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Plaintiffs

FILED
JAN 13 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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RICHARD W. WIEKING, CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JONATHAN D. COBB, AND
W. ARLEN ST. CLAIR

Plaintiffs,

vs.

ERNEST BREDE, LUIS CONTRERAS, PAUL KOEHLER, LARRY LAVERDURE, DONALD SHOWERS, AARON LUCAS, STEVE MISTERFELD, ALAN SHUSTER, RICHARD ASHE AND DOES, SDG:SSX

Defendants.

Civil Action No. C 10-03907 MEJ

JUDGE: MARIA-ELENA JAMES

PLAINTIFF'S REQUEST FOR LEAVE TO FILE MOTION FOR RECONSIDERATION RE ORDER IN RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDMENT

COMPLAINT FILED: AUGUST 31, 2010

Having accepted service of the recommended disposition for this action dismissing Plaintiff's lawsuit pursuant to Defendant's motion for summary judgment, allegedly from the Honorable Maria-Elena James, as represented, by U.S. Mail on January 7, 2012, Plaintiffs wish to submit their objections to such pursuant to the provisions of FRCP 72(b), 28 U.S.C. 636 (b)(1)(B) and Civil Local Rule 72-3(a). To this end, Plaintiffs hereby request leave to file their "Motion for *De Novo* Determination of Dispositive Matter Referred to Magistrate Judge."

This leave should be granted for the following reasons.

First, the request is timely. While not receiving notice of such from the Court, Plaintiffs have learned that relevant case law establishes that they have ten days from the date of service of a

Magistrate's recommended disposition to file any objections (*Viada v. Osaka Health Spa, Inc*., S.D.N.Y.2006, 235 F.R.D. 55. United States Magistrates). Consequently, the deadline to file objections in this instance is January 17, 2012, again, pursuant to Plaintiffs accepting service on January 7, 2012.

Second, upon reviewing the recommended disposition, Plaintiffs note several points therein that are erroneous and contrary to law, per **Exhibit A**. In line with Civil L.R. 7-9(b)(3), Plaintiffs feel that there has been "a manifest failure by the Court to consider material facts" that were presented to the Court before the current recommended disposition.

Furthermore, Plaintiffs are generally dismayed by the line of reasoning and commentary which constitute a sharp deviation from Judge James' clearly stated and demonstrated acceptance of Plaintiffs' pleadings including their standing to bring a Civil RICO claim over the past fourteen months in general recognition of the fact that Plaintiffs are pro se litigants. Such an about face and at "the ninth hour" so to speak, with no prior warning or notice through the series of status conferences to date is inconsistent with every aspect of Plaintiffs' experiences with Judge James who is always fair, just and accommodating in her dealings. Having observed Judge James' handling of both civil and criminal matters on several occasions, she has consistently explained points of law and any implications of such to individuals, regardless of their station in life or education, with care and patience, typically verifying a party's clarity, understanding and when acceptance of the relevant point of law and any agreements/arrangements prior to proceeding. In view of this, Plaintiffs feel strongly that Judge James would never "blind side" a litigant, especially a pro se litigant in the midst of summary judgment, with a recommendation as unexpected, harsh and questionable as the one served upon Plaintiffs. However, in recognizing the importance of not waiving their right to object, Plaintiffs hereby respond to said recommendation despite having concerns regarding the authenticity of such.

Plaintiffs will appreciate having the Court's consideration to the end of having matters reviewed by a district judge pursuant to the just provisions of FRCP 72(b), 28 U.S.C. 636 (b)(1)(B) and Civil Local Rule 72-3(a).

Dated: January 12, 2012

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EXHIBIT: A

PLAINTIFFS' OBJECTIONS TO RECOMMENDED DISPOSITION

(DOC. 137)

PORTIONS OF THE ORDER TO WHICH PLAINTIFFS OBJECT

1) "Defendants now move for summary judgment on Plaintiffs' entire lawsuit. Dkt. No. 114. Defendants primary argument is that this Court has no jurisdiction over the ecclesiastical questions and controversies that are at the center of Plaintiffs' claims. Id. In considering this argument, the Court has reviewed the papers submitted by both parties and analyzed Plaintiffs' claims. Doc. 137; Page 2, Lines 4 – 7

Objection A: Clearly erroneous and contrary to law. FRCP 72 establishes that *the Magistrate* will assess matters and provide a report detailing *her/his* findings and recommendations. For reasons already stated, Plaintiffs do not believe that this has actually occurred in this instance. Consequently, Plaintiffs here and hereinafter object to the use of the expressions "this Court" and "the Court" until such a time that this order (Doc. 137) allegedly produced by the Honorable Judge James, as represented, can be properly authenticated.

Objection B: Clearly erroneous and contrary to law. While the assertion here is made that "the Court" has reviewed the papers submitted by both parties," the alleged "Court" strangely declines to execute its obligation to evaluate and address such. Since its impact can be drastic, summary judgment under rule 56 must be used with the highest regard *for its **purpose*** and should be cautiously applied so that no person will be improperly deprived of their right to trial of disputed factual issues. (Watson v. Southern R. Co. (1975, DC SC) 420 F Supp 483))

2) "This review has raised other jurisdictional problems with Plaintiffs' lawsuit, which, as discussed below, lead the Court to dismiss this action.". Doc. 137; Page 2, Lines 7 – 9

Objection: Clearly erroneous and contrary to law. The record for this action establishes that Judge James duly exercised the latitude she is afforded as a Magistrate and made a conscious decision to accommodate Plaintiffs' as pro se litigants to the end of liberally construing their pleadings and standing to allege Civil RICO claims. When Plaintiffs explicitly alleged bank fraud further into the proceedings and expressed a need to obtain substantiating evidence of such by way of a court order demanding production of records from Chase and Wells Fargo, Judge James granted the request and ordered the drafting of an Order for such.

There is no right of private action for the bank fraud statute, of and in itself (U.S.C. Title 18, section 1344). However, the basis for civil action exists pursuant to U.S.C. Title 18, section 1962. That Judge James liberally construed the pleadings of Plaintiffs, who appear pro se, to the end of viewing the

factual allegations in their complaint in the light most favorable to them, effectively granting them standing pursuant to an acknowledgement of the provisions of U.S.C. Title 18, section 1962, is evident by the court's acceptance of their SAC and generally by the overall record for this action to date. *Papasan v. Allain*, 478 U.S. 265, 283 (1986) Having established that precedent for the duration of this case, why would Judge James arbitrarily alter her position and in the midst of summary judgment, where deference is generally given to the nonmovant, and thereafter leave Plaintiffs no recourse? Plaintiffs simply do not believe that Judge James would do that.

If Judge James now *genuinely* and *actually* desires the complaint to expressly state U.S.C. Title 18, section 1962 therein then that can be easily accomplished by and through amending the complaint pursuant to the just provisions of FRCP 15(a)(2), which would permit Plaintiffs their day in court in recognition of their right to trial and due process.

3) "Plaintiffs' alleged claims also do not invoke any federal questions." Doc. 137; Page 3, Line 12

Objection: Clearly erroneous and contrary to law. Plaintiffs have alleged mail, wire and bank fraud, which all invoke federal questions and inherently address any and all concerns regarding jurisdiction and venue. (18 U.S.C. § 1962; 18 U.S.C. § 1965)

4) "Although Plaintiffs' pleadings are liberally construed because they are representing themselves, it is difficult for this court to find that Plaintiffs have alleged a valid civil RICO claim based on this single reference." Doc. 137; Page 4, Lines 8 – 10

Objection: Clearly erroneous and contrary to law. See objection for **Point 2** above: page 4, Lines 19 – 27 and page 5, Lines 1 – 11.

5) "Plaintiffs cannot meet this RICO standing requirement because they are not alleging their business or property was harmed." Doc. 137; Page 5, Lines 2 – 3

Objection: Clearly erroneous and contrary to law. USC Title 18 section 1343 establishes that wire fraud involves "a scheme or artifice to defraud, or to obtain money or property by means of false or fraudulent representations." Consequently, a scheme that wrongs one in his property rights can involve either the acquisition of something of value by trick, deceit, chicane or overreaching or the *deprivation* of such. (*McNally v. United States,* 483 U.S. 350, 358 (1987) (quoting *Hammerschmidt v. United States,* 265 U.S. 182, 188 (1924)))

The term and concept of "fraud" is broader under the mail and wire fraud statutes than it is under

common law and so is not bound by the technical constraints of common law fraud, which is the direct result of congressional intent as expressed by the Civil Rico statute and the accompanying body of case law. (*Lavery v. Kearns*, D.Me.1992, 792 F.Supp. 847; *U.S. v. Tackett*, C.A.8 (Mo.) 1981, 646 F.2d 1240). In *U.S. v. Condolon* (C.A.4 (Va.) 1979, 600 F.2d 7), Defendant's operation of a bogus talent agency which he established to meet and seduce young women was held to be a "scheme to defraud" within the meaning of these sections (18 U.S.C. § 1341, 1343) (Also see *United States v. Diwan* (1989, CA11 Fla)). Consequently, the term "defrauded" within the meaning employed by the mail wire fraud statutes is broad and extensive.

Within the body of documentation included within their **Opposition to Defendants' Motion for Summary Judgment (Doc. 129)**, Plaintiffs generally establish several points of injury. These include intentional misrepresentation of the financial condition of the corporation for the purpose of inducing donations. In relying on Defendant Brede's report, corporation members felt compelled to intensify their efforts to donate money for the remodeling project and did so pursuant to Defendant Brede's material misrepresentation. That is a direct and tangible harm.

Defendant Brede et al. arbitrarily misappropriated donated corporate funds to pay some of ***their*** legal expenses for this very federal action which constitutes inurement, especially since the Menlo Park Corporation is not being sued in this action.

Assuming operational control of the corporation and its assets including real property currently valued at 2.3 million dollars with a view to liquidating such is a clear object of the scheme as described. Defendant Koehler spoke extensively about this very idea to Plaintiffs upon his arrival in 2008. In executing the takeover attempt of the corporation, Defendant Brede et al. added express verbiage to their fraudulent by-laws authorizing them to sell the property then Defendant Brede and Contreras recorded a new deed thereafter adding their names to such. The scheme or artifice to defraud need not succeed to be indictable. Rather, it is the scheme itself and manifest intent that is indictable. (*Rowe v. Boyle* (1920, CA9 Wash))

In opening an account at Chase Bank on July 9, 2010, on behalf of the Menlo Park Corporation, Ernest Brede et al. committed an act of business identity theft. Pursuant to this it is believed that they have initiated recurring unlawful transactions in this account and others, in the name of the Menlo Park Corporation that can best be described as money laundering and bank fraud (offenses actionable under

Civil RICO - 18 U.S.C. § 1962).

The Menlo Park Corporation is a legitimate endeavor legal entity that these intruders have insidiously converted into a vehicle for criminal activity, per the allegations (which have expanded pursuant to the acquisition of further evidence during discovery). **Obviously that constitutes harm to the corporation**. The Plaintiffs and actual directors of the Menlo Park Corporation do not want the corporation to be used for such purposes as this runs contrary to their bible-based beliefs and convictions which require them to be law abiding citizens. The fact that the corporation has been and is being presently used for such purposes, per the allegations, damages the goodwill and reputation of the corporation which more than satisfies the CIVIL RICO requirements. (See United States v. Joyce (1974, CA7 Ill) – Company's testimony that it "lost a great deal else in the way of reputation" was properly admissible)) Furthermore, such criminal activity endangers the corporations' tax-exempt status and very existence. At the highest level, such activity violates the very values and ideals that Plaintiffs and their fellow members endeavor to live by making it a true violation.

It is generally known that a person's name, their reputation and goodwill is included within California's definition of "personal property." The Plaintiffs and others have suffered damages to such pursuant to acts of defamation by the Defendants. This too would satisfy the damage to business or property requirement for CIVIL RICO as well as the scheme or artifice to defraud element of the mail and wire fraud statutes.

Plaintiffs are happy to amend the complaint as the Court pleases to address any concerns with the prayer for relief if given the opportunity to do so. In fact, Plaintiffs had already intended to submit a motion for leave to amend the complaint to address this very issue prior to the current recommended disposition, allegedly from Judge James, as represented as they have grown weary of the recurring references to this point of technicality in Defendants' obvious effort to misdirect attention away from the clearly established merit of Plaintiffs' concerns and claims, efforts that, to date, had consistently failed to move Judge James.

6) "With the dismissal of any possible RICO allegations, Plaintiffs' only basis for invoking federal jurisdiction no longer exists,..." Doc. 137; Page 6, Lines 1 – 2

Objection: Clearly erroneous and contrary to law. Plaintiffs have alleged mail, wire and bank fraud, which all invoke federal questions and inherently address any and all concerns regarding

jurisdiction and venue. (18 U.S.C. § 1962; 18 U.S.C. § 1965) Plaintiffs' allegations and standing for such were accepted by the Court over 12 months ago. Plaintiffs are happy to make any amendments that the actual Court deems necessary to cure any deficiencies therein to the end of them having their day in court pursuant to their right to due process. (FRCP 15(a)(2); 14th Amendment)

7) "In declining to exercise to exercise supplemental jurisdiction, the Court considers that Jonathan Cobb's son currently has a state court action pending...based on the same set of operative facts." Doc. 137; Page 6, Lines 9 – 13

Objection: Clearly erroneous and contrary to law. Pursuant to the provisions of California Corporations Code section 5617(c), Jonathan Cobb's son, Jason Cobb, filed a state action on September 2, 2011 seeking a hearing **solely** to determine the validity of the appointments of Ernest Brede, Luis Contreras and Larry Laverdure as officers of the Menlo Park Congregation of Jehovah's Witnesses, Inc. as performed on December 16, 2010. That is the sole claim for that action. So, while this state action (CIV 508137) and this federal action are related in *some* respects, they are *not* identical nor are they interdependent. Unlike that State case, this federal action is intended to address criminal matters involving *racketeering*. This federal action will not and is not intended to directly address and resolve the status of the corporate directors for the Menlo Park corporation as that particular task has been expressly reserved for regulation at the state level, thus the state action.

8) "For the foregoing reasons, Plaintiffs' lawsuit is DISMISSED." Doc. 137; Page 6, Line 17

Objection: Clearly erroneous and contrary to law. Plaintiffs struggle to see any basis to dismiss this action in view of the reasons cited above and below as supported by clearly stated points of law.

9) "The Court does not address the remaining arguments in Defendants' Motion nor their objections to Plaintiffs' supporting evidence because these issues are not material to the Courts' ruling." Doc. 137; Page 6, Lines 17 – 19

Objection: Clearly erroneous and contrary to law. The express purpose of summary judgment pursuant to FRCP 56 is:

"to pierce boilerplate of pleadings and assay parties' proof in order to determine whether trial is actually required." – *Atwood V. Vilsak* (2004, SD Iowa) 338 F Supp 2d 985

to test "in advance of trial, not just bare contentions found in legal verbiage of pleadings, but whether there is in actuality any real basis for relief or defense." – Swettlen v. Wagoner Gas 7 oil, Inc. (1974, WD Pa) 369 F Supp 893

Plaintiffs strongly feel that the entire point and purpose of summary judgment pursuant to rule 56 has not been served in this instance and this appears to be a conscious and targeted effort. Plaintiffs have not been extended *any* "presumptions" in their favor as called for by rule and practice. To the contrary, if allowed to stand, Plaintiffs have been systematically deprived of their fundamental right to trial and despite having clearly defeated Defendants' motion. (*Johnson Foils, Inc. v Huyck Corp.* (1973, ND NY))

10) "Plaintiffs' request, outlined in the Declaration of Jonathan Cobb (Dkt. No. 130), to complete its discovery is DENIED…" Doc. 137; Page 6, Lines 19 – 21

Objection: Clearly erroneous and contrary to law. FRCP 56(d) establishes the basis of Plaintiffs' request made by affidavit, which takes on added significance as the stated reasons requiring the acquisition of these records was also clearly stated within the body of documentation submitted in opposition to Defendants' Motion for summary judgment as well as previously during several case status hearings which led to the court ordering the drafting of an order to obtain said records pursuant to allegations o bank fraud.

While Plaintiffs' realize that the decision to grant a request pursuant to Rule 56(d) is at the Court's discretion, case law states that such a motion should be granted almost as a matter of course unless the information is otherwise available to the requesting party. (*Rusek v. Unisys Corp.*, D.N.J.1996, 921 F.Supp. 1277.Federal Civil Procedure)