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SOUTHERN DISTRICT CIVIL ROUNDUP

Whether to Seek Dismissal of Civil RICO Claims Under Rule 12(b)(1)

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Faced with a defective civil RICO claim, defendants often struggle over whether to move to dismiss for want of jurisdiction under Federal Rule of Civil Procedure 12(b)(1) or for failure to state a claim under Rule 12(b)(6), or both.

A complaint's failure to state a RICO claim under Rule 12(b)(6) frequently is intertwined with the jurisdictional question under Rule 12(b)(1), as courts in the Second Circuit analyzing federal question jurisdiction consider whether "'the cause of action alleged is so patently without merit as to justify... the court's dismissal for want of jurisdiction.'" *Town of West Hartford v. Operation Rescue,* 915 F.2d 92, 100 (2d Cir. 1990) (quoting *Hagans v. Lavine,* 415 U.S. 528, 542-43 (1974)).

Southern District Judge Katherine Polk Failla's recent decision in *Wanglap Yam v. Qi Xin*, 2026 WL 2224981 (S.D.N.Y. Aug. 3, 2026), illustrates the line-drawing exercise that exists in deciding whether to dismiss a civil RICO claim under Rule 12(b)(1) or Rule 12(b)(6). The exercise is not academic because, for example, if a court finds that it has jurisdiction over a civil RICO claim and then dismisses the claim under Rule 12(b)(6), the court still could potentially exercise supplemental jurisdiction over remaining state law claims.

If, however, the court finds that it lacks jurisdiction over the RICO claim and no other basis for federal jurisdiction exists, the court could not exercise supplemental jurisdiction over remaining state law claims.

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In *Yam*, Judge Failla found that the plaintiff had successfully alleged "at least some elements of a civil RICO claim," and thus that the Court possessed jurisdiction over the claim. Judge Failla went on, however, to dismiss the claim under Rule 12(b)(6) because she found that the plaintiff had inadequately pleaded an association-in-fact enterprise and a pattern of racketeering activity.

Wanglap Yam v. Qi Xin

In *Yam*, the plaintiff, a Chinese citizen residing in Hong Kong, brought a putative class action against Qi Xin (also known as Brandon Qi) and China Summit Capital, LLC, alleging that defendants provided fraudulent college-consulting services. Through an entity called IvyMountain International, LLC, defendants represented that they could assist students in gaining admission to elite U.S. colleges through "professional study abroad intermediary services."

The plaintiff entered into a "Commission Contract for School Application Services" with IvyMountain on Feb. 6, 2023. The contract required the plaintiff to pay a $250,000 service fee, which he paid by wiring the amount to Mr. Xin. Pursuant to the contract, IvyMountain was required to refund $125,000 if the plaintiff's daughter was not admitted to one of the following schools: Harvard University, Yale University, Columbia University, Cornell University, or Princeton University.

The plaintiff alleged that defendants provided no meaningful services, did not secure admission for his daughter into any of the identified schools, and thereafter refused to refund the contractually required amount. The plaintiff also identified a second alleged victim, Sherry Shan, who wired Mr. Xin roughly $111,000 pursuant to an alleged oral contract for similar services. Pursuant to the oral contract, Ms. Shan was entitled to a refund if her son was not admitted to Cornell. Ms. Shan's son was not admitted to Cornell, and Mr. Xin refused her demand for a refund.

The plaintiff's Second Amended Complaint asserted a federal civil RICO claim under 18 U.S.C. §1962, as well as various state-law claims. The defendants moved to dismiss under both Rule 12(b)(1) and Rule 12(b)(6).

Rule 12(b)(1) Jurisdictional Standard

Judge Failla began by analyzing whether jurisdiction existed over the RICO claim under Rule 12(b)(1). A case properly is dismissed for "lack of subject-matter jurisdiction" "when the district court lacks the statutory or constitutional power to adjudicate it." Lyons v. Litton Loan Servicing LP, 158 F. Supp. 3d 211, 218 (S.D.N.Y. 2016). The plaintiff bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence. See, e.g., *Branch of Citibank, N.A. v. De Nevares*, 74 F.4th 8, 15 (2d Cir. 2023).

Judge Failla explained that the Second Circuit recognizes two types of Rule 12(b)(1) challenges: facial and fact-based. See *Carter v. HealthPort Techs., LLC*, 882 F.3d 47, 56-57 (2d Cir. 2016). A facial motion is one "based solely on the allegations of the complaint or the complaint and exhibits attached to it," under which the plaintiff bears "no evidentiary burden." *Carter,* 882 F.3d at 56. The court, accepting the allegations as true and drawing all reasonable inferences in favor of the plaintiff, determines whether the complaint on its face establishes subject matter jurisdiction.

A fact-based motion, by contrast, is one where the defendant proffers "evidence beyond the complaint and its exhibits" to challenge jurisdiction, and in response, the plaintiff may present evidence of its own to controvert the defendant's challenge. *Carter*, 882 F.3d at 57. If the extrinsic evidence presented on a fact-based motion is "material and controverted," a court will need to make findings of fact.

As noted above, in the Second Circuit, federal question jurisdiction exists whenever a complaint involves federal law, unless the purported claim is "'so patently without merit as to justify... the court's dismissal for want of jurisdiction.'" *Town of West Hartford*, 915 F.2d at 100 (quoting *Hagans*, 415 U.S. at 542-43). As a result, Judge Failla noted that the merits of the claim are "not entirely irrelevant to the jurisdictional question." *Yam*, 2026 WL 2224981, at *7.

The Court Denied Dismissal Under Rule 12(b)(1)

Judge Failla concluded that the plaintiff in *Yam* had alleged facts sufficient to establish the court's jurisdiction over the civil RICO claim. Defendants argued that the court lacked jurisdiction over the claim based on the plaintiff's failure to state a cognizable civil RICO claim. Although Judge Failla acknowledged that the merits are not "entirely irrelevant" to the jurisdictional inquiry—because a court will lack jurisdiction when a federal claim is "patently without merit"—she concluded that the claim here was not so deficient as to meet that standard.

Judge Failla ultimately found that the civil RICO claim failed on the merits, but she concluded that this did not deprive the court of jurisdiction over the claim because the plaintiff had "successfully alleged at least some elements of a civil RICO claim."

The Court Dismissed Under Rule 12(b)(6)

Turning to defendants' arguments for dismissal under Rule 12(b)(6), Judge Failla concluded that the plaintiff's allegations were insufficient to state a civil RICO claim. A civil RICO plaintiff must plead, among other things, (i) the existence of an "enterprise" and (ii) a "pattern of racketeering activity." 18 U.S.C. §§1961(4), 1962(c). Judge Failla found the plaintiff's allegations deficient as to both elements.

As for the existence of an "enterprise," the RICO statute defines the term to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. §1961(4) (emphasis added).

An enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct" and often "proved by evidence of an ongoing organization." *United States v. Turkette*, 452 U.S. 576, 583 (1981). For an association to be considered an enterprise, the plaintiff must allege that its structure includes "(i) a purpose; (ii) relationships among individuals associated with the enterprise; and (iii) longevity sufficient to permit the associates to pursue the purpose of the enterprise." *Elsevier, Inc. v. Grossman*, 2013 WL 6331839, at *8 (S.D.N.Y. Dec. 5, 2013).

Judge Failla found that the plaintiff adequately stated the enterprise's purpose, but failed to allege the required "relationships among individuals" and "longevity." She explained that the complaint "fail[ed] to plausibly connect" the alleged individuals involved "to specific roles and to each other in a manner that reflects the 'hierarchy, organization, and activities'" of the alleged association-in-fact enterprise. As to longevity, Judge Failla opined that the plaintiff did not clearly allege the period over which the enterprise operated, and his allegations regarding the relevant time frame were "insufficiently specific to plausibly allege longevity."

Judge Failla also found that the plaintiff had not pleaded the required "pattern of racketeering activity." Although the plaintiff had pleaded several predicate criminal offenses, Judge Failla found that the plaintiff did not allege facts sufficient to show that the pleaded offenses "amount[ed] to or pose a threat of continued criminal activity." *Crawford v. Franklin Credit Mgmt. Corp.*, 758 F.3d 473, 487 (2d Cir. 2014) (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989)).

Specifically, Judge Failla concluded that the plaintiff failed to establish the requisite continuity under either of the accepted approaches to pleading continuity: alleging facts sufficient to show closed-ended continuity (past criminal conduct extending over a substantial period of time) or open-ended continuity (past conduct coupled with a threat of future criminal conduct).

Having dismissed the civil RICO claim under Rule 12(b)(6), Judge Failla went on to consider whether to exercise supplemental jurisdiction over the plaintiff's remaining state law claims. Judge Failla declined to do so, noting that "the Second Circuit counsels against exercising supplemental jurisdiction" in situations when all claims over which a court has original jurisdiction have been dismissed.

Conclusion

Judge Failla's decision in *Yam* reinforces the distinction between a dismissal for failure to state a claim under Rule 12(b)(6) and a dismissal under Rule 12(b)(1) for so patently failing to state a claim as to deprive the court of jurisdiction over the claim.

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