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Securities Law - Securities & Exchange Commission v. Rind: SEC Civil Enforcement Actions Are Not Subject To Statute Of Limitations

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SECURITIES LAW

SECURITIES & EXCHANGE COMMISSION v. RIND: SEC CIVIL ENFORCEMENT ACTIONS ARE NOT SUBJECT TO STATUTE OF LIMITATIONS

I. INTRODUCTION

In *Securities & Exchange Commission v. Rind*,¹ the United States Court of Appeals for the Ninth Circuit, ruling on an issue of first impression,² held that civil enforcement actions³ brought by the Securities and Exchange Commission (hereinafter "SEC") are not subject to statute of limitations restrictions.⁴ Additionally, the court ruled that no right to a jury trial attaches in SEC civil enforcement actions seeking disgorgement of illicit profits.⁵

II. FACTS AND PROCEDURAL HISTORY

On August 15, 1990, the SEC filed a civil enforcement action in connection with the collapse of ZZZZ Best Company.⁶

1. SEC v. Rind, 991 F.2d 1486 (9th Cir. 1993), *cert. denied*, 114 S. Ct. 439 (1993) (per Wallace, J., the other panel members were Trott, J. and Nelson, J.).

2. *Id.* at 1488.

3. Section 20 of the Securities Act of 1933 and Section 21 of the Securities and Exchange Act of 1934 [hereinafter "1933 Act" and "1934 Act," respectively], authorize the SEC's use of the civil courts to enforce Act provisions. 15 U.S.C. § 77t(b) (1988), 15 U.S.C. § 78u(d) (1988).

4. *Id.* at 1493.

5. *Id.* Disgorgement deprives a wrongdoer of illegally obtained profits, often compensating victims for losses. *Id.* at 1490.

6. SEC v. Rind, 991 F.2d 1486, 1488 (9th Cir. 1993), *cert. denied*, 114 S. Ct.

In the action, the SEC named Maurice Rind, along with thirteen others, as defendants.⁷ The complaint was brought under Section 20 of the Securities Act of 1933 (hereinafter "1933 Act") and Section 21 of the Securities Act of 1934 (hereinafter "1934 Act").⁸ The SEC alleged violations of various reporting and recordkeeping provisions of the 1933 Act,⁹ the 1934 Act¹⁰ and various SEC Rules.¹¹

The SEC alleged that Rind violated securities regulations by concocting a fraudulent transaction which vastly overstated the assets of ZZZZ Best Company in the company's registration statements.¹² The alleged overstatement enabled the company to raise millions of dollars in capital.¹³ According to the complaint, Rind personally received at least \$700,000 for his part in the fraud.¹⁴

The SEC sought disgorgement of Rind's unlawful gains and a permanent injunction prohibiting his further violation of federal securities provisions.¹⁵ Rind moved for judgment on the pleadings, arguing that, under *Lampf, Pleva, Lipkind, Prupis & Pettigrow v. Gilbertson*,¹⁶ the SEC action was barred by the statute of limitations.¹⁷ The district court denied Rind's

439 (1993).

7. *Id.* Prior to trial, the thirteen other defendants either defaulted or consented to judgments, leaving Rind as the sole defendant in the case. *Id.* at 1488.

8. *Id.*

9. *Id.* Rind was charged with violating Section 17(a) of the 1933 Act, which forbids a seller of securities to use misleading statements, fraud or deceit in interstate transactions. 15 U.S.C. § 77q(a) (1988).

10. *Rind*, 991 F.2d at 1488. Rind was charged with violating Section 10(b) of the 1934 Act, which prohibits the use of misleading statements, deceptive schemes or fraudulent practices by persons buying or selling securities in interstate commerce, and by national securities exchanges. 15 U.S.C. § 78j(b) (1988).

11. *Rind*, 991 F.2d at 1488. Specifically, Rules 10b-5 (17 C.F.R. § 240.10b-5), 12b-20 (17 C.F.R. § 240.12b-20), 13a-13 (17 C.F.R. § 240.13a-13), and 13b-1 (17 C.F.R. § 240.13b-1).

12. *Rind*, 991 F.2d at 1488.

13. *Id.*

14. *Id.*

15. *Id.*

16. 501 U.S. 350 (1991). In *Lampf*, the Supreme Court held that an action brought by private investors under Section 10(b) of the 1934 Act was subject to a one-year statute of limitations with a three-year period of repose (i.e., one year from the date fraud is detected, and three years from when it occurred) *Id.* at 364.

17. *Rind*, 991 F.2d at 1488. Rind argued that July, 1987, the date ZZZZ Best

motion and granted the SEC's motion to strike Rind's statute of limitations defenses.¹⁸ The district court also granted the SEC's motion to strike Rind's demand for a jury trial, on the grounds that disgorgement is an equitable remedy.¹⁹ Rind appealed these rulings interlocutorily, and the court certified the statute of limitations and the jury trial questions for appeal.²⁰ The United States Court of Appeals for the Ninth Circuit granted permission to appeal.²¹

III. THE COURT'S ANALYSIS

In *Rind*, the U.S. Court of Appeals for the Ninth Circuit held that no statute of limitations applies to civil enforcement actions brought by the SEC.²² The court also held that the right to a jury trial does not attach in actions where the SEC sues for disgorgement of illegal profits.²³

A. STATUTE OF LIMITATIONS

In addressing the issue of whether SEC civil enforcement actions are subject to a statute of limitations, the Ninth Circuit considered the Supreme Court's ruling in *Lampf*,²⁴ and held that *Lampf* was inapplicable.²⁵ The court then determined that, in light of Congress' intent²⁶ and public policy interests,²⁷ a statute of limitations period does not apply to SEC

Company filed for bankruptcy, was the latest date the fraud can be said to have occurred. The SEC's action was filed more than three years later, in August, 1990. *Id.* at 1488.

18. *Rind*, 991 F.2d at 1488.

19. *Id.*

20. *Id.* An interlocutory appeal is one brought prior to final adjudication of a case "which is not determinable of the controversy, but which is necessary for a suitable adjudication of the merits." BLACK'S LAW DICTIONARY 815 (6th ed. 1990).

21. *Id.*

22. SEC v. Rind, 991 F.2d 1486, 1492 (9th Cir. 1993), *cert. denied*, 114 S. Ct. 439 (1993).

23. *Id.* at 1493.

24. *Lampf, Pleva, Lipkind, Prupis & Pettigrow v. Gilbertson*, 501 U.S. 350 (1991).

25. SEC v. Rind, 991 F.2d 1486, 1490 (9th Cir. 1993).

26. *Id.*

27. *Id.* at 1492.

enforcement actions.²⁸

1. *Lampf Applies Only to Private Actions Implied Under Section 10(b)*

Responding to Rind's assertion that, under *Lampf*, the SEC is bound by a statute of limitations period when it sues for disgorgement of profits, the Ninth Circuit determined that *Lampf* is not dispositive in this case.²⁹ The court stated that *Lampf* applies only to private actions implied under Section 10(b) of the Securities & Exchange Act of 1934.³⁰

Lampf involved an action brought by a group of investors under Section 10(b) of the 1934 Act.³¹ Such private 10(b) actions were not expressly created by Congress, but were later implied by the courts.³² The issue in *Lampf* was whether a statute of limitations should control private actions implied under Section 10(b).³³ The *Lampf* Court noted that the policy considerations underlying Congress' decision to impose time limitations on other private actions expressly authorized in the 1934 Act would also apply to the private actions implied by the courts.³⁴ Therefore, the *Lampf* Court held that the same restrictions placed by Congress on the expressly created private rights of actions would also control private actions implied under Section 10(b).³⁵

In *Rind*, however, the Ninth Circuit refused to extend the *Lampf* opinion to public claims brought under Section 20 of the 1933 Act and Section 21 of the 1934 Act.³⁶ The court noted the differences in the policy considerations underlying private and public actions.³⁷ Private actions were created to protect

28. *Id.*

29. SEC v. Rind, 991 F.2d 1486, 1490 (9th Cir. 1993).

30. *Rind*, 991 F.2d at 1490.

31. *Lampf*, 501 U.S. at 353.

32. *Id.* See Superintendent of Ins. v. Bakers Life & Cas. Co., 404 U.S. 6, 13 n.9 (1971).

33. *Lampf*, 501 U.S. at 353.

34. *Id.*

35. *Id.*

36. *Rind*, 991 F.2d at 1490.

37. *Id.*

individual investors from stock manipulations schemes and to compensate them by restoring losses.³⁸ In contrast, civil enforcement actions are concerned with deterring wrongdoers and depriving them of their unlawful profits.³⁹ The court noted that these social policies are “independent of the claims of individual investors”⁴⁰ and that, despite the monetary aspect of disgorgement, its purpose, to remove the incentive for violating securities regulations, is public in nature.⁴¹ The court concluded that, because the interests are different for public actions, the time limits extended to implied private rights by the Supreme Court in *Lampf*, do not apply to civil enforcement actions brought by the SEC.⁴²

2. *Congress Did Not Intend for a Statute of Limitations to Apply to SEC Enforcement Actions*

The Ninth Circuit determined that Congress did not intend for SEC enforcement actions to be subject to time restrictions.⁴³ The court pointed to the structure of the securities laws as evidence of this intention.⁴⁴ The private actions expressly created in the 1933 and 1934 Acts are all bound by express statutes of limitation.⁴⁵ In contrast, Congress imposed no time restrictions on SEC enforcement actions it authorized.⁴⁶ As a result, the *Rind* court determined that the structure of the securities laws indicates that Congress deliberately refrained from imposing time restrictions on SEC civil enforcement actions.⁴⁷

Recognizing that Congress has often refrained from imposing time restrictions on federal claims it has created, the *Rind* court considered how the Supreme Court has dealt with cases

38. *Id.*

39. *Id.*

40. *Id.*

41. *Rind*, 991 F.2d at 1490.

42. *Id.*

43. SEC v. *Rind*, 991 F.2d 1486, 1490 (9th Cir. 1993).

44. *Id.*

45. *Id.*

46. 15 U.S.C. § 77t(b) and U.S.C. § 78u(d) (1988).

47. *Rind*, 991 F.2d at 1490.

arising from those claims.⁴⁸ The Court has held that generally, when Congress is silent as to a statute of limitations, a court should borrow the limitation period provided in an analogous rule.⁴⁹ This doctrine, however, is not applied in cases where the government sues to protect a public right or interest.⁵⁰ The underlying justification for exempting federal claims from the general rule is that the public should not suffer due to the failure of public officials to enforce laws in a timely manner.⁵¹ Civil enforcement claims are brought by the SEC to protect the public interest by ensuring the integrity and fairness of the capital markets.⁵² Therefore, the *Rind* court held that Congress did not intend for these actions to be subject to statute of limitations restrictions.⁵³

Finally, the court noted that the nature of SEC enforcement claims indicates that Congress did not intend for these claims to be time-barred.⁵⁴ The court relied on *Occidental Life Ins. Co. v. EEOC*,⁵⁵ where the Supreme Court refused to place time restrictions on employment discrimination claims brought by the Equal Employment Opportunity Commission (hereinafter "EEOC").⁵⁶ The Court stated that to do so would "frustrate or interfere with the implementation of national policies."⁵⁷ The Court noted that the EEOC was required by law to attempt to settle potential claims before suing.⁵⁸ Furthermore, the EEOC faced a severe backlog of cases when Congress first authorized EEOC enforcement actions.⁵⁹ These two factors indicated to the Court that Congress could not have intended

48. *Id.*

49. *Id.* (citing *Reed v. United Transp. Union*, 488 U.S. 319, 323-24 (1989) (holding that claims brought under 101(a)(2) of Title I of the federal Labor-Management Reporting and Disclosure Act of 1959 are governed by statute of limitations restrictions contained in applicable state personal injury statutes)). *Id.* at 323.

50. *U.S. v. Summerlin*, 310 U.S. 414, 416 (1940).

51. *Rind*, 991 F.2d at 1490 (citing *Guaranty Trust Co. v. U.S.*, 304 U.S. 126, 132 (1938)).

52. *Rind*, 991 F.2d at 1491.

53. *Id.*

54. *Id.*

55. 432 U.S. 355 (1977).

56. *Id.* at 372.

57. *Id.* at 367.

58. *Id.* at 368.

59. *Id.* at 369-71.

for the EEOC to be subject to stringent time constraints.⁶⁰

Similarly, the *Rind* court stated that the nature of SEC enforcement actions indicates that Congress did not intend for them to be subject to a statute of limitations.⁶¹ Investigations of securities laws violations are often arduous and time-consuming.⁶² The SEC often attempts to avoid litigation by settling claims administratively, a process which requires considerable time.⁶³ Furthermore, enforcement actions may involve multiple parties and complex transactions, and fraud is often difficult to detect.⁶⁴ The *Rind* court noted all of these factors and concluded that the nature of SEC enforcement actions indicates that Congress could not have intended to subject them to strict time restrictions.⁶⁵

B. JURY TRIAL

The Ninth Circuit joined the Second Circuit⁶⁶ in holding that the right to a jury trial does not attach to SEC civil enforcement actions seeking disgorgement of unlawful profits.⁶⁷ Noting the settled rule that no jury trial attaches to purely injunctive actions brought by the SEC,⁶⁸ the court extended the rule to include enforcement actions seeking disgorgement of profits.⁶⁹

The court based its ruling on the fact that, despite its monetary nature, disgorgement of profits has been held to constitute an equitable remedy.⁷⁰ In *Securities and Exchange*

60. *Occidental*, 432 U.S. at 372.

61. *Rind*, 991 F.2d at 1492.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. See *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90 (2d Cir. 1978). In *Commonwealth*, the Second Circuit, characterizing disgorgement of profits as an exercise of the court's discretion in preventing unjust enrichment, ruled that no right to a jury trial existed in an SEC enforcement action seeking disgorgement of profits. *Id.* at 95.

67. *SEC v. Rind*, 991 F.2d 1486, 1493 (9th Cir. 1993).

68. *Id.*

69. *Id.*

70. *Id.*

Comm'n v. Clark,⁷¹ the Ninth Circuit characterized disgorgement of profits as injunctive in nature.⁷² Also, the Supreme Court has noted that disgorgement actions are equitable in nature.⁷³

Finally, the court cited the similarity between disgorgement and the more traditional equitable remedy of restitution.⁷⁴ Because the right to jury trial guaranteed by the Seventh Amendment⁷⁵ does not attach in equitable actions, the court held that a wrongdoer charged under an SEC disgorgement action is not entitled to a jury trial.⁷⁶

IV. CONCLUSION

The Ninth Circuit held that civil enforcement claims brought by the SEC are not subject to statute of limitations restrictions. The court based its decision on the important public policies underlying enforcement claims, the intent of Congress as evidenced by the structure of the securities laws, and the complex nature of SEC enforcement claims. In addition, the Rind court held that, due to the equitable nature of disgorgement, a defendant's right to a jury trial does not attach in SEC civil enforcement actions which seek disgorgement of profits.

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71. *Clark*, 915 F.2d 439 (9th Cir. 1990).

72. *Id.* at 453.

73. *See* *Chauffers, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 570 (1990).

74. *Rind*, 991 F.2d at 1493.

75. U.S. CONST. amend. VII.

76. *Rind*, 991 F.2d at 1493.

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