

MAY 13 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**ROBERT E. WALCHLI; RACHELLE
J. WALCHLI,**

Plaintiffs - Appellants,

v.

**COMMUNITY BANK, an Oregon
corporation, et al.,**

Defendants - Appellees.

No. 10-35560

D.C. No. 3:09-cv-00359-AC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Submitted May 3, 2011**
Portland, Oregon

Before: **KOZINSKI**, Chief Judge, **TASHIMA** and **IKUTA**, Circuit Judges.

Because the Walchlis didn't appeal the district court's dismissal of their
RICO claim based on the Release Agreement, this claim is waived. See

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

Rodriguez v. Hayes, 591 F.3d 1105, 1118 n.6 (9th Cir. 2010) (“[F]ailure of a party in its opening brief to challenge an alternate ground for a district court’s ruling given by the district court waives that challenge.” (emphasis omitted)). Even if Community Bank’s discussion of the Release Agreement in its answering brief could be considered a “waiver of waiver,” we wouldn’t exercise discretion to review this claim because the Walchlis didn’t file a reply brief, and so never objected to the district court’s dismissal on this ground. See Singh v. Ashcroft, 361 F.3d 1152, 1157 n.3 (9th Cir. 2004); cf. Han v. Stanford Univ., 210 F.3d 1038, 1040 (9th Cir. 2000).

Moreover, the district court rightly held that the Walchlis’ third amended complaint failed to allege a plausible scheme to defraud, which is necessary to establish the predicate acts of racketeering activity alleged in this case. See 18 U.S.C. §§ 1341, 1343, 1961(1); see also Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949–50 (2009); Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1400–01 (9th Cir. 1986).

AFFIRMED.