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CRIMES AND OFFENSES

Racketeer Influenced and Corrupt Organizations: Apply Georgia RICO Act to Interrelated Patterns of Criminal Activity Motivated by or the Effect of Which is Pecuniary Gain or Economic or Physical Threat or Injury to Others

CODE SECTION:	O.C.G.A. § 16-14-2 (amended)
BILL NUMBER:	SB 282
ACT NUMBER:	260
GEORGIA LAWS:	1997 Ga. Laws 672
SUMMARY:	The Act makes interrelated patterns of criminal activity motivated by or resulting in pecuniary gain a violation of the Georgia Racketeer Influenced and Corrupt Organizations Act. The Act imposes sanctions against persons violating the Act and provides compensation to persons injured or aggrieved by violations of the Act. The Act requires a liberal construction to effectuate the remedial purposes of the Act. The Act specifically declares that acts of civil disobedience shall not be prosecuted under the statute.
EFFECTIVE DATE:	April 14, 1997[1]

History

In 1996, the Georgia Court of Appeals in *Sevcech v. Ingles Markets, Inc.*,[2] held that in order to bring a civil or criminal claim under the Georgia Racketeering Influenced and Corrupt Organizations Act (Georgia RICO Act),[3] the plaintiff or prosecution must prove that the crimes were committed with a motive to receive financial gain.[4] In holding that the legislative purpose itself constituted an element of a Georgia RICO cause of action,[5] the court in *Sevcech* used the findings and intent of the General Assembly from former Code section 16-14-2, which stated that "only an interrelated pattern of criminal activity, the motive or effect of which is to derive pecuniary gain,"[6] is to be

1. The Act became effective upon approval by the Governor.
2. 222 Ga. App. 221, 474 S.E.2d 4 (1996).
3. 1980 Ga. Laws 405, § 1 (formerly found at O.C.G.A. §§ 16-14-1 to -15 (1996)).
4. *Sevcech*, 222 Ga. App. at 222-23, 474 S.E.2d at 7; *see* Telephone Interview with Michael E. Hobbs, Counsel to the Attorney General (Apr. 24, 1997) [hereinafter Hobbs Interview].
5. *See Sevcech*, 222 Ga. App. at 222, 474 S.E.2d at 7.
6. 1980 Ga. Laws 405, § 1, at 406 (formerly found at O.C.G.A. § 16-14-2(b)

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prosecuted under that statute.[7] The *Sevcech* court went on to state that "[m]ere evidence that a person's criminal conduct constitutes a pattern of racketeering activity is insufficient; RICO's remedial provisions are intended to address 'the increasing extent to which criminal activities and funds acquired as a result of criminal activity are being directed to and against the legitimate economy of the state.' "[8]

The *Sevcech* court's holding was inconsistent with the cases of *Reaugh v. Inner Harbour Hospital, Ltd.*[9] and *State v. Shearson Lehman Brothers, Inc.*[10] The Court of Appeals in *Reaugh* and *Shearson* held that the "expression of legislative purpose in enacting Georgia's RICO act is not an element of a civil cause of action under the act."[11] The court's opinion in *Sevcech*, that the crimes had to be committed with a motive to receive financial gain, was not only inconsistent with the opinions in the *Reaugh* and *Shearson* cases, but was inconsistent with the General Assembly and the legal community's understanding that a financial motive was unnecessary to bring a claim under the Georgia RICO Act.[12]

It is the General Assembly's intent that Georgia RICO actions may be brought not only for crimes with financial motives, but also for crimes involving nonfinancial, ongoing criminal activities.[13] For example, nonfinancial criminal activities encompass terrorist acts, such as political overthrows, serial bombings, and church burnings.[14] For these reasons, the language contained in the *Sevcech* opinion was too restrictive in interpreting the Georgia RICO Act.[15]

The Attorney General's Office filed an amicus curiae brief concerning the *Sevcech* case in the Supreme Court of Georgia, in support of a petition of certiorari from the Georgia Court of Appeals.[16] When the petition was denied, the Attorney General's Office sought recourse in the General Assembly to clarify the meaning of the Georgia RICO Act.[17]

(1996)).

7. *See* Hobbs Interview, *supra* note 4; *Sevcech*, 222 Ga. App. at 222, 474 S.E.2d at 7.

8. *Sevcech*, 222 Ga. App. at 222, 474 S.E.2d at 7 (citing 1980 Ga. Laws § 1, at 406 (formerly found at O.C.G.A. § 16-14-2(a) (1996))).

9. 214 Ga. App. 259, 447 S.E.2d 617 (1994).

10. 188 Ga. App. 120, 372 S.E.2d 276 (1988).

11. *Id.* at 121, 372 S.E.2d at 278; *Reaugh*, 214 Ga. App. at 265, 447 S.E.2d at 622; *see* Hobbs Interview, *supra* note 4.

12. *See* Hobbs Interview, *supra* note 4; Telephone Interview with Sen. Charles C. Clay, Senate District No. 37 (Apr. 18, 1997) [hereinafter Clay Interview].

13. *See* Hobbs Interview, *supra* note 4; Clay Interview, supra note 12.

14. *See* Hobbs Interview, *supra* note 4; Clay Interview, supra note 12.

15. *See* Hobbs Interview, *supra* note 4.

16. *See id.*

17. *See id.*

Senator Charles C. Clay sponsored the bill because nothing in the previous statute required that the crimes have an underlying pecuniary interest, and it was understood from a legislative standpoint that a pecuniary element was unnecessary to bring an action under the Georgia RICO Act.[18] Also, Senator Clay wanted to ensure that ongoing criminal activities without financial motivation would be punished as a matter of public policy.[19]

SB 282

The language of SB 282 was submitted to the General Assembly by the Georgia Attorney General's Office.[20] The Attorney General's Office drafted the bill so that the Georgia RICO Act could be applied even when there was no motive of financial gain in the commission of a crime.[21] In drafting the bill, the Attorney General's Office took into consideration the federal RICO statute and federal interpretations of that statute.[22] The Act amends Code section 16-14-2 of the Georgia RICO Act by clarifying the criminal activities that are included under RICO laws.[23] The Act is intended to clarify the findings and intent of the General Assembly by stating that the provisions of the Act apply to interrelated patterns of criminal activity motivated not only by pecuniary gain, but also by economic or physical threat or injury to others.[24] The Act amends the Georgia RICO Act by completely rewording Code section 16-14-2, which expresses the findings and intent of the General Assembly.[25]

Sophistication of Various Criminal Elements

Previously, the statute included the language that a severe problem is posed in Georgia by the "organization among certain criminal elements and the increasing extent to which criminal activities and funds acquired as a result of criminal activity are being directed to and against the legitimate economy of the state."[26] The Act changes this language to state that a problem is posed by the "sophistication of various criminal elements and the increasing extent to which the state

18. Clay Interview, *supra* note 12.
19. *Id.*
20. *See id.*, Hobbs Interview, *supra* note 4.
21. *See* Hobbs Interview, *supra* note 4.
22. *See id.*
23. *See* GEORGIA SENATE, WEEKLY WRAP-UP REPORT, at 2 (Feb. 27, 1997); O.C.G.A. § 16-14-2 (Supp. 1997).
24. O.C.G.A. § 16-14-2(b) (Supp. 1997).
25. *Id.*
26. 1980 Ga. Laws 405, § 1, at 406 (formerly found at O.C.G.A. § 16-14-2(a) (1996)).

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and its citizens are harmed as a result of the activities of these elements."[27]

This language makes the RICO Act much broader because the Act does not merely refer to organized crime.[28] This change was made not only to ensure that the General Assembly's intent would be construed to punish crimes based on factors other than financial gain, but also to clarify the common misunderstanding that RICO only applies to organized crime and not to other types of ongoing criminal activities.[29] The crimes prosecuted under RICO must be ongoing, criminal enterprises, indicating some level of criminal sophistication and concerted effort.[30]

Acts of Civil Disobedience

Further, the Act specifies that acts of civil disobedience are not intended by the General Assembly to be prosecuted under the Georgia RICO Act.[31] This language was included in the Act's only amendment, a floor amendment adopted in the House and introduced by Representatives Brian Joyce and William Randall.[32] Unlike similar acts in other states, the purpose of this Act was not to stifle political dissent.[33] Without this language, the Act has the potential of allowing Georgia RICO actions against political protesters.[34] Representative Joyce wanted to limit the language to ensure that forms of civil disobedience, such as protests by abortion or environmental groups, would not be violations under Georgia RICO.[35] The General Assembly did not intend this sort of political dissent to be the basis for a RICO action.[36]

Crimes Motivated by Pecuniary Gain or Economic or Physical Threat or Injury

The Act strikes the language under the previous Code section that the motive or result of the criminal activity must be to derive pecuniary gain.[37] To replace the previous language, the Act provides that the

27. O.C.G.A. § 16-14-2(a) (Supp. 1997).
28. *See* Hobbs Interview, *supra* note 4.
29. *See* Clay Interview, *supra* note 12; Hobbs Interview, *supra* note 4.
30. *See* Clay Interview, *supra* note 12.
31. O.C.G.A. § 16-14-2(b) (Supp. 1997).
32. SB 282 (HFA), 1997 Ga. Gen. Assem.
33. *See* Telephone Interview with Rep. Brian D. Joyce, House District No. 1 (June 12, 1997) [hereinafter Joyce Interview]; Clay Interview, *supra* note 12.
34. *See* Clay Interview, *supra* note 12; Joyce Interview, *supra* note 33.
35. *See* Joyce Interview, *supra* note 33.
36. *See id.*; Clay Interview, *supra* note 12.
37. 1980 Ga. Laws 405, § 1, at 406 (formerly found at O.C.G.A. § 16-14-2(b) (1996)).

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Georgia RICO Act only applies to "an interrelated pattern of criminal activity motivated by or [resulting in] pecuniary gain or economic or physical threat or injury."[38] This language effectively nullifies the court's opinion in *Sevcech* that, in order to bring a Georgia RICO action, the underlying crimes must have a pecuniary motive.[39] The change clarifies the General Assembly's intent that racketeering actions may be brought when there is no financial or pecuniary interest in ongoing criminal activities.[40]

Liberal Construction

The Act also clarifies that the new chapter shall be "liberally construed to effectuate the remedial purposes embodied in its operative provisions."[41]

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38. O.C.G.A. § 16-14-2(b) (Supp. 1997).
39. *See* Hobbs Interview, *supra* note 4.
40. *See* Clay Interview, *supra* note 12.
41. O.C.G.A. § 16-14-2(b) (Supp. 1997).

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