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Replying to @attorneyjeremy1

The Howey "scheme" is to structure ownership of the individual rows of orange trees such that they can be owned through a plat map ledger which entitles holders to rights to shares of the market value of emitted orange tokens and/or their pro rata share of orange grove market cap

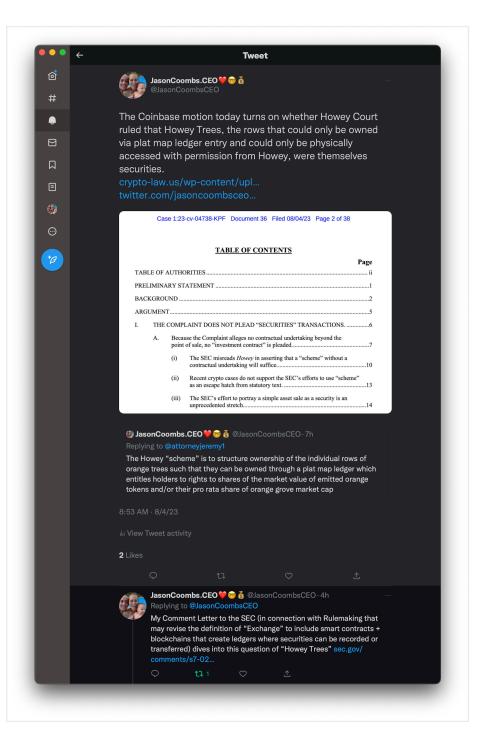
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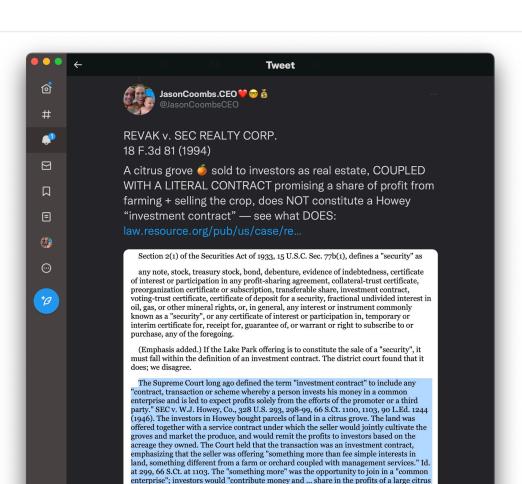
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Thanks. But it's not me, that's literally what the Howey Court said. People have reading comprehension problems, caused in part by the way that other courts including later SCOTUS rulings apparently ignore the details and use their imaginations as a substitute for plain language.

8:33 AM · 8/4/23



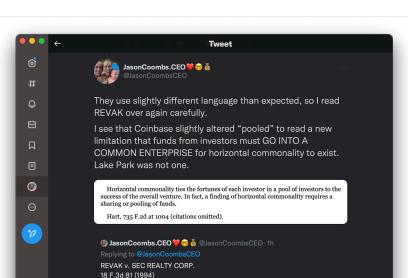


The three elements of the Howey test must all be present for a land sale contract to constitute a security: (i) an investment of money (ii) in a common enterprise (iii) with profits to be derived solely from the efforts of others. Cameron v. Outdoor Resorts of America, Inc., 608 F.2d 187, 192 (5th Cir.1979). We hold that the Lake Park venture does not constitute a common enterprise.

fruit enterprise managed and partly owned" by the seller. Id.

A common enterprise within the meaning of Howey can be established by a showing of "horizontal commonality": the tying of each individual investor's fortunes to the fortunes of the other investors by the pooling of assets, usually combined with the pro-rata distribution of profits. See Hart v. Pulte Homes of Michigan Corp., 735 F.2d 1001, 1004 (6th Cir.1984); Salcer v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 682 F.2d 459, 460 (3d Cir.1982) (investment must be "part of a pooled group of funds"); Milnarik v. M-S Commodities, Inc., 457 F.2d 274, 276 (7th Cir.) (success or failure of other contracts must have a "direct impact on the profitability of plaintiffs' contract"), cert. denied, 409 U.S. 887, 93 S.Ct. 113, 34 L.Ed.2d 144 (1972). In a common enterprise marked by horizontal commonality, the fortunes of each investor depend upon the profitability of the enterprise as a whole:

12:09 PM · 8/4/23



A citrus grove <a>
 sold to investors as real estate, COUPLED WITH A LITERAL CONTRACT promising a share of profit from farming + selling the crop, does NOT constitute a Howey "investment contract" — see what DOES: law.resource.org/pub/us/case/re...

Section 2(1) of the Securities Act of 1933, 15 U.S.C. Sec. 77b(1), defines a "security" as

any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(Emphasis added.) If the Lake Park offering is to constitute the sale of a "security", it must fall within the definition of an investment contract. The district court found that it does; we disagree.

does; we disagree.

The Supreme Court long ago defined the term "investment contract" to include any "contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. "SEC v. W.J. Howey, Co., 238 U.S. 292, 298-99, 66 Ct. 1100, 1103, 90 LEd. 1244 (1946). The investors in Howey bought parcels of land in a citrus grove. The land was offered together with a service contract under which the seller would jointly cultivate the groves and market the produce, and would remit the profits to investors based on the acreage they owned. The Court held that the transaction was an investment contract, emphasizing that the seller was offering "something more than fee simple interests in land, something different from a farm or orchard coupled with management services." Id. at 299, 66 S.C. at 1103. The "something more" was the opportunity to join in a "common enterprise"; investors would "contribute money and ... share in the profits of a large citrus fruit enterprise managed and partly owned" by the seller. Id.

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