



as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. \*\*\*\* See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} The primary allegations in plaintiffs' complaint are that defendant, Ohio Department of Insurance (ODI), by and through one of its "senior officials," either conspired with and/or coerced senior officers of Physicians Insurance Equitable (PIE) to agree to the liquidation of PIE by both generating financial reports containing false and inaccurate information and presenting those reports to the court of common pleas during insolvency proceedings; that said conduct resulted in a finding that PIE was insolvent and subject to liquidation; and that the subsequent order of liquidation issued by that court in March 1998 interfered with plaintiffs' employment opportunities.

{¶5} As a threshold issue, the court's jurisdiction to hear the claims asserted in plaintiffs' complaint must be addressed. Each of plaintiffs' claims, whether they be asserted as RICO violations, fraud, conspiracy, or otherwise, are premised upon the alleged fraud in procuring the judgment of liquidation in the common pleas court. Defendant argues that jurisdiction of these claims lies exclusively with the court of common pleas. The jurisdiction of that court relative to liquidation proceedings is set forth very broadly in R.C. 3903.04 as follows:

{¶6} "(A) No delinquency proceeding shall be commenced under this chapter by anyone other than the superintendent of insurance of this state. No court has jurisdiction to entertain, hear, or determine any delinquency proceeding commenced by any other person.

{¶7} “(B) No court of this state has jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or restraining order, preliminary injunction, or permanent injunction, *or other relief preliminary to, incidental to, or relating to delinquency proceedings* other than in accordance with sections 3903.01 to 3903.59 of the Revised Code. \*\*\*

{¶8} “(E) All actions authorized in sections 3903.01 to 3903.59 of the Revised Code shall be brought in the court of common pleas of Franklin county.” (Emphasis added.)

{¶9} As stated above, plaintiffs’ claims for relief in this case arise directly from conduct that occurred during the pending liquidation proceedings. According to plaintiffs, such alleged conduct led directly to an erroneous order of liquidation. Thus, plaintiffs’ claims are clearly “related to” the liquidation action in the court of common pleas and under R.C. 3903.04 must be litigated in that forum. In short, plaintiffs’ case shall be dismissed due to the lack of subject matter jurisdiction. Furthermore, inasmuch as the court is without jurisdiction to hear plaintiffs’ case, defendant’s motion for summary judgment shall be denied as moot. Plaintiffs’ October 31, 2003, request for an immunity determination is also DENIED.

{¶10} A non-oral hearing was conducted in this case upon defendant’s motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiffs’ case is DISMISSED for lack of subject matter jurisdiction and defendant’s motion for summary judgment is DENIED as moot. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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JOSEPH T. CLARK  
Judge

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