120 F.4th 177
United States Court of Appeals, Fifth Circuit.

Jorge CROSSWELL; Gloria Wang; LA Trade Supplies, L.L.C.; Green Wisdom Industry, L.L.C., Plaintiffs—Appellants,
v.
Juan Carlos MARTINEZ Cecias Rodriguez; Karina Hernandez; Cecilia Miranda; RhinoPro Ceramic, L.L.C.; RhinoPro Truck Outfitters, Incorporated; M&D Corporate Solutions, L.L.C.; Comar Holdings, L.L.C.; Mara 6 Holdings, L.L.C.; Mara 6 Investments, L.L.C.; Rhino Linings Corporation; Jennifer Anne Gleason-Altieri, Defendants—Appellees.

No. 23-20535
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FILED October 17, 2024

Opinion

Stephen A. Higginson, Circuit Judge:

***182** In the proceedings below, the plaintiffs alleged that the defendants marketed fraudulent "franchise" opportunities to foreign nationals seeking to invest in the United States to obtain residency visas. The complaint laid out claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968 ("RICO"), along with state-law claims sounding in fraud, breach of contract, and malpractice. The district court dismissed for failure to state a cognizable enterprise as required by the RICO statute and, as to the state-law claims at issue here, for failure to state a claim under the heightened pleading standards for fraud imposed by Fed. R. Civ. P. 9, denying the plaintiffs leave to amend the complaint. We AFFIRM.

I.

A.

Defendant-Appellee Rhino Linings Corporation makes liquid ceramic bedliners for trucks and trailers.[1] RhinoPro Mobile vans have equipment for spraying the liners on. The complaint alleges that Defendant-Appellee Juan Carlos Martinez Cecias Rodriguez ("Martinez") and others marketed RhinoPro Mobile franchises as opportunities to qualify for E-2 or EB-5 visas by investing in the United States. But according to the complaint, investors received only licenses rather than the franchises that had been represented to them, which failed to make them eligible for the visas. Two of these investors were Plaintiffs-Appellants Jorge Crosswell and Gloria Wang, who through their respective limited liability companies Plaintiffs-Appellants LA Trade Supplies, L.L.C., and Green Wisdom Industry, L.L.C., executed contracts for these licenses.

The complaint alleges a variety of other false representations supporting the scheme. Brochures falsely stated that investors would receive 100% of profits. Defendant-Appellee Karina Hernandez represented to Crosswell that the franchises had an 11% return on investment, in contradiction of the contract's express terms. The management agreements "turned total control" over to another (nonparty) company, which received all profits above a limited threshold. Wang and Crosswell did not receive all of the payments they were entitled to; Crosswell's business did not even receive vans or supplies. The limited income from the licenses and restricted participation in management meant that the investors did not qualify for visas despite marketing that the investment was "one hundred percent effective at receiving E2 and EB5 visa approval." Failure to disclose the management arrangement during the visa application process subjected Crosswell to visa revocation.

It is alleged that these sharp dealings were part of a coordinated scheme. The complaint says that Martinez worked with Hernandez, Defendant-Appellee Cecilia Miranda, Defendant-Appellee Jennifer Anne Gleason-Altieri, Defendant-Appellee M&D Corporate Solutions, L.L.C. ***183** ("M&D"), and nonparties to market RhinoPro Mobile licenses and to help investors set up bank accounts and incorporate entities to run their businesses, and that Rhino Linings knowingly acquiesced. "Martinez carried out his part of the scheme through at least five companies" that included Defendants-Appellees RhinoPro Ceramic, L.L.C. ("RPC"), and RhinoPro Truck Outfitters, Inc. ("RPT"). With respect to the visa fraud, "Martinez and Hernandez coordinated with Defendants Miranda, Gleason-Altieri, and M&D Corporate Solutions to prepare and file all necessary paperwork" for Mexican investors. In sum, "Defendant Hernandez ... located suitable victims, Defendants Martinez, RPC, and RPT Outfitters and non-defendant Uberwurx sold them fraudulent RhinoPro franchises, Defendant Martinez and non-defendant MCM sold them fraudulent management services," and "Defendants Miranda, Gleason-Altieri, and M&D Corporate Solutions prepared fraudulent business plans and visa paperwork ...."

B.

Crosswell and Wang, and their companies, sued Martinez, Hernandez, Miranda, Gleason-Altieri, RPC, RPT, M&D, and Rhino Linings. The plaintiffs sought to recover their losses under RICO on the basis of the coordinated visa fraud. The plaintiffs further asserted common-law fraud and fraud in the inducement claims under Texas law, and deceptive trade practices under the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE ANN. §§ 17.41–.63, on the basis of the false representations by Martinez, Hernandez, RPC, and RPT concerning the Rhino Linings business and the false representations by Miranda, Gleason-Altieri, and M&D about the visa applications. Fraudulent transfers under the Texas Uniform Fraudulent Transfer Act, *id.* §§ 24.001–.013, were alleged between Martinez and RPC, RPT, and Defendants-Appellees Comar Holdings, L.L.C., Mara 6 Holdings, L.L.C., and Mara 6 Investments, L.L.C. The plaintiffs additionally asserted a civil conspiracy claim. Other claims were asserted that are not at issue in this appeal.

The complaint was filed April 6, 2022. A docket control order was entered on September 12, 2022, allowing amendment of pleadings without leave by November 1, 2022. Motions to dismiss were filed by some of the defendants on September 13, 2022, and October 7, 2022. In responsive briefing beginning on October 4, 2022, the plaintiffs requested leave to amend the complaint. Following a joint motion to amend the docket control order, the order was vacated May 31, 2023.

The magistrate judge's report and recommendation was filed September 8, 2023, and proposed to dismiss the case for failure to state a claim, and as to certain of the defendants for failure of service. The report also recommended denying leave to amend the complaint. The plaintiffs filed objections to the report on September 22, 2023, again asking for leave to amend the complaint and attaching a proposed amended complaint. The district court adopted the magistrate judge's report in relevant part and rejected the plaintiffs' request for leave to amend. Judgment issued September 25, 2023. Notice of appeal was given October 25, 2023.

* * * *

A.

Turning first to the RICO claim, we note at the outset some lack of clarity about the proper standard for our review within the parameters just outlined. We have been directed to out-of-circuit authority holding that "in cases alleging civil RICO violations, particular care is required to balance the liberality of the Civil Rules with the necessity of preventing abusive or vexatious treatment of defendants." *Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 44 (1st Cir. 1991), *abrogated on other grounds by Salinas v. United States*, 522 U.S. 52, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997). This court has stated that a RICO plaintiff "must plead specific facts, not mere conclusory allegations, which establish the enterprise." *Montesano v. Seafirst Com. Corp.*, 818 F.2d 423, 427 (5th Cir. 1987). And that the "plaintiff must plead the specified facts as to each defendant. It cannot ... 'lump[ ] together the defendants.'" *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 738 (5th Cir. 2019) (quoting *In re MasterCard Int'l Inc., Internet Gambling Litig.*, 132 F. Supp. 2d 468, 476 (E.D. La. 2001), *aff'd*, 313 F.3d 257 (5th Cir. 2002)).

We need not decide whether such statements establish a special elevated standard for pleading RICO claims or merely caution that, in a field with complex theories of liability, plaintiffs must nonetheless follow the ordinary rules of pleading. *See D. Penguin Bros. v. City Nat. Bank*, 587 F. App'x 663, 666 (2d Cir. 2014) ("The heightened pleading requirements of Rule 9(b) ***185** 'appl[y] only to claims of fraud or mistake.' ... [F]or other elements of a RICO claim—such as non-fraud predicate acts or, as relevant here, the existence of an 'enterprise'—a plaintiff's complaint need satisfy only the 'short and plain statement' standard of Rule 8(a)." (quoting *McLaughlin v. Anderson*, 962 F.2d 187, 194 (2d Cir. 1992))); *Robbins v. Wilkie*, 300 F.3d 1208, 1211 (10th Cir. 2002) ("Defendants confuse the requirement to plead with particularity RICO acts predicated upon fraud pursuant to Rule 9(b) with Rule 8's more general notice pleading typically required of all litigants."). At the very least, these statements provide a reminder that a claim for relief may not be stood up on conclusory allegations, and since the complaint fails to state a RICO claim under Rule 8 it would fail under a stricter standard too.

The merits issue involves the "enterprise" element of RICO claims. "Regardless of subsection, RICO claims under § 1962 have three common elements: '(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise.'" *Abraham v. Singh*, 480 F.3d 351, 355 (5th Cir. 2007) (quoting *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996)). "RICO does not require [that] an enterprise be a separate business-like entity. Instead, an association-in-fact enterprise includes 'a group of persons associated together for a common purpose of engaging in a course of conduct,' and that enterprise can be proved with 'evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.' " *Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 673 (5th Cir. 2015) (citation omitted) (quoting *Boyle v. United States*, 556 U.S. 938,

944–45, 129 S.Ct. 2237, 173 L.Ed.2d 1265 (2009)).

The district court adopted the determination in the magistrate judge's report that the plaintiffs had not pleaded a cognizable RICO enterprise because the complaint "fail[ed] to allege that the purported enterprise had any existence separate and apart from the racketeering activity," as required to plead an association-in-fact. The court explained that "a cognizable RICO enterprise 'must exist for purposes other than just to commit predicate acts.' " *See Walker*, 938 F.3d at 738. Since the complaint alleged only the purpose of "steal[ing] money from foreign investors by pitching fraudulent franchises as investment opportunities," no such separate purpose had been pleaded. The appellants contend that they adequately pleaded an association-in-fact enterprise,[2] urging that the complaint alleged that "multiple persons ... joined together to engage in mail, wire, and immigration fraud.... The Complaint identified each defendant and described their overall role in the scheme."

We agree that the plaintiffs failed to plead a RICO enterprise but do not quite agree with the district court's reasoning. Although a RICO enterprise "must be more than a summation of predicate acts," *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 748 (5th Cir. 1989), that does not mean that predicate acts cannot demonstrate the existence ***186** of an enterprise. On the contrary, "the evidence establishing the enterprise and the pattern of racketeering may 'coalesce.' " *Allstate*, 802 F.3d at 673 (quoting *Boyle*, 556 U.S. at 947, 129 S.Ct. 2237). The rule that an association-in-fact "must exist for purposes other than just to commit predicate acts," *Walker*, 938 F.3d at 738, requires the association-in-fact to have *continuity*—in other words, a group that commits an isolated set of acts need not thereby "function as a continuing unit and remain in existence long enough to pursue a course of conduct." *Boyle*, 556 U.S. at 948, 129 S.Ct. 2237; *see Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir. 1989) ("Plaintiff has failed to assert continuity—that the association existed for any purpose other than to commit the predicate offenses."); *Montesano*, 818 F.2d at 427 (similar). It does not mean that a plaintiff must plead that a common venture dedicated to racketeering activity exists to further other nonculpable ends too. *Allstate*, 802 F.3d at 674; *see Boyle*, 556 U.S. at 948, 129 S.Ct. 2237 ("[A] group that does nothing but engage in extortion ... may fall squarely within the statute's reach."); *Russello v. United States*, 464 U.S. 16, 24, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) ("[T]he term 'enterprise' in § 1961(4) encompasses both legal entities and *illegitimate* associations-in-fact." (emphasis added)); *United States v. Turkette*, 452 U.S. 576, 582 n.4, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981) ("[S]ince legitimacy of purpose is not a universal characteristic of the specifically listed enterprises [in § 1961(4)], it would be improper to engraft this characteristic upon [association-in-fact] enterprises.").

Instead, to determine whether the plaintiffs pleaded an association of sufficient continuity to constitute an enterprise, we turn to the Supreme Court's decision in *Boyle v. United States*.[3] *Boyle* reiterated that an association-in-fact enterprise "is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." 556 U.S. at 945, 129 S.Ct. 2237 (quoting *Turkette*, 452 U.S. at 583, 101 S.Ct. 2524). The Court identified "at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Id.* at 946, 129 S.Ct. 2237. The Court further stated that "the group must function as a continuing unit and remain in existence long enough to pursue a course of conduct." *Id.* at 948, 129 S.Ct. 2237. We take this as our starting point, noting the test for association-in-fact continuity outlined in *Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2d 241, 243 (5th Cir. 1988).[4]

***187** At the level of *allegations*, it seems clear that the plaintiffs did not fail to allege such continuity. The clear import of the pleadings is that each of the defendants played a specific, repeated role in a sustained coordinated scheme to defraud multiple victims. Such allegations are consistent with the existence of an entity with continuing and coherent associational structure.

We agree with the district court's conclusion that the plaintiffs failed to plead a RICO enterprise, however, because these general allegations lack plausible support in the pleaded facts. Instead, the facts pleaded demonstrate a sequence of unfavorable transactions orchestrated by Martinez, at times accompanied by defendant and nonparty corporate entities, and the complaint is bereft of facts that define any structure or organization or other emergent properties of connection among Martinez and these entities.[5] Accusing a group of defendants comprising one natural person and a collection of legal fictions as undertaking a set of acts together, without providing any detail as to *how* they acted together, fails to provide a factual basis from which to plausibly infer the connected structure of an association. *See Boyle*, 556 U.S. at 946, 129 S.Ct. 2237. To be sure, the facts pleaded are "consistent with" RICO liability, but these conclusory allegations do not state a plausible claim for relief. *See Twombly*, 550 U.S. at 557, 127 S.Ct. 1955.

The pleaded facts do demonstrate specific acts by Hernandez, Miranda, Gleason-Altieri, and M&D—but only as to an isolated set of events directed to Crosswell. No allegations plausibly support the complaint's theory of the enterprise that such transactions were repeated by these defendants with the continuing common purpose of a shared scheme.[6] This is similar to the situation presented (pre-*Boyle*) in *Montesano*, when we concluded that "join[ing] together for the purpose of illegally repossessing the vessel" did not plausibly support the extrapolation that the defendants had formed an enterprise dedicated to like activity. 818 F.2d at 427. While the appropriateness of such extrapolation depends on the circumstances of each case, here the defendants are not linked to any other continuing set of relationships or a course of activity that would entail an association operating in the background; there is no evidence plausibly indicating that otherwise isolated acts as to Crosswell are examples of reiterated roles.[7] Instead, it is the other way around; we are effectively being asked to assume an association-in-fact in order to infer the premise that these defendants could have been playing repeated roles in continuing association. There are other ways to show an enterprise ***188** but as presented on appeal this theory of the complaint's sufficiency lacks plausible support.

* * * *

IV.

The district court's judgment is AFFIRMED.

Footnotes

[1] We describe the facts as alleged in the complaint because of the case's posture. *See Heinze v. Tesco Corp.*, 971 F.3d 475, 479 (5th Cir. 2020).

[2] To the extent that the appellants further argue that RPC, RPT, or nonparty Uberwurx provided a "legal entity" enterprise, their contentions on appeal do not provide sufficient explanation to allow assessment of this theory. *Cf. St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 447 n.16 (5th Cir. 2000) ("[A] '§ 1962(c) enterprise must be more than an association of individuals or entities conducting the normal affairs of a defendant corporation.' " (quoting *Brittingham v. Mobil Corp.*, 943 F.2d 297, 301 (3d Cir. 1991))).

[3] At this point we part ways from the district court's conclusion that *Boyle* was inapplicable because it concerned jury instructions in a criminal case. The definition of enterprise in *Boyle*, 28 U.S.C. § 1961(4), is the same one at issue here. Although a provision can take on different meanings as it is incorporated into different parts of a statutory scheme, "we presume that the same term has the same meaning." *Env't Def. v. Duke Energy Corp.*, 549 U.S. 561, 574–76, 127 S.Ct. 1423, 167 L.Ed.2d 295 (2007). In any case, both *Walker*, 938 F.3d at 738, and *Allstate*, 802 F.3d at 673, have already applied *Boyle* in the civil context.

[4] It bears noting that this court has recently carefully canvassed case law on continuity in the context of RICO's "pattern" requirement. *See D&T Partners, L.L.C. v. Baymark Partners Mgmt., L.L.C.*, 98 F.4th 198, 205–10 (5th Cir. 2024), *cert. denied*, No. 24-18, —— U.S. ——, —— S.Ct. ——, —— L.Ed.2d ——, 2024 WL 4427165 (U.S. Oct. 7, 2024); *see also Boyle*, 556 U.S. at 946, 129 S.Ct. 2237 ("Section 1962(c) ... shows that an 'enterprise' must have some longevity, since the offense proscribed by that provision demands proof that the enterprise had 'affairs' of sufficient duration to permit an associate to 'participate' in those affairs through 'a pattern of racketeering activity.' ").