SUPREME COURT OF THE UNITED STATES

No. 91–1043

PROFESSIONAL REAL ESTATE INVESTORS, INC., ET AL., PETITIONERS *v.* COLUMBIA PICTURES INDUSTRIES, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May 3, 1993]

JUSTICE THOMAS delivered the opinion of the Court.

This case requires us to define the "sham" exception to the doctrine of antitrust immunity first identified in *Eastern R. Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127 (1961), as that doctrine applies in the litigation context. Under the sham exception, activity "ostensibly directed toward influencing governmental action" does not qualify for *Noerr* immunity if it "is a mere sham to cover . . . an attempt to interfere directly with the business relationships of a competitor." *Id.*, at 144. We hold that litigation cannot be deprived of immunity as a sham unless the litigation is objectively baseless. The Court of Appeals for the Ninth Circuit refused to characterize as sham a lawsuit that the antitrust defendant admittedly had probable cause to institute. We affirm.

Petitioners Professional Real Estate Investors, Inc., and Kenneth F. Irwin (collectively, PRE) operated La Mancha Private Club and Villas, a resort hotel in Palm Springs, California. Having installed videodisc players in the resort's hotel rooms and assembled a library of more than 200 motion picture titles, PRE rented videodiscs to guests

for in-room viewing. PRE also sought to develop a market for the sale of videodisc players to other hotels wishing to offer in-room viewing of prerecorded material. Respondents, Columbia Pictures Industries, Inc., and seven other major motion picture studios (collectively, Columbia), held copyrights to the motion pictures recorded on the videodiscs that PRE purchased. Columbia also licensed the transmission of copyrighted motion pictures to hotel rooms through a wired cable system called Spectradyne. PRE therefore competed with Columbia not only for the viewing market at La Mancha but also for the broader market for in-room entertainment services in hotels.

In 1983, Columbia sued PRE for alleged copyright infringement through the rental of videodiscs for viewing in hotel rooms. PRE counterclaimed, charging Columbia with violations of §§1 and 2 of the Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. §§1–2,[1] and various state-law infractions. In particular, PRE alleged that Columbia's copyright action was a mere sham that cloaked underlying acts of monopolization and conspiracy to restrain trade.

The parties filed cross-motions for summary judgment on Columbia's copyright claim and postponed further discovery on PRE's antitrust counterclaims. Columbia did not dispute that PRE could freely sell or lease lawfully purchased videodiscs under the Copyright Act's "first sale" doctrine, see 17 U. S. C. §109(a), and PRE conceded

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[1]Section 1 of the Sherman Act prohibits "[e]very contract, combination . . . , or conspiracy, in restraint of trade or commerce among the several States." 15 U. S. C. §1. Section 2 punishes "[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States."

that the playing of videodiscs constituted "performance" of motion pictures, see 17 U. S. C. §101 (1988 ed. and Supp. III). As a result, summary judgment depended solely on whether rental of videodiscs for in-room viewing infringed Columbia's exclusive right to "perform the copyrighted work[s] publicly." §106(4). Ruling that such rental did not constitute public performance, the District Court entered summary judgment for PRE. 228 USPQ 743 (CD Cal. 1986). The Court of Appeals affirmed on the grounds that a hotel room was not a "public place" and that PRE did not "transmit or otherwise communicate" Columbia's motion pictures. 866 F. 2d 278 (CA9 1989). See 17 U. S. C. §101 (1988 ed. and Supp. III).

On remand, Columbia sought summary judgment on PRE's antitrust claims, arguing that the original copyright infringement action was no sham and was therefore entitled to immunity under *Eastern R. Presidents Conference* v. *Noerr Motor Freight, Inc.*, *supra*. Reasoning that the infringement action "was clearly a legitimate effort and therefore not a sham," 1990–1 Trade Cases ¶68,971, p. 63,243 (CD Cal. 1990), the District Court granted the motion:

> "It was clear from the manner in which the case was presented that [Columbia was] seeking and expecting a favorable judgment. Although I decided against [Columbia], the case was far from easy to resolve, and it was evident from the opinion affirming my order that the Court of Appeals had trouble with it as well. I find that there was probable cause for bringing the action, regardless of whether the issue was considered a question of fact or of law." *Ibid.*

The court then denied PRE's request for further discovery on Columbia's intent in bringing the copyright action and dismissed PRE's state-law counterclaims without prejudice.

The Court of Appeals affirmed. 944 F. 2d 1525 (CA9

1991). After rejecting PRE's other allegations of anticompetitive conduct, see *id.*, at 1528– 1529,[2] the court focused on PRE's contention that the copyright action was indeed sham and that Columbia could not claim *Noerr* immunity. The Court of Appeals characterized "sham" litigation as one of two types of "abuse of . . . judicial processes": either "`misrepresentations . . . in the adjudicatory process'" or the pursuit of "`a pattern of baseless, repetitive claims'" instituted "`without probable cause, and regardless of the merits.'" *Id.*, at 1529 (quoting *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U. S. 508, 513, 512 (1972)). PRE neither "allege[d] that the [copyright] lawsuit involved misrepresentations" nor "challenge[d] the district court's finding that the infringement action was brought with probable cause, i.e., that the suit was not baseless." 944 F. 2d, at 1530. Rather, PRE opposed summary judgment solely by arguing that "the copyright infringement lawsuit [was] a sham because [Columbia] did not honestly believe that the infringement claim was meritorious." *Ibid.*

The Court of Appeals rejected PRE's contention that "subjective intent in bringing the suit was a question

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[2]The Court of Appeals held that Columbia's alleged refusal to grant copyright licenses was not "separate and distinct" from the prosecution of its infringement suit. 944 F. 2d, at 1528. The court also held that PRE had failed to establish how it could have suffered antitrust injury from Columbia's other allegedly anticompetitive acts. *Id.*, at 1529. Thus, whatever antitrust injury Columbia inflicted must have stemmed from the attempted enforcement of copyrights, and we do not consider whether Columbia could have made a valid claim of immunity for anticompetitive conduct independent of petitioning activity. Cf. *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U. S. 690, 707–708 (1962).

of fact precluding entry of summary judgment." *Ibid.* Instead, the court reasoned that the existence of probable cause "preclude[d] the application of the sham exception as a matter of law" because "a suit brought with probable cause does not fall within the sham exception to the *Noerr- Pennington* doctrine." *Id.*, at 1531, 1532. Finally, the court observed that PRE's failure to show that "the copyright infringement action was baseless" rendered irrelevant any "evidence of [Columbia's] subjective intent." *Id.*, at 1533. It accordingly rejected PRE's request for further discovery on Columbia's intent.

The courts of appeals have defined "sham" in inconsistent and contradictory ways.[3] We once

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[3]Several Courts of Appeals demand that an alleged sham be proved legally unreasonable. See *McGuire Oil Co.* v. *Mapco, Inc.*, 958 F. 2d 1552, 1560, and n. 12 (CA11 1992); *Litton Systems, Inc.* v. *American Telephone & Telegraph Co.*, 700 F. 2d 785, 809–812 (CA2 1983), cert. denied, 464 U. S. 1073 (1984); *Hydro-Tech Corp.* v. *Sundstrand Corp.*, 673 F. 2d 1171, 1177 (CA10 1982); *Federal Prescription Service, Inc.* v. *American Pharmaceutical Assn.*, 214 U. S. App. D. C. 76, 85, 89, 663 F. 2d 253, 262, 266 (1981), cert. denied, 455 U. S. 928 (1982). Still other courts have held that successful litigation by definition cannot be sham. See, *e.g.*, *Eden Hannon & Co.* v. *Sumitomo Trust & Banking Co.*, 914 F. 2d 556, 564–565 (CA4 1990), cert. denied, 499 U. S. ___ (1991); *South Dakota* v. *Kansas City Southern Industries, Inc.*, 880 F. 2d 40, 54 (CA8 1989), cert. denied *sub nom. South Dakota* v. *Kansas City Southern R. Co*, 493 U. S. 1023 (1990); *Columbia Pictures Industries, Inc.* v. *Redd Horne, Inc.*, 749 F. 2d 154, 161 (CA3 1984).

Other Courts of Appeals would regard some meritorious litigation as sham. The Sixth Circuit treats "genuine [legal] substance" as raising merely "a *rebuttable* presumption" of immunity. *Westmac,*

observed that "sham" might become "no more than a label courts could apply to activity they deem unworthy of antitrust immunity." *Allied Tube & Conduit Corp.* v. *Indian Head, Inc.*, 486 U. S. 492, 508, n. 10 (1988). The array of definitions adopted by lower courts demonstrates that this observation was prescient.

PRE contends that "the Ninth Circuit erred in holding that an antitrust plaintiff must, as a threshold prerequisite . . . , establish that a sham lawsuit is baseless as a matter of law." Brief for Petitioners 14. It invites us to adopt an approach under which either "indifference to . . . outcome," *ibid.*, or failure to prove that a petition for redress of grievances "would . . . have been brought but for [a] predatory motive," Tr. of Oral Arg. 10, would expose a defendant to antitrust liability under the sham exception. We decline PRE's invitation.

Those who petition government for redress are generally immune from antitrust liability. We first recognized in *Eastern R. Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127 (1961), that

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Inc. v. *Smith*, 797 F. 2d 313, 318 (1986) (emphasis added), cert. denied, 479 U. S. 1035 (1987). The Seventh Circuit denies immunity for the pursuit of valid claims if "the stakes, discounted by the probability of winning, would be too low to repay the investment in litigation." *Grip-Pak, Inc.* v. *Illinois Tool Works, Inc.*, 694 F. 2d 466, 472 (1982), cert. denied, 461 U. S. 958 (1983). Finally, in the Fifth Circuit, "success on the merits does not . . . preclude" proof of a sham if the litigation was not "significantly motivated by a genuine desire for judicial relief." *In re Burlington Northern, Inc.*, 822 F. 2d 518, 528 (1987), cert. denied *sub nom. Union Pacific R. Co.* v. *Energy Transportation Systems, Inc.*, 484 U. S. 1007 (1988).

"the Sherman Act does not prohibit . . . persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly." *Id.*, at 136. Accord, *Mine Workers* v. *Pennington*, 381 U. S. 657, 669 (1965). In light of the government's "power to act in [its] representative capacity" and "to take actions . . . that operate to restrain trade," we reasoned that the Sherman Act does not punish "political activity" through which "the people . . . freely inform the government of their wishes." *Noerr*, 365 U. S., at 137. Nor did we "impute to Congress an intent to invade" the First Amendment right to petition. *Id.*, at 138.

Noerr, however, withheld immunity from "sham" activities because "application of the Sherman Act would be justified" when petitioning activity, "ostensibly directed toward influencing governmental action, is a mere sham to cover . . . an attempt to interfere directly with the business relationships of a competitor." *Id.*, at 144. In *Noerr* itself, we found that a publicity campaign by railroads seeking legislation harmful to truckers was no sham in that the "effort to influence legislation" was "not only genuine but also highly successful." *Ibid.*

In *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U. S. 508 (1972), we elaborated on *Noerr* in two relevant respects. First, we extended *Noerr* to "the approach of citizens . . . to administrative agencies . . . and to courts." 404 U. S., at 510. Second, we held that the complaint showed a sham not entitled to immunity when it contained allegations that one group of highway carriers "sought to bar . . . competitors from meaningful access to adjudicatory tribunals and so to usurp that decisionmaking process" by "institut[ing] . . . proceedings and actions . . . with or without probable cause, and regardless of the merits of the cases." *Id.*, at 512 (internal quotation marks omitted). We left unresolved the

question presented by this case—whether litigation may be sham merely because a subjective expectation of success does not motivate the litigant. We now answer this question in the negative and hold that an objectively reasonable effort to litigate cannot be sham regardless of subjective intent.[4]

Our original formulation of antitrust petitioning immunity required that unprotected activity lack objective reasonableness. *Noerr* rejected the contention that an attempt "to influence the passage and enforcement of laws" might lose immunity merely because the lobbyists' "sole purpose . . . was to destroy [their] competitors." 365 U. S., at 138. Nor were we persuaded by a showing that a publicity campaign "was intended to and did in fact injure [competitors] in their relationships with the public and with their customers," since such "direct injury" was merely "an incidental effect of the . . . campaign to influence governmental action." *Id.*, at 143. We reasoned that "[t]he right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend upon their intent in doing so." *Id.*, at 139. In short, "*Noerr* shields from

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[4]*California Motor Transport* did refer to the antitrust defendants' "purpose to deprive . . . competitors of meaningful access to the . . . courts." 404 U. S., at 512. See also *id.*, at 515 (noting a "purpose to eliminate . . . a competitor by denying him free and meaningful access to the agencies and courts"); *id.*, at 518 (Stewart, J., concurring in judgment) (agreeing that the antitrust laws could punish acts intended "to discourage and ultimately to prevent [a competitor] from invoking" administrative and judicial process). That a sham depends on the existence of anticompetitive intent, however, does not transform the sham inquiry into a purely subjective investigation.

the Sherman Act a concerted effort to influence public officials regardless of intent or purpose." *Pennington*, 381 U. S., at 670.

Nothing in *California Motor Transport* retreated from these principles. Indeed, we recognized that recourse to agencies and courts should not be condemned as sham until a reviewing court has "discern[ed] and draw[n]" the "difficult line" separating objectively reasonable claims from "a pattern of baseless, repetitive claims . . . which leads the factfinder to conclude that the administrative and judicial processes have been abused." 404 U. S., at 513. Our recognition of a sham in that case signifies that the institution of legal proceedings "without probable cause" will give rise to a sham if such activity effectively "bar[s] . . . competitors from meaningful access to adjudicatory tribunals and so . . . usurp[s] th[e] decisionmaking process." *Id.*, at 512.

Since *California Motor Transport*, we have consistently assumed that the sham exception contains an indispensable objective component. We have described a sham as "evidenced by repetitive lawsuits carrying the hallmark of *insubstantial* claims." *Otter Tail Power Co.* v. *United States*, 410 U. S. 366, 380 (1973) (emphasis added). We regard as sham "private action that is not genuinely aimed at procuring favorable government action," as opposed to "a valid effort to influence government action." *Allied Tube & Conduit Corp.* v. *Indian Head, Inc.*, 486 U. S. 492, 500, n. 4 (1988). And we have explicitly observed that a successful "effort to influence governmental action . . . certainly cannot be characterized as a sham." *Id.*, at 502. See also *Vendo Co.* v. *Lektro-Vend Corp.*, 433 U. S. 623, 645 (1977) (BLACKMUN, J., concurring in result) (describing a successful lawsuit as a "genuine attemp[t] to use the . . . adjudicative process legitimately" rather than "`a pattern of baseless, repetitive claims'"). Whether applying *Noerr* as an antitrust doctrine or invoking it

in other contexts, we have repeatedly reaffirmed that evidence of anticompetitive intent or purpose alone cannot transform otherwise legitimate activity into a sham. See, *e.g.*, *FTC* v. *Superior Court Trial Lawyers Assn.*, 493 U. S. 411, 424 (1990); *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 913– 914 (1982). Cf. *Vendo*, *supra*, at 635–636, n. 6, 639, n. 9 (plurality opinion of REHNQUIST, J.); *id.*, at 644, n., 645 (BLACKMUN, J., concurring in result). Indeed, by analogy to *Noerr*'s sham exception, we held that even an "improperly motivated" lawsuit may not be enjoined under the National Labor Relations Act as an unfair labor practice unless such litigation is "baseless." *Bill Johnson's Restaurants, Inc.* v. *NLRB*, 461 U. S. 731, 743–744 (1983). Our decisions therefore establish that the legality of objectively reasonable petitioning "directed toward obtaining governmental action" is "not at all affected by any anticompetitive purpose [the actor] may have had." *Noerr*, 365 U. S., at 140, quoted in *Pennington*, *supra*, at 669.

Our most recent applications of *Noerr* immunity further demonstrate that neither *Noerr* immunity nor its sham exception turns on subjective intent alone. In *Allied Tube*, 486 U. S., at 503, and *FTC* v. *Trial Lawyers*, *supra*, at 424, 427, and n. 11, we refused to let antitrust defendants immunize otherwise unlawful restraints of trade by pleading a subjective intent to seek favorable legislation or to influence governmental action. Cf. *National Collegiate Athletic Assn.* v. *Board of Regents of Univ. of Okla.*, 468 U. S. 85, 101, n. 23 (1984) ("[G]ood motives will not validate an otherwise anticompetitive practice"). In *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. ___ (1991), we similarly held that challenges to allegedly sham petitioning activity must be resolved according to objective criteria. We dispelled the notion that an antitrust plaintiff could prove a sham merely by showing that its competitor's "purposes were to delay [the plaintiff's] entry into the market

and even to deny it a meaningful access to the appropriate . . . administrative and legislative fora." *Id.*, at ___ (slip op., at 15) (internal quotation marks omitted). We reasoned that such inimical intent "may render the manner of lobbying improper or even unlawful, but does not necessarily render it a `sham.'" *Ibid.* Accord, *id.*, at ___ (STEVENS, J., dissenting).

In sum, fidelity to precedent compels us to reject a purely subjective definition of "sham." The sham exception so construed would undermine, if not vitiate, *Noerr*. And despite whatever "superficial certainty" it might provide, a subjective standard would utterly fail to supply "real `intelligible guidance.'" *Allied Tube*, *supra*, at 508, n. 10.

We now outline a two-part definition of "sham" litigation. First, the lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits. If an objective litigant could conclude that the suit is reasonably calculated to elicit a favorable outcome, the suit is immunized under *Noerr*, and an antitrust claim premised on the sham exception must fail.[5]

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[5]A winning lawsuit is by definition a reasonable effort at petitioning for redress and therefore not a sham. On the other hand, when the antitrust defendant has lost the underlying litigation, a court must "resist the understandable temptation to engage in *post hoc* reasoning by concluding" that an ultimately unsuccessful "action must have been unreasonable or without foundation." *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, 421–422 (1978). Accord, *Hughes* v. *Rowe*, 449 U. S. 5, 14–15 (1980) *(per curiam)*. The court must remember that "[e]ven when the law or the facts appear questionable or unfavorable at the outset, a party may have an entirely reasonable ground for bringing suit."

Only if challenged litigation is objectively meritless may a court examine the litigant's subjective motivation. Under this second part of our definition of sham, the court should focus on whether the baseless lawsuit conceals "an attempt to interfere *directly* with the business relationships of a competitor," *Noerr*, *supra*, at 144 (emphasis added), through the "use [of] the governmental *process*—as opposed to the *outcome* of that process—as an anticompetitive weapon," *Omni*, 499 U. S., at ___ (slip op., at 14) (emphasis in original). This two-tiered process requires the plaintiff to disprove the challenged lawsuit's *legal* viability before the court will entertain evidence of the suit's *economic* viability. Of course, even a plaintiff who defeats the defendant's claim to *Noerr* immunity by demonstrating both the objective and the subjective components of a sham must still prove a substantive antitrust violation. Proof of a sham merely deprives the defendant of immunity; it does not relieve the plaintiff of the obligation to establish all other elements of his claim.

Some of the apparent confusion over the meaning of "sham" may stem from our use of the word "genuine" to denote the opposite of "sham." See *Omni*, *supra*, at ___; *Allied Tube*, *supra*, at 500, n. 4; *Noerr*, *supra*, at 144; *Vendo Co.* v. *Lektro-Vend Corp.*, *supra*, at 645 (BLACKMUN, J., concurring in result). The word "genuine" has both objective and subjective connotations. On one hand, "genuine" means "actually having the reputed or apparent qualities or character." Webster's Third New International Dictionary 948 (1986). "Genuine" in this sense governs Federal Rule of Civil Procedure 56, under which a "genuine issue" is one "that properly can be resolved only by a finder of fact because [it] may *reasonably* be resolved in favor of either party." *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 250

Christiansburg, *supra*, at 422.

(1986) (emphasis added). On the other hand, "genuine" also means "sincerely and honestly felt or experienced." Webster's Dictionary, *supra*, at 948. To be sham, therefore, litigation must fail to be "genuine" in both senses of the word.[6]

We conclude that the Court of Appeals properly affirmed summary judgment for Columbia on PRE's antitrust counterclaim. Under the objective prong of the sham exception, the Court of Appeals correctly held that sham litigation must constitute the pursuit of claims so baseless that no reasonable litigant could realistically expect to secure favorable relief. See 944 F. 2d, at 1529.

The existence of probable cause to institute legal proceedings precludes a finding that an antitrust defendant has engaged in sham litigation. The notion of probable cause, as understood and applied in the

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[6]In surveying the "forms of illegal and reprehensible practice which may corrupt the administrative or judicial processes and which may result in antitrust violations," we have noted that "unethical conduct in the setting of the adjudicatory process often results in sanctions" and that "[m]isrepresentations, condoned in the political arena, are not immunized when used in the adjudicatory process." *California Motor Transport*, 404 U. S., at 512–513. We need not decide here whether and, if so, to what extent *Noerr* permits the imposition of antitrust liability for a litigant's fraud or other misrepresentations. Cf. Fed. Rule Civ. Proc. 60(b)(3) (allowing a federal court to "relieve a party . . . from a final judgment" for "fraud . . . , misrepresentation, or other misconduct of an adverse party"); *Walker Process Equipment, Inc.* v. *Food Machinery & Chemical Corp.*, 382 U. S. 172, 176–177 (1965); *id.*, at 179–180 (Harlan, J., concurring).

common- law tort of wrongful civil proceedings,[7] requires the plaintiff to prove that the defendant lacked probable cause to institute an unsuccessful civil lawsuit and that the defendant pressed the action for an improper, malicious purpose. *Stewart* v. *Sonneborn*, 98 U. S. 187, 194 (1879); *Wyatt* v. *Cole*, 504 U. S. ___, ___ (1992) (REHNQUIST, C. J., dissenting); T. Cooley, Law of Torts *181. Cf. *Wheeler* v. *Nesbitt*, 24 How. 544, 549–550 (1861) (related tort for malicious prosecution of criminal charges). Probable cause to institute civil proceedings requires no more than a "reasonabl[e] belie[f] that there is a chance that [a] claim may be held valid upon adjudication" (internal quotation marks omitted). *Hubbard* v. *Beatty & Hyde, Inc.*, 343 Mass. 258, 262, 178 N. E. 2d 485, 488 (1961); Restatement (Second) of Torts §675, Comment *e*, pp. 454–455 (1977). Because the absence of probable cause is an essential element of the tort, the existence of probable cause is an absolute defense. See *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter-House Co.*, 120 U. S. 144, 149 (1887); *Wheeler*, *supra*, at 551; *Liberty Loan Corp. of Gadsden* v. *Mizell*, 410 So. 2d 45, 48 (Ala. 1982). Just as evidence of anticompetitive intent cannot affect the objective prong of *Noerr*'s sham exception, a showing of malice alone will neither entitle the wrongful civil proceedings plaintiff to prevail nor permit the factfinder to infer the absence of probable cause. *Stewart*, *supra*, at 194; *Wheeler*,

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[7]This tort is frequently called "malicious prosecution," which (strictly speaking) governs the malicious pursuit of *criminal* proceedings without probable cause. See W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Torts §120, p. 892 (5th ed. 1984). The threshold for showing probable cause is no higher in the civil context than in the criminal. See Restatement (Second) of Torts §674, Comment *e*, pp. 454– 455 (1977).

supra, at 551; 2 C. Addison, Law of Torts §1, ¶853, pp. 67– 68 (1876); T. Cooley, *supra*, at *184. When a court has found that an antitrust defendant claiming *Noerr* immunity had probable cause to sue, that finding compels the conclusion that a reasonable litigant in the defendant's position could realistically expect success on the merits of the challenged lawsuit. Under our decision today, therefore, a proper probable cause determination irrefutably demonstrates that an antitrust plaintiff has not proved the objective prong of the sham exception and that the defendant is accordingly entitled to *Noerr* immunity.

The District Court and the Court of Appeals correctly found that Columbia had probable cause to sue PRE for copyright infringement. Where, as here, there is no dispute over the predicate facts of the underlying legal proceeding, a court may decide probable cause as a matter of law. *Crescent*, *supra*, at 149; *Stewart*, *supra*, at 194; *Nelson* v. *Miller*, 227 Kan. 271, 277, 607 P. 2d 438, 444 (1980); *Stone* v. *Crocker*, 41 Mass. 81, 84–85 (1831); J. Bishop, Commentaries on Non-Contract Law §240, p. 96 (1889). See also *Director General* v. *Kastenbaum*, 263 U. S. 25, 28 (1923) ("The question is not whether [the defendant] thought the facts to constitute probable cause, but whether the court thinks they did"). Columbia enjoyed the "exclusive righ[t] . . . to perform [its] copyrighted" motion pictures "publicly." 17 U. S. C. §106(4). Regardless of whether it intended any monopolistic or predatory use, Columbia acquired this statutory right for motion pictures as "original" audiovisual "works of authorship fixed" in a "tangible medium of expression." §102(a)(6). Indeed, to condition a copyright upon a demonstrated lack of anticompetitive intent would upset the notion of copyright as a "limited grant" of "monopoly privileges" intended simultaneously "to motivate the creative activity of authors" and "to give

the public appropriate access to their work product." *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 429 (1984).

When the District Court entered summary judgment for PRE on Columbia's copyright claim in 1986, it was by no means clear whether PRE's videodisc rental activities intruded on Columbia's copyrights. At that time, the Third Circuit and a District Court within the Third Circuit had held that the rental of video cassettes for viewing in on-site, private screening rooms infringed on the copyright owner's right of public performance. *Columbia Pictures Industries, Inc.* v. *Redd Horne, Inc.*, 749 F. 2d 154 (1984); *Columbia Pictures Industries, Inc.* v. *Aveco, Inc.*, 612 F. Supp. 315 (MD Pa. 1985), aff'd, 800 F. 2d 59 (CA3 1986). Although the District Court and the Ninth Circuit distinguished these decisions by reasoning that hotel rooms offered a degree of privacy more akin to the home than to a video rental store, see 228 USPQ, at 746; 866 F. 2d, at 280–281, copyright scholars criticized both the reasoning and the outcome of the Ninth Circuit's decision, see 1 P. Goldstein, Copyright: Principles, Law and Practice §5.7.2.2, pp. 616–619 (1989); 2 M. Nimmer & D. Nimmer, Nimmer on Copyright §8.14[C][3], pp. 8– 168 to 8–173 (1992). The Seventh Circuit expressly "decline[d] to follow" the Ninth Circuit and adopted instead the Third Circuit's definition of a "public place." *Video Views, Inc.* v. *Studio 21, Ltd.*, 925 F. 2d 1010, 1020, cert. denied, 502 U. S. ___ (1991). In light of the unsettled condition of the law, Columbia plainly had probable cause to sue.

Any reasonable copyright owner in Columbia's position could have believed that it had some chance of winning an infringement suit against PRE. Even though it did not survive PRE's motion for summary judgment, Columbia's copyright action was arguably "warranted by existing law" or at the very least was based on an objectively "good faith argument for the

extension, modification, or reversal of existing law." Fed. Rule Civ. Proc. 11. By the time the Ninth Circuit had reviewed all claims in this litigation, it became apparent that Columbia might have won its copyright suit in either the Third or the Seventh Circuit. Even in the absence of supporting authority, Columbia would have been entitled to press a novel copyright claim as long as a similarly situated reasonable litigant could have perceived some likelihood of success. A court could reasonably conclude that Columbia's infringement action was an objectively plausible effort to enforce rights. Accordingly, we conclude that PRE failed to establish the objective prong of *Noerr*'s sham exception.

Finally, the Court of Appeals properly refused PRE's request for further discovery on the economic circumstances of the underlying copyright litigation. As we have held, PRE could not pierce Columbia's *Noerr* immunity without proof that Columbia's infringement action was objectively baseless or frivolous. Thus, the District Court had no occasion to inquire whether Columbia was indifferent to the outcome on the merits of the copyright suit, whether any damages for infringement would be too low to justify Columbia's investment in the suit, or whether Columbia had decided to sue primarily for the benefit of collateral injuries inflicted through the use of legal process. Contra, *Grip-Pak, Inc.* v. *Illinois Tool Works, Inc.*, 694 F. 2d 466, 472 (CA7 1982), cert. denied, 461 U. S. 958 (1983). Such matters concern Columbia's economic motivations in bringing suit, which were rendered irrelevant by the objective legal reasonableness of the litigation. The existence of probable cause eliminated any "genuine issue as to any material fact," Fed. Rule Civ. Proc. 56(c), and summary judgment properly issued.

We affirm the judgment of the Court of Appeals.

So ordered.