

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 09a0650n.06

Case Nos. 08-6325, 08-6327

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Sep 23, 2009
LEONARD GREEN, Clerk

SOUTHERN APPALACHIAN COAL)
SALES, INC., (08-6325))
)
Plaintiff-Appellant,)
)
COOK AND SONS MINING, INC., (08-6327))
)
Intervenor-Appellant,)
)
v.)
)
CITIZENS BANK OF NORTHERN)
KENTUCKY, et al.,)
)
Defendants-Appellees.)
_____)
)
)

**ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF KENTUCKY**

BEFORE: BATCHELDER, Chief Judge; NORRIS and KETHLEDGE, Circuit Judges.

ALICE M. BATCHELDER, Chief Judge. Southern Appalachian Coal Sales, Inc. and Cook & Sons Mining, Inc. (“plaintiffs”) appeal the district court’s order granting summary judgment to Citizens Bank of Northern Kentucky (“Citizens”), its assistant manager Teresa Gillum (“Gillum”) and Charles Welsh (“Welsh”), the owner/operator of Cardigan Coal and Coke Corp. (“Cardigan”), on plaintiffs’ claims of state law fraud, negligence, breach of fiduciary duty, and conspiracy, as well as plaintiffs’ civil RICO claims under 18 U.S.C. § 1962 (c) and (d). All of these claims arise out of plaintiffs’ sales of coal to Cardigan, Cardigan’s failure to pay for various of those shipments of coal, and the relationship among Welsh, Citizens, and Gillum.

The district court held that plaintiffs had failed to present evidence sufficient to permit a reasonable fact-finder to conclude that Citizens, Welsh and Gillum could be deemed an enterprise for purposes of the RICO statute. Further, the court held that even if it could find the existence of such an enterprise, plaintiffs had failed to present evidence sufficient — even when viewed in the light most favorable to the plaintiffs — to permit a finding that the defendants had engaged in a scheme to defraud. The district court noted explicitly that in reviewing the evidence submitted on summary judgment, it was required to draw — and in fact had drawn — all reasonable inferences in favor of the plaintiffs.

After carefully reviewing the district court’s opinion and order, the parties’ briefs, and the record in this case, and having had the benefit of oral argument, we conclude that the district court did not err in granting summary judgment to all of the defendants on the RICO claims. As the district court’s opinion carefully and correctly sets out both the undisputed facts surrounding those claims and the law governing the issues raised in them, and clearly articulates the reasons underlying its decision, issuance of a full written opinion by this court would serve no useful purpose. Accordingly, for the reasons stated in the district court’s opinion, we **AFFIRM** the summary judgment in favor of the defendants on the RICO claims.

Because the RICO claims are the only basis for jurisdiction in the federal court, we conclude that the judgment of the district court on all of the remaining claims should be, and is, **VACATED**, and we remand those claims to the district court with instructions that they be dismissed without prejudice.