United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5273 **September Term, 2018**

1:17-cv-02335-APM

Filed On: May 16, 2019

Robert Allen Stanford, On behalf of himself and the Stanford Estate,

Appellant

v.

Jay Clayton, U.S. Securities and Exchange Commission,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Tatel, Millett, and Pillard, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, the motion to appoint counsel, the motion to expedite, and the "Request for Leave to Present Defendant with an Offer to Compromise and Settle Pending Tort Litigation," it is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court's order filed July 5, 2018, be affirmed. The district court properly dismissed the case for lack of subject matter jurisdiction, because appellant's claims are barred by sovereign immunity. In initiating an investigation of and enforcement action against appellant, the U.S. Securities and Exchange Commission performed a discretionary function under 28 U.S.C. § 2680(a). See Loumiet v. United States, 828 F.3d 935, 941-42 (D.C. Cir. 2016); cf. Sloan v. U.S. Dep't of Hous. & Urban Dev., 236 F.3d 756, 760-61 (D.C. Cir. 2001). Although "the discretionary-function exception does not categorically bar [Federal Tort Claims Act] claims where the challenged exercise of discretion allegedly exceeds the government's constitutional authority to act," Loumiet, 828 F.3d at 939,

appellant did not allege Fourth and Fifth Amendment violations in his complaint or in any other filing before the district court, and "[i]t is well settled that issues and legal theories not asserted at the District Court level ordinarily will not be heard on appeal," Keepseagle v. Perdue, 856 F.3d 1039, 1053 (D.C. Cir. 2017). Because 28 U.S.C. § 2680(a) bars appellant's claims, the court need not consider whether suit would otherwise be allowed under the intentional-tort exception found in 28 U.S.C. § 2680(h). See Gray v. Bell, 712 F.2d 490, 507-08 (D.C. Cir. 1983) (declining to address plaintiff's arguments under § 2680(h) in light of the application of § 2680(a)). Furthermore, appellant did not raise arguments as to that exception before the district court, see Keepseagle, 856 F.3d at 1053, and his arguments on appeal are not sufficiently developed for the court's consideration, see N.Y. Rehab. Care Mgmt., LLC v. NLRB, 506 F.3d 1070, 1076 (D.C. Cir. 2007) ("It is not enough to merely mention a possible argument in the most skeletal way, leaving the court to do counsel's work."). It is

FURTHER ORDERED that the motion to expedite be dismissed as moot. It is

FURTHER ORDERED that the "Request for Leave to Present Defendant with an Offer to Compromise and Settle Pending Tort Litigation" be dismissed as moot, as appellant need not seek leave of court to present a settlement offer.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam