Plaintiff-Appellee

Defendant

Objectors-Appellants

5HFHLYHU¶V

$O\HVND 3LSHOLQH 6HUY &R Y 7KH :LOGHUQHV

Autotech Tech. LP v. Integral Research & Dev. Corp

CFTC v. Am. Metals Exch. Corp

CFTC v. Am. Metals Exch. Corp

&)7& Y 1REHO 0HWDOV ,QW¶O

DeGeer v. Gillis

Duff v. Cent. Sleep Diagnostics, LLC

FM Indus., Inc. v. Citicorp Credit Servs., Inc

FTC v. Williams, Scott & Assoc LLC

FTC v. World Wide Factors, Ltd.

,Q UH +RQH\ZHOO ,QW¶O 6HF /LWLJ

McComb v. Jacksonville Paper Co.

S*SEC v. Capital Consultants, LLC*

SEC v. Capital Counsellors Inc.

...(1,4TJE(60H9Tm4ET (1,4TJ...........................)TJETBT1 0 0 329Tm6(1,4TJE...............

SEC v. Enter. Trust Co.

M,9Eed States v

SEC v. Wealth Mgmt., LLC

Solis v. Current Dev. Corp

Spears v. City of Indianapolis

....8

8QLWHG 6WDWHV Y $QWLTXHV /WG 3¶VKLS

....8

*United States v. Cardinal Growth*TJETn.8BTP5 *Stat*

E\ 7UXGHDX¶V

7UXGHDX¶V FRPSDQ\

2

2

2

DQG ³DQ RUGHU WKDW DGGUHVVHV DO

FTC v. Trudeau

³WKH F

IURP 7UXGHDX¶V ´

FTC v. Trudeau

cert. denied,

KDW WKH)7& ³GLG QRWKLQJ

7UXGHDX¶V

PXOWLSOH DSSHDOV RI WKH GLVWULFW FRXUW¶

DQG VRXUFH RI 7UXGHDX¶V DVVHWV *See e.g.*

7KH ODZ ILUPV DUH DOVR ZURQJ WKDW WKH)7&

MXGJPHQW FLWDWLRQ SURFHHGV 7UXGHDX¶V DFFH

See

McComb v. Jacksonville Paper Co.

)7&¶V PRWLRQ WR FRPSHO

2

VHHNLQJ LQIRUPDWLRQ DER

prima facie

7UXGHDX¶V EHQHILFLDO FRQWUR

DQG 7UXGHDX LV WKDW WKH FRPSDQ\

´

WKLQJV 7UXGHDX KLPVHOI DSSHDUHG DV :HEVL

UXGHDX¶V DVVHWV)DLOHG¶ZLWK DWWHPSWV WR EOR

)7&¶V ORFDWLQJ 7UXGHDX¶V DVVHWV

See, e.g., *FTC v. Trudeau* *denied*

FTC v. Trudeau *denied*

)DUXNL¶V

3 ´

6ROXWLRQV ,QF ³%OXH6W

RI 6DQW¶V UHMHFWHG WKH)7&

X¶V DVVHWV

HFHLYHU WR ³P

WR 7UXGHDX¶V YLFWLPV

pro rata 7UXGHDX¶V

Id.;

JUDQWHG WKH)7&

¶ ³VDZ QR UHDVRQ ZK\ >L

UHLPEXUVH >WKH ODZ I)LUP@ WKH DOO S´DUW ³D

WR WKH UHFRYHU\ RI WKH *Id.* PRQH\ IWUKDW¶ ZH KDYH

GLG QRW ³EHQHILW>@ WKH UHFHLY

LPSHGHG WKH *Id.* UHFHLYHUVKLS ´GHVSLWH WKH O

³ZHUH LQ IDFW FRQWUROOHG E\ 7UXGHDX´ %DEHHQ 6DQW ³

ZLWK´ 7UXGHDX WU*Id.*LQJ WR KLGH DVVHWV

WR SD\LQJ 0U 7UXGHDX¶V OHJ

DOO WKH*Id.*VH DVVHWV ´

IHHV DQG FRQVXPHU UHGUHVV 7UXGHDX¶V YLF

VKRXOG EH ´ WKH FRXUW VW

³ ´

See Spears v. City of Indianapolis ³>$@Q

SURSULHW\ RI WKH FRXUW¶V DFWLRQ QR DEXV

Washington v. Sherwin Real Estate, Inc.

see Trudeau

UHTXLUHV D ³FOHDUO\ HUURQHRXV *United* LQGLQJ´ RU

States v. Silva

¶V GHFLVLRQ WR

UHFHLYHUVKLS IXQGV WR 7UXGHDX¶V FRQVXPH

ZLWKLQ WKH FRXUW¶V EURDG HTXLWDEOH GLVF

WKH\ VKRXOG EH ³ ´ ´ PLOOLRQ

FRQVXPHU UHGUHVV 7KDW ZDV ³HQRXJK WR RY

ILUPV´ WR WKH 5HFHLYHU¶V SODQ WR GLVWULE

Id

MXGJPHQW ZDV DOVR ZLWKLQ WKH FRXUW¶V

&RXUWV KDYH GHFOLQHG WR SD\ ODZ\HU¶V I

CFTC v. Nobel Met DOV ,QW¶O

UHTXHVW WR SHH\V DRXWWRRIQHU¶]VHQ DVVHWV ZKHQ

VKRUW RI WKH DPRXQW QHHGHG WR FRPSHQVDW

FXVWRPHUV ´ *Id*

Nobel Metals

FTC v. World Wide Factors, Ltd.

OLPLWDWLRQ RQ (ðeni

UHFHLYHUVKLS HVWDWH WR SD\ >GHIHQGDQW¶V

YDOXH RI IUR]HQ DVVHWV ZDV ³ZHOO VKRUW RI

WKH GHIHQGDQWV¶ YLFWLP *Id.*

CFTC v. Am. Metals Exch. Corp

See also FTC v. Sharp

³%HFDXVH LW GRHV QRW DSSHDU

WR UHFRYHU DWWRUQH\¶V IHHV IU

HVWDWH ´

IURP FDVHV EDUULQJ DWWRUQH\¶V IHHV GXULQJ

FTC v. Jordan

Ashley, Inc.

V¶ ¶

EHFDXVH GRLQJ VR ³

GHSULYH 'HIHQGDQWV¶ YLFWLPV RI WKH IXOO P

LQMXULHV ´

2

2

VXFK DV 7UXGHDX¶V ZLIH %DEHQNR

see

2

2

¶V SURGXFWLRQ

+RJDQ 0DUUHQ¶V FODLP IRU

6DQW¶V FHOO SKRQH DQG VHDUFKLQ

7UXGHDX¶V DVVHWV

YLFWLPV¶ EHQHILW ,QDQG KSRDVUHHWFLLFXXFDPUVW\ D ³>Q F@

DFWLRQ LV WR UHTXLUH FRXQVHO WR EHDU WKH

³PLJKW ODFN VXIILFLHQW IXQGV

FTC v. Williams, Scott & Assoc LLC

appeal pending sub nom. FTC v. Lenyszyn

see also Sharp *Williams*

³ ODZ\HU@ GHFLGHG WR UHSUHVHQW

FDVH ³KH VKRXOG KDYH NQRZQ WKDW SD\PHQW

´

7KH ODZ ILUPV GR QRW VHULRXVO\ FRQWHVV

ILUPV¶ FRQWHQWLRQ WKDW GLVWULFW FR

IRU GLVFRYHU\ H[SHQVHV EDVHG RQ LWV ³>V@X

VKLIWLQJ RQO\ LQ IDYRU RI SHUVRQV ³V

³XQGHU 5XOH LW¶V WKH

QDV ZKR KDYH D ULJKW WR UHTXHVW´

³LQFXUUHG FRPSO\LQJ ZLWK WKH VXESRHQDV ´

SDUW\ 5XOH ³WHOO

KRZ WR REW îD0 plqét` @ DWLRV @T @copQ@$ SS D 0 p H H T0

DSSOLHV RQO\ WR ³D SHUVRQ ZK

QRU D SDUW\¶V RIILFHU ´

³ZHUH WRWDOO\ FRQWUROOHG E\ 7UXGHDX ´ *See* LQ

2 2

%HFDXVH WKH ODZ ILUPV GR QRW FKDOOH

See, e.g. SEC v. Capital Counsellors Inc.

see also Alyeska Pipeline Serv.

&R Y 7KH :LOGHUQHVV 6RF¶\ XQGHU WKH ³$PHU

UXOH ´ OLWLSDQWKHLU RZQHDWWRKQH\¶ZKHQ D

FRPSO\LQJ ´ *United States v. Cardinal Growth, L.P.*

6 D Q W ¶ V

Michael D. Bergman