Henry v. Ford

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Henry v. Ford

Case: Henry v. Ford (1993)

Subject Category: Pyramid, Gambling

Agency Involved: Private Civil Suit

Court: New York Supreme Court, Appellate Term

Case Synopsis: The New York Supreme Court, Appellate Term, was asked to decide if the victim of an illegal pyramid scheme could recover their losses from the scheme's promoter under state antigambling statutes.

Legal Issue: Can the victim of an illegal pyramid scheme could their losses from the scheme's promoter under state antigambling statutes?

Court Ruling: The Court ruled that the anti-pyramid statute does not allow the recovery of losses similar to the anti-gambling statute. Pyramid programs are illegal under statute, and New York courts will not allow recovery under illegal enterprises. The anti-gambling statute allows recovery of gambling losses to act as a disincentive to illegal gambling operations. The court held that if the legislature wanted to allow recovery of pyramid losses, they were the ones to undertake the change, not the courts.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Anti- gambling statutes sometimes have provisions allowing the recovery of losses from the promoter. If a pyramid program is characterized as a lottery, then losses may be recovered through anti-lottery statutes.

Henry v. Ford , 598 N.Y.S.2d 660 (1993) : The Court ruled that the anti-pyramid statute does not allow the recovery of losses similar to the anti-gambling statute. The pyramid programs are illegal under statute, and New York courts will not allow recovery under illegal enterprises. The anti-gambling statute allows recovery of gambling losses to act as a disincentive to illegal gambling operations. The court held that if the legislature wanted to allow recovery of pyramid losses, they were the ones to undertake the change, not the courts.

155 Misc.2d 192, 598 N.Y.S.2d 660

David E. FORD, Respondent,

v.

Celia HENRY and Ernesto Henry, Appellants.

Supreme Court, Appellate Term, Second and Eleventh Judicial Districts.

March 8, 1993.

Before KASSOFF, P.J., and JOY and SCHOLNICK, JJ.

MEMORANDUM.

Judgment unanimously reversed without costs, and the complaint is dismissed.

The issue presented on the instant appeal is whether the plaintiff may recover part of his investment of $1,500 paid to *193 defendants as entry fee to join and participate in an illegal pyramid scheme.

For the reasons set forth herewith, we hold that the plaintiff has no right of recovery in a civil suit.

The promotional pyramid scheme in question falls within the meaning of "chain distributor scheme" as defined in General Business Law 359-fff (L.1974, ch. 17, 1, as amended by L.1982, ch. 103, 1). The statute, which forms part of Article 23-A of the General Business Law, entitled, "Fraudulent Practices in Respect to Stocks, Bonds and Other Securities", commonly known as the "Martin Act", defines a chain distributor scheme as "a sales device whereby a person, upon condition that he make an investment, is

granted a license or right to solicit or recruit for profit or economic gain one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition" (General Business Law 359-fff[2]), and provides that a chain distributor scheme constitutes a "security" within the meaning of Art. 23-A (General Business Law 359-fff[3]). The 1982 amendment provides that "investment" as used in the statute includes "any other means, medium, form or channel for the transferring of funds, whether or not related to the production or distribution of goods and services" (General Business Law 359-fff[2]). Subdivision (1) of General Business Law 359-fff further provides that it is "illegal and prohibited for any person ... to promote, offer or grant participation in a chain distributor scheme". Violation of the statute is an unclassified misdemeanor (General Business Law 359-g[2]).

The plaintiff, as a knowing and willing participant in a chain distributor scheme prohibited by law, was in pari delicto with the defendants (see, Cochran v. Dellfava, 136 Misc.2d 38, 517 N.Y.S.2d 854), and may not, under the general principles of common law, invoke the power of the court to recover the money he lost (see, Coyle v. Richetti, 140 Misc.2d 604, 531 N.Y.S.2d 497; Cochran v. Dellfava, supra; see also, Highsmith v. Smith, NYLJ, September 18, 1990, at 23, col 3; Christie v. Charles, NYLJ, June 25, 1990, at 25, col 6; Thompson v. Lawrence, NYLJ, June 14, 1989, at 28, col 3). "It is the settled law of this State (and probably of every other State) that a party to an illegal contract cannot ask a court of law to help him carry out his illegal object ... For no court should be required to serve as paymaster of the wages of crime, or referee between thieves. Therefore, the law 'will not extend its aid to either of the parties' or 'listen to their *194 complaints against each other, but will leave them where their own acts here placed them' ". (Stone v. Freeman, 298 N.Y. 268, 271, 82 N.E.2d 571, citing Schermerhorn v. Talman, 14 N.Y. 93, 141).

The lower court acknowledged that General Business Law 359-fff did not by its terms provide the plaintiff with a right of recovery, but nonetheless determined, by analogy to General Obligations Law 5-419 and 5-421, which permit parties recovery **662 of money lost at wagering games, that the plaintiff was entitled to reimbursement on public policy grounds. Following the approach of Solon v. Meuer, 141 Misc.2d 993, 539 N.Y.S.2d 241, the court reasoned that reimbursement served the public policy goal of deterring illegal gambling schemes by removing the profit motive.

The classification of chain promotional schemes under Article 23-A of the General Business Law, however, indicates that "the Legislature has sought to isolate pyramid schemes from losses at games of chance contingent upon the happening (or not) of some specific event" (Coyle v. Richetti, supra, 140 Misc.2d at 605, 531 N.Y.S.2d 497; see also, Highsmith v. Smith, supra). General Business Law 359-fff contains no language abrogating the common law rule that a party in pari delicto is without remedy at law or equity. Had the legislature intended to create a comparable right of action to recover money lost at chain distributor schemes, it would have expressly included it, and its omission is an indication that the legislature intended its exclusion (McKinney's Cons.Laws of N.Y., Book 1, Statutes 74). The court thus acted in excess of its authority by expanding the scope of the statute on public policy grounds, so as to provide the plaintiff with a remedy not expressly contained therein. In so doing, the court improperly

substituted its judgment for that of the legislature, by "read[ing] into [the] statute that which the Legislature might have inserted but did not" (McKinney's Cons.Laws of N.Y., Book 1, Statutes 73).

We find the public policy rationale advanced by the court in any event unpersuasive. The statutory classification of chain distributor schemes under Article 23-A of the General Business Law is consistent with the particular feature characterizing such schemes, i.e., the undertaking by the participants of personal promotional efforts to recruit new members upon which the continued success of the game ultimately depends, a factor which sets these significantly apart from the typical wagering games and bets falling within the ambit of General Obligations Law 5-419 and 5-421, as well as the lotteries regulated by General Obligations Law 5-423.

*195 Further, while the court correctly observed that the 1974 Memorandum of the Attorney General (NY Legis Ann, 1974, pp 78-79; see, People v. Life Science Church, 113 Misc.2d 952, 962, 450 N.Y.S.2d 664) "support[s] the conclusion that [the statute] created a protected class of persons who ... cannot be considered accomplices in such schemes", this does not in our view compel the conclusion that a participant is entitled to recovery of losses in a civil suit, in the absence of express statutory language conferring such right of action (see, McKinney's Cons.Laws of N.Y., Book 1, Statutes 301).