

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CHUNG CHO, : 3:04-CV-00487 (WWE)
Plaintiff :
 :
 :
v. :
 :
 :
RYUNG HEE CHO, :
 :
Defendant : April 5, 2005

RULING ON PLAINTIFF'S CROSS-MOTION FOR
JUDGMENT AS A MATTER OF LAW ON RICO COUNTS AND OPPOSITION TO
DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW

The plaintiff, Chung Cho, has filed a post-trial cross-motion for judgment as a matter of law, in contradiction to the jury's verdict, that the defendant, Ryung Hee Cho, violated sections 1962(a), (b) and (c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. section 1961, et seq. Furthermore, the plaintiff has filed his opposition to the defendant's motion for judgment as a matter of law regarding the jury's findings of her liability of breach of fiduciary duty and conversion.¹ This Court will uphold the jury's verdict.

¹This Court addressed the defendant's motion regarding fiduciary duty and conversion in its ruling dated March 23, 2005 [Doc. # 94] and, therefore, it is not the subject of this ruling.

I. BACKGROUND

The initial complaint in this action was filed on March 23, 2004. The plaintiff filed an eight-count complaint² which included a demand for declaratory relief, which count was not submitted to the jury, and which is the subject of a separate ruling by the Court [Doc. # 95]. The counts submitted to the jury included, *inter alia*, negligent misrepresentation, breach of fiduciary duty, and conversion. The plaintiff's complaint also included allegations of RICO violations, conspiracy to commit RICO violations, infliction of emotional distress, and conflict of interest. After a contentious motion practice, the case went to trial on May 24, 2004. The jury found for the defendant on the RICO violations and conspiracy to commit RICO violations. The Court dismissed the claims of intentional infliction of emotional distress and conflict of interest. Of the remaining counts, the jury found for the defendant on the count of negligent misrepresentation and for the plaintiff on the counts of breach of fiduciary duty and conversion. The jury awarded the plaintiff \$200,000 in damages.

II. LEGAL STANDARD

Rule 50, Fed.R.Civ.P. provides that a party that has made a motion for judgment as a matter of law at trial may renew that motion after the jury has returned with a verdict. The Second

²The plaintiff's suit originally included Michael S. Kim and Company as a defendant. The jury found in favor of defendant Kim on all counts. Kim is not a party to the present action.

Circuit has explained the standard for post-verdict judgment. The guiding principle is whether "viewed in the light most favorable to the non-moving party, the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable men could have reached." Sir Speedy, Inc. V. L.&.P Graphics, Inc., 957 F.2d 1033, 1038-39 (2d Cir. 1992).

A motion for judgment as a matter of law may therefore be granted only where either: (1) there is such a complete absence of evidence supporting the verdict that the jury's finding could only have been the result of sheer surmise and conjecture; or (2) there is such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded persons could not arrive at a verdict against it. In considering whether a defendant is entitled to judgment as a matter of law, a court must consider all of the evidence in the light most favorable to the nonmovant, and cannot substitute its own judgment for that of the jury, which itself has already had an opportunity to pass upon the credibility of witnesses and weigh conflicting evidence.

Shamis v. Ambassador Factors Corp., 2000 WL 1368049, *14 (S.D.N.Y.), (rev'd. on other grounds, 2002 WL 31906118 (2d Cir. 2002)*2).

III. DISCUSSION

In the present case, the jury found that, as to defendant Ryung Hee Cho, the plaintiff had failed to prove all the elements of a violation of Sections 1962(a), (b) and (c) of the RICO statute, and that the plaintiff had failed to prove that Ryung Hee Cho and her co-defendant, Michael S. Kim & Co., had conspired

with each other to violate the RICO statute. Accordingly, the jury returned a negative verdict on all the RICO counts and did not award the plaintiff any damages on these claims.³

In keeping with the Circuit's articulated standard, this Court agrees with the jury and will not overturn its verdict.

IV. CONCLUSION

For the foregoing reasons, this Court denies the plaintiff's cross-motion for judgment as a matter of law [Doc. # 72].

SO ORDERED this 5th day of April, 2005 at Bridgeport, Connecticut.

_____/s/_____

Warren W. Eginton
Senior United States District Judge

³In his motion, the plaintiff incorrectly claims that the jury found nominal damages in the amount of \$1 on the RICO claims, but then asks the Court to "grant plaintiff \$1 damages on the RICO counts." Despite this discrepancy, this Court will, in keeping with this ruling, decline to award any damages to the plaintiff based on the RICO counts.