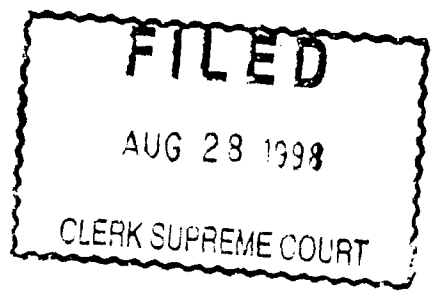
IN THE COURT OF APPEALS OF IOWA

No. 7-775 / 97-540

ROLLING HILLS FS, INC.,
Plaintiff,

vs.

RICHARD HARDIN a/k/a RICHARD HARDEN,
Defendant.



RICHARD HARDEN,
Counter-Plaintiff-Appellant,

vs.

ROLLING HILLS FS, INC., RONNIE C. FRY, Credit Manager, and JOHN KNOBLOCH,
Counter-Defendants-Appellees.

Appeal from the Iowa District Court for Wayne County, Darrell J. Goodhue, Judge.

Richard Harden appeals a district court ruling granting summary judgment in favor of the defendants on his counterclaims. **AFFIRMED.**

Richard Harden, Lineville, pro se, appellant.

Hugh J. Cain of Hopkins & Huebner, P.C., Des Moines, and Lori L. Koop, West Des Moines, for appellees.

Considered by Vogel, P.J., Mahan, J., and McCartney, S.J.* Streit, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PER CURIAM

Richard Harden (Harden) appeals from a judgment in the district court granting defendants' (Rolling Hills, Inc., Ronnie Fry, and John Knobloch) motion for summary judgment. We affirm.

Harden purchased two LP tanks from Rolling Hills during the 1970s. Payment was to be on an annual installment basis until paid in full. In February of 1991, Harden made the final payment on the two tanks and received a receipt to that effect. In August of 1991, however, Rolling Hills sent Harden a letter requesting a final $50 payment. The letter reads as follows:

> Please accept this letter as notice of your annual LP tank payment.
>
> Your balance is $50. Your payment due is $50. Please remit payment for the balance due by September 21, 1991. We have enclosed an envelope so your payment may be applied correctly.

Again on August 3, 1992, an identical letter was again sent to Harden, the only change being that the balance should be paid by August 15, 1992.

Harden, on both occasions, advised Rolling Hills that the account had been paid in February 1991. The receipt for such payment evidenced that fact. It appears, however, that the payment had not been properly entered into accounts maintained by Rolling Hills.

In October of 1993, Rolling Hills filed suit against Harden in small claims court, asking for the sum of $284.67 as a balance due Rolling Hills for propane gas purchased by Harden. The purported $50 balance due for the tanks was not included

in this amount. On December 8, 1993, Rolling Hills, by letter to Harden, acknowledged that the tanks were paid in full.

On December 15, 1993, and based upon these two 1991 and 1992 letters, Harden filed his counterclaim against Rolling Hills. Harden alleged that Rolling Hills committed extortion, mail fraud, had engaged in an extortion credit practice, had violated the federal racketeer influence and corrupt practice act (RICO), had caused severe emotional distress to Harden, and because the claim filed by Rolling Hills was signed by its manager as an attorney, perjury had been committed.

He further alleged that Rolling Hills violated the federal fair debt collection practices act (FDCPA).

Rolling Hills received judgment against Harden for the unpaid propane gas bill, but the counterclaim was transferred to district court.

The district court then dismissed the counterclaim on grounds not pertinent to this appeal. The court of appeals, however, in 1996, directed that the counterclaim be remanded to district court for further proceedings. *Rolling Hills FS, Inc. v. Hardin*, No. 94-611 (Iowa App. May 31, 1996).

Litigation over the counterclaim then was renewed. Thereafter and on February 6, 1997, the district court sustained the motion for summary judgment filed by Rolling Hills. This action precipitated the present appeal with Harden asserting that there was sufficient factual basis to allow a jury trial on the issues raised in his

counterclaim. In addition, Harden asserts that the district court erred in not permitting other and further discovery.

Summary judgment is appropriate where there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). The resisting party shall set forth a statement of disputed facts and the authorities supporting the resistance. *Id.* The resisting party may not simply rely on allegations or denials but must set forth specific facts showing that there is a genuine issue. Iowa R. Civ. P. 237(e).

Our review for the granting summary judgment is for errors at law. Ia. R. App. P. 4. Similarly, questions of appropriate discovery and discovery rulings are for errors at law to determine if there has been an abuse of judicial discretion. *Uthe v. Time-Out Family Amusement Ctrs.*, 475 N.W.2d 635, 637 (Iowa App. 1991). We look to see if the abuse arose out of reasons that are clearly inappropriate or unreasonable. *Id.*

The magistrate entered his judgment against Harden in the small claims action on December 17, 1993, and directed that the counterclaim be transferred to district court. Three months later, on March 18, 1994, the district court dismissed the counterclaim. The record does not reflect any discovery undertaken or initiated by Harden during that period of time. In like fashion, until December 2, 1996, Harden did not seek discovery. On that date he filed interrogatories and requests for admissions.

Rolling Hills timely filed its responses to the request for admissions and interrogatories. Rolling Hills objected in part to some of the interrogatories and requests for admissions as being irrelevant and in part because it believed that the requests would not lead to the discovery of admissible evidence. It then filed its motion for summary judgment.

Harden then moved that the court compel Rolling Hills answer the interrogatories and respond to all of the requests for admissions. The district court sustained the motion in part by requiring Rolling Hills to make its bylaws available and by providing a list of the owners of its preferred stock and also a listing of the customers with whom Rolling Hills had billing disputes during the years between 1990 and 1993.

These additional requirements of the district court were complied with and Harden was given an additional nine days to supplement his resistance to the motion for summary judgment. No further resistance appears to have been filed by Harden. and the court then granted summary judgment on February 6, 1997.

Under the circumstances, we conclude that the district court did not abuse its discretion in directing discovery be held in the manner that it did. Harden was provided more than adequate time to make discovery and, upon his motion to compel, received further discovery. A review of the interrogatories and requests for admissions reflects in part that they request matters irrelevant to the issues raised by

Harden in his counterclaim and that other interrogatories were answered in sufficient detail.

The resistance made by Harden to the motion for summary judgment did not contain "specific facts showing there is a genuine issue for trial." Iowa R. Civ. P. 237(e). His resistance was essentially argumentative and a reassertion of his allegations.

The district court then proceeded to grant summary judgment against all the claims asserted by Harden on February 6, 1997.

The assertion by Harden that Rolling Hills committed extortion depends upon the two letters concerning his "balance due." The letters do not contain any threats to Harden or to his credit or his business. *See* Iowa Code § 711.4. The only evidence adduced by Harden in this regard are the two letters. Harden should, if other threats were made to him, express those acts in his resistance to the motion for summary judgment. This he did not do. We find his claim does not submit a justiciable issue.

When making allegations of "common law fraud" as asserted by Harden, one must show reliance upon the misrepresentation, and that he acted upon such misrepresentation to his damage. *Ford v. Barcus,* 261 Iowa 616, 622, 155 N.W.2d 507, 511 (1968). Harden did not rely on the representations in the letters that he owed further monies on the propane tank account. He did not incur any damages as a consequence. He did not pay the account again and protested it throughout. This

claim of fraud is not supported by facts in the resistance to the motion for summary judgment, and it is apparent from the record that he was not misled in this regard.

With regard to the allegations of Harden that Rolling Hills engaged in the practice of extortionate credit, contrary to 18 United States Code section 894, we similarly find the elements of extortion absent. The record is barren of any evidence of explicit threats or of implicit threats. *United States v. Curcio*, 310 F. Supp 351, 356 (D.C. Conn. 1970).

The claim of RICO violations similarly fails to pass muster. Section 1962 sets forth the unlawful activity constituting racketeering. 18 U.S.C. §1962.

In the first instance it is a far stretch to assert that the mailing of the two collection letters almost a year apart under these circumstances constitutes "criminal activity." The letters are courteous in tone and nonthreatening. The letters do not constitute a "pattern" of racketeering. There are no "predicate acts" involving actual threats of criminal activity, implicit or explicit. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 236, 109 S. Ct. 2893, 2899, 106 L. Ed. 2d 195, 206 (1989). Mistaken requests for payment should not be converted into criminal activity. Here Rolling Hills by letter to Harden acknowledged its mistake in sending the requests for payment. This acknowledgment preceded by a number of days Harden's filing his RICO complaint in his counterclaim.

In addition, a RICO violation must result in the collection of income from racketeering activity "or through a collection of an unlawful debt." 18 U.S.C. §

1962(a). Harden shows no injury here since he did not suffer any damage to his business or property. The tanks were not repossessed and the purported debt was not paid by Harden.

We also note that personal damages are not recoverable under RICO. *Drake v. B.F. Goodrich Co.*, 782 F.2d 638, 643 (6th Cir. 1986).

Harden asserts he suffered emotional distress because he is particularly concerned about his credit reputation. The court determines in the first instance if the conduct may "reasonably be regarded as so extreme and outrageous as to permit recovery." *Marks v. Estate of Hartgerink*, 528 N.W.2d 539, 546 (Iowa 1995). The conduct must be so extreme as to be atrocious and intolerable. *Vinson v. Linn-Mar Community School Dist.*, 360 N.W. 2d 108, 118 (Iowa 1984). The conduct is viewed from a reasonable person's point of view. *Meyer v. Nottger*, 241 N.W.2d 911, 918 (Iowa 1976). While Hardin would have us disregard *Meyer* and substitute his own subjective feelings to determine the pernicious effect of the acts, we decline. The district court acted appropriately in granting summary judgment against this claim, the conduct complained of being the two nonthreatening letters.

Harden contends that Rolling Hills committed perjury when its manager signed its petition in small claims court. The manager used a preprinted form and the signature line had the word "attorney" printed beneath the signature line. It is acknowledged that the manager was not an attorney at law. The word "attorney" here could well be taken in its definition as an agent and not as a lawyer. A civil action

is not recognized for perjury made during litigation. The reasons are set forth in *Beeck v. Kapalis*, 302 N.W.2d 90, 97 (Iowa 1981). Be that as it may, we do not find that Harden has suffered any damage or injury. The summary judgment correctly disposed of this issue.

Finally, Harden asserts that Rolling Hills violated the federal fair debt collection practices act. 15 U.S.C. § 1692. Harden attempted to include the manager of Rolling Hills and its credit supervisor as individual defendants. The act states that a "collector" would not include an employee of any creditor while in the name of that creditor such employee attempts to collect debts. The second letter was mailed in August of 1992 with Harden filing his action under the debt collection practices act in December 1993. This is at odds with the statute of limitations contained in the debt collection practices act. It requires that any action be brought within one year from the date on which the violation occurs. *Id.* Consequently, we find no error of law in the granting of the motion for summary judgment against Harden.

We find that Harden failed to provide specific acts showing genuine issues for trial on all of his issues. The district court correctly granted the motion for summary judgment on all counts brought by Harden.

Based upon the foregoing, the decision of the district court is affirmed.

AFFIRMED.