

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 0745

2019 CW 0502

CAMSOFT DATA SYSTEMS, INC.

VERSUS

**SOUTHERN ELECTRONICS SUPPLY, INC.
AND ACTIVE SOLUTIONS, LLC**

Judgment Rendered: JUL 02 2019

**Appealed from the Nineteenth Judicial District Court
Parish of East Baton Rouge
State of Louisiana**

Case No. 582,741

The Honorable Janice Clark, Judge Presiding

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BEFORE: CRAIN, THERIOT, and HOLDRIDGE, JJ.

THERIOT, J.

In this appeal, MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc. (sometimes referred to collectively as “MMR”) seek review of the trial court’s judgment, denying their Motion for Partial Summary Judgment Regarding RICO Claims and thereby allowing CamSoft Data Systems, Inc. (“CamSoft”) to continue to pursue its claims against MMR under the Louisiana Racketeering Act, La. R.S. 15:1351, *et seq.* For the following reasons, we reverse the trial court’s judgment and deny the companion writ application, referred to this panel, as moot.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history are laid out in more detail in this court’s opinion in **CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.**, 2019-0730 (La. App. 1st Cir. 7/2/19) (unpublished), which is also being issued this date.

Relevant hereto, CamSoft filed a Master Petition for Declaratory Judgment, Supplemental Relief, Damages, and Attorney’s Fees, alleging that MMR Group, Inc. and/or MMR Constructors, Inc. is liable to CamSoft for ongoing and independent violations of the Louisiana Racketeering Act (“the LRA”), La. R.S. 15:1351, *et seq.* CamSoft asserted that former NetMethods, LLC (“NetMethods”) employees, who became employees of MMR Constructors, Inc., knew of bribery payments NetMethods made to Donald Evans (“Evans”), then acting Chief Technology Officer for the City of Baton Rouge, which lasted over one year’s time; nevertheless, MMR Constructors, Inc. continued to accept contract payments from the City of Baton Rouge for crime camera work made possible through initial bribery payments, and therefore knowingly violated La. R.S. 15:1353.

CamSoft argued that the public bribery and corrupt influencing of a public official constitute predicate acts, under La. R.S. 15:1352(A)(30) & (31). CamSoft

contended that NetMethods, MMR Group, Inc., and MMR Constructors, Inc. constitute an ongoing, successor enterprise that continues to profit and to receive payments from a pattern of racketeering activity involving the public bribery and corrupt influence of Baton Rouge's public officials.

MMR filed a motion for partial summary judgment regarding RICO claims, arguing that CamSoft is not entitled to recover under the LRA. CamSoft opposed the motion. Following the October 19, 2018 hearing on MMR's motion, the trial court signed a judgment on April 2, 2019, denying MMR's motion for partial summary judgment regarding RICO claims. From this judgment, MMR appeals pursuant to La. R.S. 51:135.¹

SUMMARY JUDGMENT AND THE STANDARD OF REVIEW

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. **M/V Resources LLC v. Louisiana Hardwood Products LLC**, 2016-0758, p. 8 (La. App. 1st Cir. 7/26/17), 225 So.3d 1104, 1109, writ denied, 2017-1748 (La. 12/5/17), 231 So.3d 624. A motion for summary judgment is properly granted if, after an opportunity for adequate discovery, the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(A)(3). The burden of proof rests with the mover. La. Code Civ. P. art. 966(D)(1). Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence

of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. **Id.** In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **M/V Resources LLC**, 2016-0758 at p. 9, 225 So.3d at 1109.

A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. A genuine issue of material fact is one to which reasonable persons could disagree. If reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. **Doyle v. Lonesome Development, Limited Liability Company**, 2017-0787, p. 6 (La. App. 1st Cir. 7/18/18), 254 So.3d 714, 718-19, writ denied, 2018-1369 (La. 11/14/18), 256 So.3d 291, quoting Jackson v. City of New Orleans, 2012-2742, pp. 5-6 (La. 1/28/14), 144 So.3d 876, 882, cert. denied, — U.S. —, 135 S.Ct. 197, 190 L.Ed.2d 130 (2014). Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Succession of Hickman v. State Through Board of Supervisors of Louisiana State University Agricultural and Mechanical College**, 2016-1069, p. 5 (La. App. 1st Cir. 4/12/17), 217 So.3d 1240, 1244.

Although summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. **Quality Environmental Processes, Inc. v. Energy Development Corporation**, 2016-0171, p. 14 (La. App. 1st Cir. 4/12/17), 218 So.3d 1045, 1059.

¹ As set forth in La. R.S. 51:135, all interlocutory judgments in cases involving antitrust claims shall be appealable within five days and shall be heard and determined within twenty days after the appeal is lodged.

DISCUSSION

As set forth above, in its motion for partial summary judgment regarding RICO claims, MMR asserted that the basis of CamSoft's RICO claims is alleged bribery payments made to Evans by NetMethods employees, which somehow resulted in MMR obtaining a contract with the City of Baton Rouge related to video surveillance work. MMR pointed out that CamSoft is unable to establish a pattern of racketeering activity, where the alleged bribery was conducted by NetMethods' employees, and the alleged racketeering activity was not conducted by any MMR employee and did not occur after MMR hired some of NetMethods' employees. MMR argued that CamSoft's attempt to recover from MMR, a company that was wholly uninvolved with any criminal activity, through the racketeering statute, is improper where MMR did not engage in public bribery or a pattern of racketeering. Thus, MMR argued that CamSoft's racketeering claims against MMR fail, as a matter of law. Additionally, MMR asserted that CamSoft has no standing to pursue a civil racketeering claim against MMR, because CamSoft's alleged injury is too speculative and because CamSoft cannot establish that the alleged injury was proximately caused by MMR.

CamSoft filed a Memorandum in Opposition to MMR Constructors, Inc.'s Motion for Partial Summary Judgment on RICO Claim, asking the trial court to deny the motion. CamSoft did not address the motion for partial summary judgment regarding RICO claims as to MMR Group, Inc. or MMR Offshore Services, Inc. Rather, CamSoft argued that genuine issues of material fact exist with respect to NetMethods'/MMR Constructors, Inc.'s violations of La. R.S. 15:1353(A) & (C); CamSoft's injury-in-fact to its business operations; and causation of CamSoft's injuries related to claims under La. R.S. 15:1353(A) & (C). Thus, CamSoft argued that summary judgment was not appropriate.

In particular, CamSoft argued that it stated a claim under La. R.S. 15:1353(A), where former New Orleans Mayor C. Ray Nagin (“Nagin”) and the Mayor’s Office of Technology’s Chief Technology Officer Gregory Meffert (“Meffert”) allegedly used their influence to purchase technology from Dell, Inc. (“Dell”) and Ciber, Inc. (“Ciber”), which in exchange agreed to contract with NetMethods for business outside of New Orleans. CamSoft asserted that Mark St. Pierre, through NetMethods, directed a portion of revenues generated from Dell and Ciber to the public officials who made the revenues possible. CamSoft argued these “*quid pro quo*” agreements violated Louisiana’s corrupt influencing statute, La. R.S. 14:120, and constituted racketeering activity, and the revenue generated by Dell and Ciber from the City of New Orleans became proceeds derived from a pattern of racketeering activity. CamSoft further alleged the racketeering activity included direct bribery payments to Nagin and Meffert, and that NetMethods expanded the enterprise with a continued pattern of racketeering activities lasting from 2004 to at least 2008, whereby NetMethods paid bribes and gratuities to Evans and Lafayette’s Chief Technology Officer Keith Thibodeaux (“Thibodeaux”), in exchange for lucrative wireless Security Canopy contracts.

CamSoft argued that NetMethods took the money from the alleged racketeering activity and invested it into the creation of MMR Communications, transferring its employees, contracts, revenue, and assets, including governmental contracts to MMR allegedly in order to continue the RICO enterprise. CamSoft contended it has standing because its injuries were proximately caused by NetMethods’ and MMR Constructors, Inc.’s violation of La. R.S. 15:1353(A).

As to its claims under La. R.S. 15:1353(C), CamSoft asserted that “MMR has materially and continually benefitted from NetMethods’ pattern of racketeering activity,” where NetMethods employees with knowledge of and direct participation in the racketeering activities transferred their employment from NetMethods to

MMR with the express and intended purpose of starting up an entirely new division, MMR Communications, and MMR Communications continued making money off of government contracts assigned to it from NetMethods, even after NetMethods stopped operations. CamSoft argued that it has standing to pursue a claim under La. R.S. 15:1353(C), where its financial injuries were proximately caused by NetMethods'/MMR Constructors, Inc.'s violations of La. R.S. 15:1353(C).

The LRA is modeled after the federal Racketeer Influenced and Corrupt Organizations ("RICO") Act. **Meadaa v. K.A.P. Enterprises**, 09-1211 (W.D. La. 12/1/14), 2014 WL 6801636, at *6 (unpublished opinion). Therefore, federal decisions regarding RICO are persuasive when interpreting the LRA. *Id.* citing **State v. Touchet**, 99-1416, p. 4 (La. App. 3d Cir. 4/5/00), 759 So.2d 194, 197.

The LRA states that "[a]ny person who is injured by reason of any violation of the provisions of R.S. 15:1353 shall have a cause of action against any person engaged in racketeering activity who violates a provision of R.S. 15:1353." La. R.S. 15:1356(E). In this regard, La. R.S. 15:1353, similar to 18 U.S.C.A. § 1962, makes four categories of conduct illegal. First, under the LRA, "[i]t is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in immovable property or in the establishment or operation of any enterprise." La. R.S. 15:1353(A). It is also unlawful "for any person, through a pattern of racketeering activity, knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or immovable property." La. R.S. 15:1353(B). Third, the LRA makes it unlawful "for any person employed by, or associated with, any enterprise knowingly to conduct or participate in, directly

or indirectly, such enterprise through a pattern of racketeering activity.” La. R.S. 15:1353(C). Lastly, it is unlawful “for any person to conspire or attempt to violate any of the provisions of Subsections A, B, or C of this Section.” La. R.S. 15:1353(D). RICO contains similar provisions in 18 U.S.C.A. § 1962.² As outlined, CamSoft has alleged that MMR violated La. R.S. 15:1353(A) & (C).

The three required elements of a RICO claim are: 1) a person who engages in 2) a pattern of racketeering activity 3) connected to the acquisition, establishment, conduct, or control of an enterprise. See St. Paul Mercury Insurance Co. v. Williamson, 224 F.3d 425, 439 (5th Cir. 2000) quoting Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2d 241, 242 (5th Cir. 1988), cert. denied, 489 U.S. 1079, 109 S.Ct. 1531, 103 L.Ed.2d 836 (1989); see also Edvisors Network, Inc., 2014 WL 3853457, at *2. The RICO person in a civil or criminal RICO action is the defendant. Crowe v. Henry, 43 F.3d 198, 204 (5th Cir. 1995) citing Landry v. Air Line Pilots Association International AFL-CIO, 901 F.2d 404, 425 (5th Cir.), certs. denied, 498 U.S. 895, 111 S.Ct. 244, 112 L.Ed.2d 203 (1990). Once the three elements of a RICO person, a pattern of racketeering activity, and a RICO enterprise are met, then the court will continue to the substantive requirements of each subsection. See St. Paul Mercury Insurance Co., 224 F.3d at 439.

The plain language of the LRA similarly establishes that one element of civil liability under the LRA is that the defendant must have engaged in “racketeering activity.” See La. R.S. 15:1356(E); see also Alack v. Jaybar, Inc., 11-143 (E.D. La. 8/21/12), 2012 WL 13005346, at *6 (citing La. R.S. 15:1356); De la Cruz v.

² “[I]n plain English, the [four] subsections [of 18 U.S.C.A. § 1962] state:

(a) a person who has received income from a pattern of racketeering cannot invest that income in an enterprise.

(b) a person cannot acquire or maintain an interest in an enterprise through a pattern of racketeering.

(c) a person who is employed by or associated with an enterprise cannot conduct the enterprise’s affairs through a pattern of racketeering.

(d) a person cannot conspire to violate subsections (a), (b), or (c).” Edvisors Network, Inc. v. Husser, 14-062 (M.D. La. 8/5/14), 2014 WL 3853457, at *3 (citing In re Burzynski, 989 F.2d 733, 741 (5th Cir.1993)).

Edwards, 14-1729 (E.D. La. 11/13/15), 2015 WL 6696427, at *6 (“Section 1353 of the [LRA] sets forth the ‘prohibited activities’ under the statute, all of which are premised on the existence of a pattern of racketeering activity.”). The LRA defines “racketeering activity” as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime which is punishable under one of the listed criminal provisions, including La. R.S. 14:118 (Public bribery) and La. R.S. 14:120 (Corrupt influencing). La. R.S. 15:1352(A).

A defendant is not civilly liable under the LRA unless that defendant has engaged in fraud or other criminal conduct. **Alack**, 2012 WL 13005346, at *5 (citing **Thomas v. North 40 Land Development, Inc.**, 2004-0610, pp. 24-29 (La. App. 4th Cir. 1/26/05), 894 So.2d 1160, 1175-78 (granting the defendants’ motion for summary judgment because the plaintiff did not provide proof of any criminal conduct on the part of the defendants as required to state a racketeering claim)); see also **De la Cruz**, 2015 WL 6696427, at *6. For example, in **Alack**, *supra*, the U.S. District Court for the Eastern District of Louisiana, applying Louisiana law, found that plaintiffs asserting a claim under the LRA were required to establish that defendants had engaged in racketeering activity, as defined by the LRA. **Alack**, 2012 WL 13005346, at *6. The court found that, despite the plaintiffs’ conclusory allegations, they had failed to point specifically to any facts that established illegal conduct attributable to the defendants. **Id.** After reviewing the evidence presented on summary judgment, the court found no evidence of racketeering activity on behalf of the moving defendants and dismissed the plaintiffs’ claims under the LRA. **Id.**

Therefore, as a prerequisite to determining whether MMR violated La. R.S. 15:1353(A) or (C), it must be determined whether MMR engaged in a pattern of racketeering activity. See La. R.S. 15:1353(E).

The facts regarding the alleged racketeering activity are not in dispute. In this regard, MMR points out that CamSoft is unable to establish that MMR engaged in a pattern of racketeering activity—an essential element of its claims under both La. R.S. 15:1353(A) & (C)—where the alleged bribery was conducted by NetMethods’ employees, and the alleged racketeering activity was not conducted by any MMR employee and did not occur after MMR hired some of NetMethods’ employees, making summary judgment proper as a matter of law. In our *de novo* review of the documents filed with the motion for partial summary judgment regarding RICO claims and the opposition thereto, the summary judgment evidence solely outlines the alleged racketeering activity of NetMethods and its employees. No evidence has been presented to show that MMR engaged in public bribery, corrupt influencing, or other racketeering activity; furthermore, no evidence has been presented to show that former NetMethods employees continued their alleged racketeering activity after they transferred their employment to MMR Constructors, Inc.

Nevertheless, CamSoft contended that MMR Constructors’ argument that it cannot be held liable for NetMethods’ LRA violations occurring before the transition of NetMethods’ employees, contracts, and assets to MMR fails, as a matter of law, because “MMR has materially and continually benefitted from NetMethods’ pattern of racketeering activity.” In support of this position, CamSoft relies on **Liquid Air Corp. v. Rogers**, 834 F.2d 1297 (7th Cir. 1987), cert. denied, 492 U.S. 917, 109 S.Ct. 3241, 106 L.Ed.2d 588 (1989).

In **Liquid Air**, D&R, whose shareholders were Jack R. Rogers and George Michlik, leased both compressed gas and compressed gas cylinders from Liquid Air. Due to price increases, D&R gave notice that it would terminate its distributorship with Liquid Air. Under the Distributor Agreement, D&R was required to return leased gas cylinders to Liquid Air, pay rent on outstanding

cylinders, and pay the replacement value for any cylinders not returned or accounted for. D&R was slow in returning the cylinders; by August 1982, D&R had returned only 1,570 of 5,000 outstanding cylinders, and Liquid Air began to charge D&R its higher, nondistributor rental rate.

Rogers and Michlik enlisted the aid of Ray Bridges (“Bridges”), an employee of Liquid Air responsible for handling all paperwork at Liquid Air’s Peoria Distribution Center. Under the scheme, Bridges would falsify documents to make it appear that D&R had returned all outstanding cylinders. D&R would save the rental and replacement fees, while retaining the cylinders for its own use. The scheme was accomplished through nineteen separate falsified shipping orders documenting returns that were never made. Each shipping order involved using the mail twice and one wire transfer. In return for Bridges’ work, Michlik and Rogers arranged to set Bridges up in his own welding business, Bridges Welding Supply (“Bridges Welding”), and supplied personnel, capital, and welding products.

Liquid Air discovered the scheme and filed a complaint against Michlik, Rogers, D&R, Bridges, and Bridges Welding, charging separate RICO violations of 18 U.S.C.A. § 1962(a), (b), (c) & (d). The predicate acts for the RICO counts were mail fraud and wire fraud. A jury found against all the defendants on the RICO counts.

On appeal, the defendants asserted numerous bases for overturning the jury verdicts, including whether Bridges Welding was properly found vicariously liable for conversion or RICO violations. Bridges Welding argued that it could not be liable for any RICO violation or for conversion since it did not have a corporate existence during the scheme. The court found that Bridges Welding was incorporated in April 1983, and defendants’ scheme was not completed until the end of May 1983. **Liquid Air**, 834 F.2d at 1306. Bridges was a principal employee and president of Bridges Welding while still employed at Liquid Air.

Id. In falsifying returns, Bridges acted as president of Bridges Welding, and his acts redounded to the benefit of Bridges Welding shareholders. **Id.** Bridges Welding accepted the benefits of Bridges' wrongdoing. **Id.** The court found that *respondeat superior* was entirely appropriate under 18 U.S.C.A. § 1962(a) & (b), so long as Bridges Welding derived a benefit from the violations. **Id.** at 1307.

The court found substantial evidence that Bridges Welding benefitted from the RICO violation. **Id.** In exchange for the "work" of Bridges Welding's president, D&R supplied Bridges Welding with the labor of defendant Rogers' son and defendant Michlik's nephew. **Id.** A supplier of Bridges Welding, Gano Welding, billed D&R for supplies furnished to Bridges Welding. **Id.** There also was evidence of various "loans" from D&R to Bridges Welding on which D&R was, at best, not actively pursuing collection. **Id.** Therefore, under 18 U.S.C.A. § 1962 (a) & (b), Bridges Welding was properly found liable.³ **Id.**

Liquid Air was decided on the principles of vicarious liability. In Louisiana, the premise of vicarious liability is codified in La. Civ. Code art. 2320, which provides an employer is liable for the tortious acts of its "servants and overseers in the exercise of the functions in which they are employed." **Richard v. Hall**, 2003-1488, p. 5 (La. 4/23/04), 874 So.2d 131, 137. However, in the instant case, no summary judgment evidence reflects that MMR or its employees, during the time of their employment with MMR, engaged in any of the alleged racketeering activity. **Liquid Air** is factually distinguishable from the instant case, in that Bridges was a principal employee and president of Bridges Welding while he was still employed at Liquid Air and conducting the racketeering activities (because Bridges Welding was incorporated in April 1983 and defendants' scheme

³ The **Liquid Air** court noted that, since addressing the propriety of the finding of vicarious liability under subsections (c) (under which *respondeat superior* may not apply) or (d) (conspiracy to violate (a), (b), or (c)), would not affect the amount of Liquid Air's award, it declined to consider defendants' challenges to these findings. **Liquid Air**, 834 F.2d at 1306.

was not completed until the end of May 1983); thus, Bridges Welding was found vicariously liable for Bridges' RICO violations.

Because we find no evidence that MMR or its employees engaged in racketeering activity, summary judgment is proper, as a matter of law.⁴

CONCLUSION

For the above and foregoing reasons, the April 2, 2019 judgment denying MMR's Motion for Partial Summary Judgment Regarding RICO Claims is reversed. The Motion for Partial Summary Judgment Regarding RICO Claims filed by MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc. is granted, and the claims of CamSoft Data Systems, Inc. against MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc., under the Louisiana Racketeering Act, are dismissed in their entirety, with prejudice. We deny the companion writ application referred to this panel, as moot. Costs of this appeal are assessed against CamSoft Data Systems, Inc.

REVERSED AND RENDERED; WRIT DENIED AS MOOT.

⁴ Because this court finds no evidence of racketeering activity under the LRA on behalf of MMR, it pretermits discussion of CamSoft's claims that MMR violated La. R.S. 15:1353(A) & (C) and CamSoft's standing to pursue those claims.