

1982), it becomes a matter of antitrust concern. This is not to say that litigation is actionable under the antitrust laws merely because the plaintiff is trying to get a monopoly. He is entitled to pursue such a goal through lawful means, including litigation against competitors. The line is crossed when his purpose is not to win a favorable judgment against a competitor but to harass him, and deter others, by the process itself—regardless of outcome—of litigating. The difficulty of determining the true purpose is great but no more so than in many other areas of antitrust law.” *Grip-Pak, Inc. v. Illinois Tool Works, Inc.*, 694 F. 2d 466, 472 (1982).

It is important to remember that the distinction between “sham” litigation and genuine litigation is not always, or only, the difference between lawful and unlawful conduct; objectively reasonable lawsuits may still break the law. For example, a manufacturer’s successful action enforcing resale price maintenance agreements,⁹ restrictive provisions in a license to use a patent or a trademark,¹⁰ or an equipment lease,¹¹ may evidence, or even constitute, violations of the antitrust laws. On the other hand, just because a sham lawsuit has grievously harmed a competitor does not necessarily mean that it has violated the Sherman Act. See *Spectrum Sports, Inc. v. McQuillan*, 506 U. S. ___, ___ (1993) (slip op., at 11). The rare plaintiff who successfully proves a sham must still satisfy the exacting elements of an antitrust demand. See *ante*, at 11.

In sum, in this case I agree with the Court’s explanation of why respondents’ copyright infringement action was not “objectively baseless,” and why allegations of improper subjective motivation do not make such a lawsuit a “sham.” I would not, however, use this easy case as a vehicle for announcing a rule that may govern the decision of difficult cases, some of which may involve abuse of the judicial process. Accordingly, I concur in the Court’s judgment but not in its opinion.

PATRICK J. COYNE, Washington, D.C. (JAMES R. LOFTIS III, WILLIAM A. HENRY, ALEXANDER H. PITOFISKY, and COLLIER, SHANNON & SCOTT, on the briefs) for petitioners; ANDREW J. PINCUS, Washington, D.C. (RICHARD J. FAVRETTO, ROY T. ENGLERT JR., DONALD M. FALK, MAYER, BROWN & PLATT, STEPHEN A. KROFT, JAMES L. SEAL, and ROSENFELD, MEYER & SUSMAN, on the briefs) for respondents.

No. 92-207

UNITED STATES, PETITIONER *v.* XAVIER V. PADILLA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PER CURIAM.

The United States Court of Appeals for the Ninth Circuit has adopted what it terms a “coconspirator exception” to the rule regarding who may challenge the consti-

tutionality of a search or seizure. Under its reasoning, a co-conspirator obtains a legitimate expectation of privacy for Fourth Amendment purposes if he has either a supervisory role in the conspiracy or joint control over the place or property involved in the search or seizure. This “exception,” apparently developed in a series of earlier decisions of the Court of Appeals, squarely contradicts the controlling case from this Court. We therefore reject it.

While patrolling Interstate Highway 10 in Casa Grande, Arizona, Officer Russel Fifer spotted a Cadillac traveling westbound at approximately 65 miles per hour. Fifer followed the Cadillac for several miles because he thought the driver acted suspiciously as he passed the patrol car. Fifer ultimately stopped the Cadillac because it was going too slowly. Luis Arciniega, the driver and sole occupant of the car, gave Fifer his driver’s license and an insurance card demonstrating that respondent Donald Simpson, a United States customs agent, owned the Cadillac. Fifer and Robert Williamson, an officer who appeared on the scene to assist Fifer, believed that Arciniega matched the drug courier profile. Acting on this belief, they requested and received Arciniega’s permission to search the vehicle. The officers found 560 pounds of cocaine in the trunk and immediately arrested Arciniega.

After agreeing to make a controlled delivery of the cocaine, Arciniega made a telephone call to his contact from a motel in Tempe, Arizona. Respondents Jorge and Maria Padilla drove to the motel in response to the telephone call, but were arrested as they attempted to drive away in the Cadillac. Like Arciniega, Maria Padilla agreed to cooperate with law enforcement officials. She led them to the house in which her husband, respondent Xavier Padilla, was staying. The ensuing investigation linked Donald Simpson and his wife, respondent Maria Sylvia Simpson, to Xavier Padilla.¹

Respondents were charged with conspiracy to distribute and possess with intent to distribute cocaine, in violation of 21 U. S. C. § 846, and possession of cocaine with intent to distribute, in violation of § 841(a)(1). Xavier Padilla was also charged with engaging in a continuing criminal enterprise, in violation of 21 U. S. C. § 848 (1988 ed. and Supp. III). Respondents moved to suppress all evidence discovered in the course of the investigation, claiming that the evidence was the fruit of the unlawful investigatory stop of Arciniega’s vehicle. The United States District Court for the District of Arizona ruled that all respondents were entitled to challenge the stop and search because they were involved in “a joint venture for transportation . . . that had control of the contraband.” App. to Pet. for Cert. 22a. The District Court reasoned that, as owners, the Simpsons retained a reasonable expectation of privacy in their car, but that the Padillas could contest the stop solely because of their supervisory roles and their “joint control over a very sophisticated operation” *Id.*, at 23a. On the merits, the District Court ruled that Officer Fifer lacked reasonable suspicion to stop Arciniega,² and granted respondents’ motion to suppress.

The Court of Appeals affirmed in part, vacated in part,

⁹*Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U. S. 373 (1911); *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U. S. 384 (1951).

¹⁰*Timken Roller Bearing Co. v. United States*, 341 U. S. 593 (1951); *Farbenfabriken Bayer A.G. v. Sterling Drug, Inc.*, 307 F. 2d 207 (CA3 1962).

¹¹*International Salt Co. v. United States*, 332 U. S. 392 (1947); *United Shoe Machinery Corp. v. United States*, 258 U. S. 451 (1922).

¹ A related investigation led by the Drug Enforcement Agency (DEA) revealed that Warren Strubbe was also involved in the conspiracy. Although Strubbe technically is a respondent in this case, see this Court’s Rule 12.4, the Court of Appeals found that he could not challenge the stop and search of the Cadillac. Strubbe did not file a petition challenging that decision, and we therefore do not address that aspect of the court’s opinion.

² The Government did not challenge this finding on appeal and does not do so here.

EXHIBIT L

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

February 14, 1992

Stephen J. Nolan, Esquire
Nolan, Plumhoff & Williams
Suite 700
Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-5340

RE: Request for Advisory Opinion
1170/1200 North Rolling Road
600-800 ft. N of Powers Lane
1st Election District
Zoning: D.R.-3.5
Zoning Cases: 69-269-RX, 75-181-X,
77-122-SPH

Dear Mr. Nolan:

Reference is made to your letter of January 18, 1992 to Arnold Jablon, Director of Zoning Administration and Development Management, which has been referred to me for reply. You have requested an investigation on behalf of your client, Scripps Howard Broadcasting Company, regarding an existing tower at the above referenced location including confirmation of zoning requirements, State and Federal requirements for the existing structure and an anticipated addition to the height.

It is my understanding that you have also sent correspondence to the Building Engineer of Baltimore County regarding this matter. Assuming that he will address the structural, Federal and State requirements which are beyond the scope of review of this office, I will defer to him regarding the same.



Stephen J. Nolan, Esquire
February 14, 1992
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As to your zoning inquiries, please be advised this office confirms three zoning cases on the subject site:

1. 69-269-RX -- Reclass public unzoned land to R.-6 and a Special Exception for a radio and T.V. wireless transmitting and receiving structure (5.6 acres) for Commercial Radio Institute, Inc. Granted 6/12/69 by Zoning Commissioner Rose - 660 foot tower height indicated on plan with an ultimate height of 850 feet shown.
2. 75-181-X -- Special Exception for a 75 foot self-supporting receiving tower on 0.001 acre (25 feet x 25 feet) for Commercial Radio Institute, Inc.; Lessee - Nationwide Communications, Inc. (WPOC-FM). Granted by Zoning Commissioner DiNenna on 2/27/75.
3. 77-122-SPH -- Special Hearing to approve an amendment to the special exception granted in case 69-269-RX to extend the approval height of the tower by 159 feet, from 850 to 1009 feet high (5.6 acres) for Commercial Radio Institution, Inc. Granted on 1/20/77 by Zoning Commissioner DiNenna.

Additionally, you have stated the existing tower was only built to a height of 666 feet and that it is anticipated that an addition might soon be requested to extend the height. This office would confirm and agree with your conclusion that the additional height granted in 1977 has in fact lapsed under Section 502.3 (B.C.Z.R.) provided that the following "reasonable diligence" standard two prong test established by the courts would fail:

1. The commencement of some readily identifiable work and
2. The work begun with the intention then formed to continue said work to its completion.

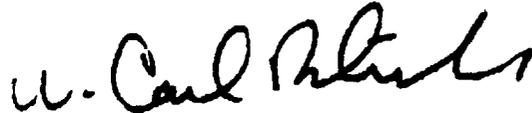
Obviously, if no work was commenced to extend the height, which appears to be the case, the second prong of the test would not have been met. Further, should the Building Engineer or State or Federal agency confirm the safety hazards of the existing 666 foot tower, this office would not approve any additional height without the benefit of another zoning hearing even though the original plan allowed 850 feet.

Stephen J. Nolan, Esquire
February 14, 1992
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Although the Development Control section of this office may agree that the full development process, including a community input meeting and hearing officer hearing would be appropriate upon considering an additional height and possible safety hazards, it is suggested that you contact Donald Rascoe in the Development Management section for information regarding any development and/or waiver procedures as reviewed by all agencies.

If I can be of any further assistance at this time or if you are updated with any additional information and need additional zoning clarification, please do not hesitate to contact me in this office at 887-3391.

Very truly yours,



W. Carl Richards, Jr.
Zoning Coordinator

WCR:scj

cc: John Reisinger, Building Engineer
Permits and Licenses
Lawrence Schmidt, Zoning Commissioner
William Hughey, Area Planner, Office of Planning & Zoning
Donald T. Rascoe, Z.A.D.M.

Certificate of Service

I, Diane Wright, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Opposition to Petition to Enlarge Issues Against Scripps Howard Broadcasting Company" to be sent via First Class United States Mail this 26th day of May, 1993 to the following:

The Honorable
Richard L. Sippel*
Presiding Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 214
Washington, DC 20554

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Diane Wright

* By Hand Delivery