

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

WILLIAM ROBERTS WILSON, JR., and
ROBERTS WILSON, JR., P.C., successor
to WM. ROBERTS WILSON, JR., P.A.

PLAINTIFFS

NO. 3:09-CV-006-NBB-SAA

v.

STEVEN A. PATTERSON

DEFENDANT

DEFENDANT STEVEN A. PATTERSON'S MOTION TO DISMISS

COMES NOW Defendant Steven A. Patterson (hereinafter, "Mr. Patterson") in the above styled and numbered cause, by and through his attorneys of record, Hiram C. Eastland, Jr. and Mike Greer, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and respectfully submits this his Motion to Dismiss any and all claims asserted against him because Plaintiff has failed to state a legally cognizable claim or cause of action against Mr. Patterson upon which relief can be granted. In support of this motion, Mr. Patterson states as follows:

I.

Plaintiffs have failed to state a claim upon which relief can be granted.

II.

Plaintiffs allege a claim for common law fraud. In order to state a claim for fraud, a plaintiff must plead the alleged fraud with particularity. State Industries v. Hodges, 919 So. 2d 943, 946 (Miss. 2006); Stephens v. Equitable Life Assurance Society, 850 So. 2d

78 (Miss. 2003). Furthermore, a plaintiff must sufficiently plead the requisite elements of fraud: (1) the falsity of a representation to the plaintiff by the defendant, and (2) the right of the plaintiff to rely on the representation of the defendant. The Plaintiffs have failed to meet these pleading requirements.

III.

Plaintiffs' claims for fraud, although mischaracterized in the Amended Complaint as misrepresentations, are actually plead as omissions. For fraud based upon an omission, the defendant must owe a fiduciary duty to the plaintiff. Taylor v. Southern Farm Bureau Cas. Co., 954 So.2d 1045, 1049 (Miss. App. 2007). Mr. Patterson did not owe any fiduciary duty to Plaintiffs.

IV.

Plaintiffs allege that Mr. Patterson conspired with others to commit common law fraud. In order to show a conspiracy, a plaintiff must allege an agreement by co-conspirators to enter into the conspiracy. Plaintiffs did not specifically allege any conspiratorial agreement between Mr. Patterson and others and thus fails to meet the pleading requirement of a conspiracy. Similarly, allegations of legal conclusions merely labeling Mr. Patterson as being engaged in a conspiracy to defraud Plaintiffs do not constitute sufficient factual pleadings of fraud.

V.

Plaintiffs alleges RICO violations of 18 USC § 1962(c) against Defendant Scruggs, and Plaintiffs are apparently attempting to allege RICO conspiracy violations of

18 U.S.C. § 1962(d) against Mr. Patterson and other Defendants by alleging they conspired to violate RICO § 1962(c). Plaintiffs, however, do not specifically allege a statutory 18 U.S.C. § 1962(d) RICO conspiracy claim.

VI.

In order to state a claim under RICO, a plaintiff must allege the existence of a valid enterprise. Abraham v. Singh, 480 F.3d 351, 355 (5th Cir. 2007). Further, the defendant cannot be the enterprise alleged under a § 1962(c) RICO action. Id. at 357. Plaintiff alleges the enterprise to be SMBD, a defendant corporation, and thus fails to meet this pleading requirement.

VII.

In order to state a RICO claim based upon underlying RICO predicate acts of mail and wire fraud, a plaintiff must allege plead the alleged fraud with particularity under F.R.C.P 9(b). Williams v. WMX Technologies, Inc., 112 F.3d 175, 177-78 (5th Cir. 1997); Tel-Phonic Services, Inc., 975 F.2d 1134, 1138 (5th Cir. 1992). Plaintiff fails to plead several of the mail and wire fraud predicates with sufficient particularity.

VIII.

Additionally, to state a valid RICO claim, the Plaintiff must also plead a pattern of racketeering demonstrating sufficient continuity. In re Burzynski, 989 F.2d 733, 742 (5th Cir. 1993). Plaintiff has failed to meet this pleading requirement.

IX.

Under 18 U.S.C. § 1964(c), a plaintiff must also plead and prove that the defendant's actions were the proximate cause of his injuries. Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 268 (1992). The plaintiff is required to allege more than mere labels and conclusions. Norris v. Hearst Trust, 500 F.3d 454, 464 (5th Cir. 2007). Plaintiffs have failed to meet this pleading requirement.

X.

Plaintiff's § 1962(d) conspiracy claims must be dismissed as the substantive RICO claim plead against the other defendants is deficient. Nolan v. Nucentrix Broadband Networks, Inc., 293 F.3d 926, 930 (5th Cir. 2002). Further, such a 1962(d) conspiracy claim in any event fails because Plaintiffs did not sufficiently plead factual allegations that Mr. Patterson entered into an agreement to violate RICO. See, Tel-Phonic Services, Inc., at 1140-41. Conclusory allegations that defendants "conspired" will not suffice. Guichard v. State Farm Fire & Casualty Co., 1995 WL 702510, * 2 (E.D. La. 1995).

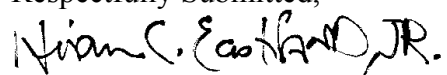
XI.

Plaintiff's claims for deprivation of Due Process must be dismissed as the allegations do not qualify as state action. See Holloway v. Walker, 784 F.2d 1287 (5th Cir. 1986); Parratt v. Taylor. 451 U.S. 527, 541, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981). Due Process does not apply to acts of private parties.

WHEREFORE, for the foregoing reasons and the reasons set forth in the accompanying memorandum in support, incorporated herein by reference, Mr. Patterson respectfully requests this Court to grant his motion to dismiss all of Plaintiffs' claims.

This the 21st day of August, 2009.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, HIRAM C. EASTLAND, JR, attorney for Defendant Patterson, do certify that I have electronically filed the foregoing document with the Clerk of the Court using the ECF system, who forwarded a copy of same to the following:

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and I certify that I have mailed the document by United States Mail, postage fully prepaid, to the following non-ECF participants:

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THIS, the 21st day of August, 2009.



Hiram C. Eastland, Jr.