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RICO class actions in the employment context – Georgia federal court denies motion to dismiss Georgia RICO claim based on employment bait-and-switch scheme

by James F. Bogan III

Takeaway: A civil RICO claim – especially one framed as a putative class action – can be a powerful cause of action, given the civil remedies for RICO violations, which include treble damages and mandatory fee-shifting. Moreover, the criminal violations that qualify as specified RICO predicate acts are so broad that a civil RICO claim can be alleged in a variety of contexts. In *Torres v. LX Hausys Am., Inc.*, No. 1:24-cv-01283-MLB-RDC, 2025 U.S. Dist. LEXIS 11287 (N.D. Ga. Jan. 21, 2025), a U.S. Magistrate Judge concluded that the plaintiffs in that case – who also alleged a collective action under the Fair Labor Standards Act (FLSA) – plausibly alleged violations of the Georgia RICO statute.

In *Torres*, three Mexican nationals with engineering degrees and engineering experience filed a putative class and collective action against three defendants (a manufacturer and two employment recruitment companies), claiming they participated in "an employment bait-and-switch scheme" by "fraudulently lur[ing] them into [the United States] as cheap general labor." 2025 U.S. Dist. LEXIS 11287, at *1, *12. Plaintiffs alleged claims under the Georgia RICO Act, FLSA, and for breach of contract and unjust enrichment.

The defendants moved to dismiss the RICO, contract, and unjust enrichment claims. In a detailed opinion – a "Non-Final Report and Recommendation" – Magistrate Judge Regina Cannon denied the motion as to the RICO and breach of contract claims. This article focuses on her Georgia RICO ruling.

As background, the fact pattern alleged in *Torres* was the subject of three prior, similar actions in the Northern District of Georgia, and the cases collectively received a fair amount of publicity. In two of those cases, Georgia RICO claims survived motions to dismiss, which decisions the Magistrate said were "*strongly* persuasive." *Id.* at *14 (emphasis in original).

Notably, plaintiffs did *not* allege a federal RICO claim. As Judge Cannon pointed out, "in certain respects, the Georgia RICO statute is 'considerably broader' than its federal counterpart." *Id.* at *15-*16.

The predicate acts alleged in support of the Georgia RICO claim were the federal crimes of mail fraud, wire fraud, fraud in foreign-labor contracting, and visa fraud, and the Georgia crime of false statements and writings. The plaintiffs alleged all three substantive violations available under Georgia RICO: (1) a violation of O.C.G.A. § 16-14-4(a) (acquiring or maintaining an interest in or control of any enterprise, real or personal property through a pattern of racketeering activity); (2) 16-14-4(b) (conducting or participating in an enterprise through a pattern of racketeering activity); and (3) 16-14-4(c) (RICO conspiracy).

In analyzing each substantive violation, the court focused on the alleged pattern of racketeering activity

for subsection (a), the alleged enterprise for subsection (b), and the alleged conspiracy for subsection (c). Consistent with the prior decisions issued by the Northern District of Georgia, Magistrate Judge Cannon concluded that plaintiffs had alleged plausible Georgia RICO claims. Specifically, she found the allegations sufficient to sustain a pattern of racketeering (the commission of at least two interrelated predicate acts) by the defendants, in working together to lure the Mexican national plaintiffs to travel to the United States with promises of engineering jobs requiring the issuance of TN-visas, when (according to the allegations) they were placed in menial, low-paying jobs that did not require engineering degrees or background.

The plaintiffs plausibly alleged an "association-in-fact" enterprise under Georgia RICO, given the allegations that the manufacturing defendant and two affiliated recruitment agencies worked together to lure the defendants to the United States.

Likewise, the plaintiffs plausibly alleged that the defendants engaged in a conspiracy to lure the Mexican nationals into the United States.

As damages, the court concluded that the allegations were sufficient to allege a RICO injury, ruling that, according to the allegations, plaintiffs were the intended targets of defendants' alleged scheme to defraud, and plaintiffs "incurred various expenses (travel costs, visa-processing fees, living expenses) and lost wages," all proximately caused by defendants' alleged scheme to defraud. *Id*. at *36-37.

"Taking stock" of its RICO ruling, the court summarized that ruling as follows: "According to Plaintiffs, Defendants schemed together to fraudulently recruit and employ TN-visa professionals from Mexico. To substantiate the alleged scheme, Plaintiffs have set forth with particularity multiple predicate acts of fraud allegedly committed by each Defendant. Because Defendants allegedly profited from their acts, Plaintiffs have plausibly stated violations of § 16-14-4(a). And because they closely associated with one another, it is plausible to infer that Defendants constituted a RICO enterprise and participated in such enterprise through their respective acts, thus violating § 16-14-4(b). Moreover, the circumstances of Defendants' association plausibly suggest they conspired to promote a common fraudulent purpose, in violation of § 16-14-4(c). Finally, Plaintiffs have standing to sue because they were the intended targets of Defendants' misconduct. Thus, Defendants' motions to dismiss should be denied as to Plaintiffs' RICO claims." *Id*. at *39.