone under the case law that we have cited
23 suggests that they don't have any property right to it, but
24 in answer to your, I don't know.

25 THE COURT: Well, there are two questions I guess.

1 One, is there a property right and if it's a contingent
2 asset, if you will, subject to distribution per the
3 plaintiffs at the will of the Commission? But there is a
4 separate issue as to whether the nature of relief sought
5 here is such that it can only be asserted against the
6 commissioners in their official capacity.

7 MR. STAUB: I don't think the government has
8 waived sovereign immunity in their official capacity in any
9 way.

10 THE COURT: Well, I understand that, but the issue
11 is is there some manner in which these claims could be
12 asserted against the individual defendants in their
13 individual capacity, or is the relief sought by definition
14 relief that it can only be sought against them in their
15 official capacity, in which case, there would be no private
16 claim, and they would be entitled to sovereign immunity in
17 their officical capacity?

18 MR. STAUB: That may be the case. I don't know
19 the answer.

20 I do want to -- well, I think the Court is
21 inclined to be consistent with its tentative as far as the
22 pleading requirements. I think that the plaintiff has an
23 opportunity to replead to amend the complaint. We will
24 certainly deal with that issue if it's raised on further
25 briefing. I imagine there will be an additional motion to

1 dismiss in the future.

2 That being said, clearly these are high level
3 government officials. They don't deserve to be sued and
4 discovery taken of them unless specific allegations have
5 been made, and none have been made in this complaint. I
6 have heard some issues that were addressed during oral
7 argument. I didn't see those in the complaint, but even
8 assuming those are true, there is nothing specific as to
9 these SEC commissioners other than the fact that they
10 somehow have the sole discretion to make every single
11 decision at the SEC. I don't buy that.

12 THE COURT: Would you agree that it might be
13 easier to assess whether claims can be asserted against the
14 commissioners as individuals if we had a complaint that
15 complied with Iqbal?

16 MR. STAUB: That may be true, yes, if in fact they
17 comply with the pleading requirements of Iqbal and they get
18 past qualified immunity, which we also raised, and the Court
19 obviously doesn't need to address right now, but if and when
20 the Court decides it's been properly pled, then I think
21 qualified immunity should be addressed.

22 THE COURT: What I am inclined is to dismiss with
23 leave to replead for failure to meet the Rule 8 requirements
24 and not -- and to dismiss the claims against them in their
25 official capacity as a matter of sovereign immunity and

1 leave the other issues until we have got a pleading that
2 passes muster.

3 MR. STAUB: Agreed. I would only ask that the
4 government have 30 days to respond to the amended complaint.

5 THE COURT: Thank you.

6 Mr. Hodges.

7 MR. HODGES: I certainly recognize the need to be
8 more specific in the complaint, and I appreciate the Court's
9 willingness to give us the opportunity.

10 THE COURT: How much time do you want?

11 MR. HODGES: Forty-five days would be helpful.

12 THE COURT: Any objection?

13 MR. STAUB: No.

14 THE COURT: And then 30 days to respond by answer
15 of a motion.

16 MR. HODGES: That's fine.

17 THE COURT: Okay. Then we will modify the
18 tentative accordingly.

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: October 4, 2010

Sharon A. Seffens 10/4/10

SHARON A. SEFFENS, U.S. COURT REPORTER