



United States
District Court,
Southern District
of New York, 2004.
305 F.Supp.2d 368.

United States v. Stewart

CEDARBAUM, District Judge.

* * * *

The criminal charges [in this case] against [Martha] Stewart * * * arose from Stewart's December 27, 2001 sale of 3,928 shares of stock in ImClone Systems, Inc. ("ImClone"). ImClone is a biotechnology company whose then-chief executive officer, Samuel Waksal, was a friend of Stewart's and a client of Stewart's stockbroker * * * [Peter] Bacanovic. On December 28, * * * ImClone announced that the Food and Drug Administration had rejected the company's application for approval of Erbitux, a cancer-fighting drug that ImClone had previously described as its lead product.

The Indictment alleges that on the morning of December 27, 2001, * * * Bacanovic learned that Waksal * * * [was] selling or attempting to sell * * * ImClone shares. Bacanovic allegedly instructed his assistant, Douglas Faneuil, to inform Stewart of the * * * trading activity, and she sold her shares in response to that information.

According to the Indictment, [Stewart] then lied about the real reason for Stewart's sale in order to cover up what was possibly an illegal trade and to deflect attention from Stewart in the ensuing investigations into suspicious ImClone trading in advance of the Erbitux announcement. [Stewart] claimed that [she] had a standing agreement * * * [to] sell her position in ImClone if the stock fell to \$60 per share.

* * * [T]he Indictment charges Stewart, the CEO of [Martha Stewart Living Omnimedia (MSLO)] with fraud in connection with the purchase and sale of MSLO securities * * * . The [charge] is based on three repetitive public statements she made in June of 2002 [at a conference attended by investment professionals and investors] after the media began reporting investigations of her ImClone trades * * * .

* * * “[S]cienter,” or intent, in the civil securities fraud context, indicates a mental state embracing intent to deceive, manipulate, or defraud, and is a required element of any claim of securities fraud. In a criminal prosecution, the Government must also prove that the defendant acted willfully, that is, with a realization that she was acting wrongfully. * * * The issue at hand is * * * whether, taking into account the heightened standard of proof in criminal cases, there is sufficient evidence of Stewart’s intent to deceive investors to present the matter to the jury. [Emphasis added.]

* * * The Government contends that a reasonable jury could draw inferences from the evidence * * * that would permit it to find beyond a reasonable doubt that Stewart intended to deceive investors with her statements. Specifically, the Government argues that the evidence supports the inferences that Stewart was aware of the impact of the negative publicity about her ImClone trade on the market value of MSLO securities * * * and that Stewart deliberately directed her statements to investors in MSLO securities.

* * * I hold that a reasonable juror could not, without resorting to speculation and surmise, find beyond a reasonable doubt that Stewart’s purpose was to influence the market in MSLO securities.

* * * With respect to the June * * * statement, the Government contends that Stewart’s awareness that she was speaking to analysts and investors, her prefatory statement that she was embarking upon a topic about which her audience was “probably interested,” and the timing of the statement, which occurred as the stock continued to fall, are sufficient * * * to permit the jury to infer that she intended to deceive investors in MSLO securities when she made the statement.

* * * [T]he fact that the * * * statement was read to an audience of analysts and investors * * * cannot be viewed in isolation—the entire context of the statement must be considered. Thus, any inference to be drawn from the makeup of the audience must also take into account the fact that Stewart was only one of several representatives of MSLO, and that MSLO was only one of several corporations making presentations at the conference. The evidence does not show that the conference was organized by Stewart or her company. There is no evidence that the negative publicity about ImClone influenced Stewart’s decision to attend and take advantage of a platform from which to reach investors directly. To the contrary, her statement—a very brief portion of a much longer presentation—indicates otherwise. The Government argues that her statement indicating an awareness that the audience was “probably interested” in what she had to say about the ImClone trade is meaningful. Yet her remarks at the close of the statement—“I have nothing to add on this matter today. And I’m here to talk about our terrific company * * *”—support an inference that she wanted to dispose of the issue and begin to address the subjects of the conference.

* * *

For the foregoing reasons, defendant Stewart's motion for a judgment of acquittal on [this charge] is granted.^a

QUESTIONS

1. How does the *scienter*, or intent, requirement in the context of criminal securities fraud differ from its counterpart in the context of civil securities fraud?
2. When a criminal securities fraud case is tried by a jury, as the *Stewart* case was, what is the judge's role with respect to issues to be presented to the jury?

a. Stewart was later convicted on other charges related to her sale of ImClone stock, including obstruction of justice and lying to federal officials, and was sentenced and served five months in prison and five months and three weeks of house arrest. She is appealing the decision in an attempt to clear her name.