

22ND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY

STATE OF LOUISIANA

NO. 2012 10436

DIVISION "J"

SALVADOR J. LIBERTO, JR., WILLIAM M. MAGEE,
AND JAMES G. COATE, JR.

VERSUS

LLOYD RAYMOND MARTIN, III, NICOLE EASTERWOOD MARTIN,
CAROL ROBINSON, JOHN GEORGE LAMPO, ANDREA SMITH LAMPO, DANIEL
G. ABEL, MARTIN E. REGAN, JR., KENNETH A. KULIK,
AND CRAIG HENRY STEWART, ET AL

FILED: January 24, 2012

Conrad Henner
DEPUTY CLERK

PETITION FOR DAMAGES FOR DEFAMATION
MALICIOUS PROSECUTION, ABUSE OF PROCESS, AND INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS

The petition of Salvador J. Liberto, Jr., William M. Magee and James G. Coate, Jr. all persons of the full age of majority and residents of the Parish of St. Tammany, respectfully represents the following:

I.

Made defendants herein are the following:

- (1) Lloyd Raymond Martin, III and Nicole Easterwood Martin, husband and wife, both persons of the full age of majority and residents of the Parish of St. Tammany, hereinafter "the Martins";
- (2) Kenneth A. Kulik, a person of the full age of majority and doing business in the Parish of St. Tammany, hereinafter "Kulik";
- (3) Andrea Smith Lampo, and John George Lampo husband and wife, both persons of the full age of majority and residents of the Parish of St. Tammany, hereinafter "the Lampos";
- (4) Carol Robinson, a person of the full age of majority and resident of the Parish of St. Tammany, hereinafter "Robinson";

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- (5) Daniel G. Abel, a person of the full age of majority and resident of the Parish of Jefferson, hereinafter "Abel";
- (6) Martin E. Regan, a person of the full age of majority and resident of the Parish of Orleans, hereinafter "Regan";
- (7) Craig Henry Stewart, a person of the full age of majority and a resident of the Parish of Terrebonne, hereinafter "Stewart";
- (8) All insurers of the named and un-named defendants, whose identities are yet unknown, co-conspirators, subcontractors, and others who had any participation in the defamatory scheme concocted by the named defendants and alleged in detail hereinafter, whose exact identity is unknown at present but who will be formally named as defendants when their identities are discovered.

II.

All defendants have, either individually or through other defendants or in a representative capacity, made defamatory per se statements regarding plaintiffs and others, and have either recklessly and maliciously or vicariously communicated and published these defamatory statements to each other and to third parties, which defamatory statements were known to be false and were made either negligently or with malicious intent, and which communications have harmed the reputation of the plaintiffs and caused each to suffer damages in excess of \$50,000.00. It is known that Abel and Stewart and perhaps some of the other defendants continue to publish defamatory and defamatory per se statements and, if so, each should be permanently enjoined from doing so and ordered to formally and effectively retract all defamatory per se statements and other defamatory statements that have been published thus far.

III.

On or about July 31, 2007, the defendants, the Martins, purchased a home in Abita Springs, LA located on lot 11-A, Square 64, of the Bossier City Addition to the Town of Abita Springs. They obtained title insurance covering the title to the property from Fidelity National Title Insurance at the time of their purchase. Subsequently, they attempted to sell the property in December, 2008, but were advised by the purchaser's title examiner that there was an alleged

defect in the title, an opinion that is not supported in fact or in law. The Martins made a claim under their title policy with Fidelity Title shortly thereafter.

IV.

On June 29, 2009, the Martins filed suit in federal court through their attorney, Richard Richardson, against Fidelity National Title Insurance Company alleging breach of contract and for penalties and attorney's fees. Plaintiff in this proceeding, William M. Magee (hereinafter "Magee") merely appeared in the chain of title to the Martin property as did an entity owned by plaintiff in this proceeding, James G. Coate, Jr., but neither were named as defendants in the federal litigation by the Martins.

V.

At some time during the pendency of the federal litigation, the Martin's attorney, Richard Richardson, brought in defendant, Daniel G. Abel, as co-counsel to assist in handling the case. As the title insurance claim case progressed, it became apparent to the attorney in the title insurance claim, Richardson, that Abel was intent on pursuing a course of conduct that he did not agree with, did not support, and did not want to be a part of. Abel, it seems, for reasons that are yet unknown to plaintiffs, went on a crusade to "mine" the land records of St. Tammany Parish, in an effort to create a claim that he could convince his clients, the Martins, and other defendants herein to pursue against Liberto, Magee and Coate, as well as others. The assumed purpose of pursuing such a claim was that it could potentially yield untold riches to both Abel, the other attorneys, and their clients, while defaming and causing damages to the plaintiffs herein, and others who were to be caught up in this scheme believed to be concocted by Abel.

VI.

After months of research, by Abel, defendant, "Kulik", private investigators and others working in concert with Abel, Abel was able to convince the Martins and Carol Robinson, and ultimately the Lampos, that he had a case for them to pursue against the named plaintiffs in this proceeding and others, including four attorneys, a deceased person, a sitting judge, eight civilians, and seven corporations.

VII.

On August 19, 2010, the Martins and Carol Robinson, through Abel and Regan as their attorneys, filed a civil RICO suit in federal court against twenty named defendants and six unnamed defendants. The suit was 96 pages in length and contained 340 paragraphs detailing alleged, but without any factual basis, acts of criminal activity, including, but not limited to a RICO violation, fraud, mail fraud, and wire fraud, among other claims, allegedly engaged in by the named defendants in that suit. At the time of the filing of this suit, the Martins and Carol Robinson, along with their attorneys, Abel and Regan, knew or should have known that their allegations against the named defendants were baseless, inadequate to sustain a RICO cause of action against the named defendants, defamatory in fact, and defamatory per se and constituted malicious prosecution, intentional infliction of emotional distress, and were the beginning of lengthy and costly litigation constituting an abuse of process.

VIII.

In furtherance of their desire to defame the plaintiffs herein, the Martins, appeared on a news program out of New Orleans, LA promoting their RICO lawsuit and made defamatory per se statements about "Magee", "Liberto", and others, falsely accusing him of criminal activity which statements were maliciously disseminated to the public over the airways and the internet and that have caused damages to Magee's reputation and damages in having to defend the baseless RICO suit and other suits filed by the Martins, Carol Robinson, and the Lampos, which damages exceed \$50,000.00. It is believed that the Martins, Carol Robinson, and the Lampos were led to make these defamatory statements on advice of, and with the assistance of, their attorneys, defendants herein, Abel and Regan, and ultimately, Stewart. It is known that Abel had, in the past, represented a reporter for the television station on which the defamatory statements were aired. The substance of the news program conveyed an element of personal disgrace, dishonesty, or disrepute and by its very nature injured plaintiff Magee's personal and professional reputation causing loss of clientele, questioning by current clientele, questioning by co-workers and individuals within the legal profession and lowered plaintiff Magee's reputation in the estimation of the community and deterred others from associating with him. The timing of the airing of this news broadcast, on

the eve of a hearing in the federal litigation, prompted the district court judge to inquire as to who was responsible for such.

IX.

Before and after August of 2010, defendant Kulik, as a subcontractor of Abel, the Martins and Robinson, made defamatory per se statements in public and to third parties which accused plaintiff "Magee" of criminal activity, and further made defamatory comments about "Liberto" which Kulik knew or should have known were false and were made either negligently or in conspiracy with Abel and the other defendants with a malicious intent to harm the reputation of plaintiff, "Magee" and "Liberto", intentionally harm the plaintiff "Magee" and "Liberto" emotionally and which have caused "Magee" and "Liberto" to suffer damages in excess of \$50,000.00.

X.

In the month of September, 2010, the Martins and Carol Robinson, allegedly upon the advice and counsel of Abel, filed two additional suits against Magee and Coate, plaintiffs herein, in the Parish of St. Tammany, again falsely alleging fraudulent and criminal activity on the part of Magee and Coate. The Martins and Carol Robinson, along with their attorney, Abel, knew or should have known that these allegations were baseless and inadequate to sustain the claims made therein, were defamatory in fact and defamatory per se and were made either negligently or by design to cause harm to the reputations of Magee and Coate, and to cause emotional harm to Magee and Coate. These two suits were dismissed by the court on July 12, 2011.

XI.

During the pendency of the RICO litigation in federal court, the Lampos joined in the defamatory scheme concocted by Abel and others and had themselves included in a petition to be added as plaintiffs in the pending RICO litigation. In doing so, they adopted all and singular the defamatory in fact, defamatory per se, and false allegations previously made by Abel, Regan, the Martins, and Carol Robinson as alleged in paragraph V. herein. It is unknown how the Lampos were made aware of the pending litigation, but is believed that their involvement in the litigation was upon the advice and counsel of Abel.

XII.

During the pendency of the RICO litigation in April 2011, Abel, individually and as representative of the RICO plaintiffs, disseminated a written publication containing false and defamatory per se statements against "Magee" in the form of a mail out to banks, lenders and title companies in Louisiana apparently attempting to solicit additional plaintiffs to join in Abel's scheme to defame Magee and the other plaintiffs herein as well as the other defendants in the RICO litigation. It is believed that this action involved solicitation and fomenting litigation by Abel and is believed to be violative of the rules of professional conduct applicable to attorneys in Louisiana. It is alleged that the Martins, Carol Robinson, and the Lampos participated in and approved of this action by their attorney, Abel, as the new solicited members would be additional plaintiffs with them in the pending litigation.

XIII.

At all times pertinent to the pending RICO litigation, the Martins, Robinson, and the Lampos, and Abel and other counsel, knew that the titles to the properties that formed the subject of the RICO suit had all been approved multiple times by multiple title companies as being valid and that the procedure followed by the RICO defendants was legal. In spite of this knowledge, they continued on with their defamatory scheme.

XIV.

On or about June 10, 2011, the federal court dismissed the federal RICO claims of the Martins, Carol Robinson and the Lampos and in its ruling of dismissal, granted Abel's request for time to amend the petition in an attempt to state a cause of action. However the court cautioned the plaintiffs and Abel that they should be careful to read the opinion of dismissal when considering filing an amended complaint since the facts admitted to in the pleadings and in open court by Abel made it difficult, if not impossible, to state a claim that would survive dismissal.

XV.

Not to be deterred in his scheme to defame the RICO defendants, Abel, individually and as representative for the plaintiffs therein, filed another amending complaint, continuing to use the false and defamatory in fact and defamatory per se allegations he had used in his earlier pleadings. On or about October 16, 2011, Craig Henry Stewart enrolled in the RICO litigation as co-counsel

with Abel, thereby adopting all of the false and defamatory statements previously made by the plaintiffs and counsel in the RICO litigation and additionally made his own false and defamatory statements against the plaintiffs herein in filings made subsequent to dismissal of the RICO litigation. This second attempt to revive their defective and fatal RICO pleadings was dismissed on November 4, 2011.

XVI.

On or about November 2, 2011 the plaintiffs in the RICO litigation filed a motion to dismiss Timothy K. Dunaway as a defendant in the RICO case, confirming that the plaintiffs had never had any claim against him but yet kept him in the suit as a defendant for over a year. Also, on December 12, 2011, the plaintiffs in the RICO litigation filed a motion to dismiss Phillip M. Lynch as a defendant in the RICO case, again confirming that they never had any proof for the allegations against him in the RICO case, yet kept him in the suit for over a year.

XVII.

To illustrate his motive and relentless drive to further defame the plaintiffs herein, to cause emotional distress to plaintiffs, to maliciously prosecute, and partake in abuse of process, Abel has made additional defamatory allegations against Magee in other unrelated litigation in Jefferson Parish by stating that Magee had committed fraud and was under criminal investigation by various state and federal authorities, all the while knowing that such statements were false and made in an effort to sway the court and other counsel in their opinion of Magee. Efforts by Magee to obtain the proof necessary to support these defamatory allegations from Abel have been met with refusals to produce any such evidence by Abel.

XVIII.

Throughout all of the listed litigation, Abel has consistently abused the process of the courts and maliciously prosecuted the claims against the plaintiffs herein by filing pleadings which were procedurally incorrect and contained false allegations that had no chance of success and failed in his obligation to his clients to alert them that they had no RICO claim against the named defendants in the first place, negligently exposing his clients to the claims made in this lawsuit. He consistently has made false statements to the courts in his oral arguments before the court, all in an effort to

defame, cause reputational harm, damage financially, and damage emotionally, primarily Magee, but the other plaintiffs as well.

XIX.

At all times pertinent hereto, the defendants, Martins, Robinson, and Lampos were represented by defendants, Abel, Regan and Stewart. As such, all defamatory allegations made by Abel, Regan and Stewart were done in both their personal capacity and as representatives of the defendants Martins, Robinson, and Lampos, either with their full knowledge and approval or in a manner that resulted from reliance on legal advice given to the Martins, Robinson, and Lampos, by Abel, Regan and Stewart.

XX.

Abel and Regan filed the first separate defamatory suit (RICO) in late August 2010, which was ultimately dismissed in June 2011 and then again in November 2011. The two state court suits were filed in September 2010 and then dismissed in July 2011. The Channel 4 news story was broadcast in August 2010. The defamatory mailout by Abel was in April 2011.

XXI.

It is suggested and therefore believed that the Martins, Robinson, and the Lampos were enticed by Abel with the lure of treble damages and attorney's fees recoverable under a RICO claim when they agreed to pursue the civil RICO claim. The courts have recognized the potential for frivolous suits in search of these enhanced damages and have imposed a greater responsibility on attorneys handling and filing these suits to inquire into the factual and legal bases of potential claims and defenses prior to bringing such suits or risk sanctions for failing to do so. Plaintiffs are required to stop and think before filing these suits. Justice Thurgood Marshall has recognized that the availability of civil RICO litigation has been used for extortive purposes, giving rise to the very evils it was designed to combat. As such, it is alleged that had the RICO litigation plaintiffs and their counsel performed the due diligence required of them prior to filing the frivolous suit, they would have known that there was no claim available to them as the federal court has so held. They must now be held responsible for all the damages they have caused these plaintiffs for failing to do so.

XXII.

Each of the plaintiffs in this case has had to endure the mental anguish, distress and anxiety that has followed from the filing of these various lawsuits by the defendants in this suit and the defamatory statements contained therein. Each has had to suffer financial loss resulting from the filing of these clearly frivolous lawsuits, which is a violation of LSA-art. 863 for which each defendant should be held liable for the damages, attorney's fees and costs and other sanctions that might be imposed. The lingering effect of the false and defamatory allegations continues to this day. The defendants should be required to pay all the provable damages incurred by each plaintiff as well as having a permanent injunction issued to prevent future communication of false and defamatory statements against these plaintiffs and further a mandatory injunction ordering the defendants to formally and effectively retract all publications of the false and defamatory statements in a manner that insures the damages will cease being incurred by these plaintiffs.

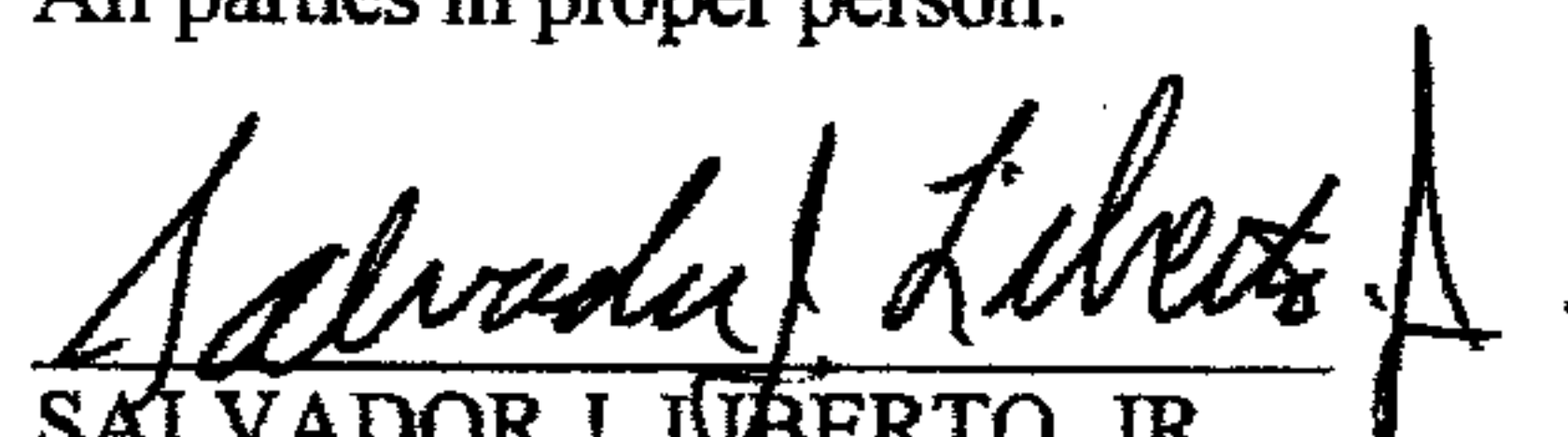
WHEREFORE, Petitioners pray that the Defendants, Daniel G. Abel, Lloyd Raymond Martin, III, Nicole Easterwood Martin, Carol Robinson, Andrea Smith Lampo, John George Lampo, Martin E. Regan, Jr., and Craig Henry Stewart be served with a copy of these pleadings and that they be required to answer same within the due delays provided by law and after due proceedings had, there be judgment in favor of Petitioners, Salvador J. Liberto, Jr., William M. Magee, and James G. Coate, Jr. and against Defendants, Daniel G. Abel, Lloyd Raymond Martin, III, Nicole Easterwood Martin, Carol Robinson, Andrea Smith Lampo, John George Lampo, Martin E. Regan, Jr., and Craig Henry Stewart, as well as all others acting in concert with them in an amount which is more than \$50,000.00, together with legal interest thereon from date of judicial demand until paid and for all costs of these proceedings, that all named defendants, excluding insurers, should further be ordered by permanent mandatory injunction ordering them to cease further publication or dissemination of the false and defamatory statements made about plaintiffs and to formally and effectively retract all publications of the false and defamatory statements in a manner that insures the damages will cease being incurred by these plaintiffs.


AND, further, Petitioners, William M. Magee and Salvador J. Liberto, Jr., further pray that the Defendant, Kenneth A. Kulik, be served with a copy of these pleadings and that he be required to answer same within the due delays provided by law and after due proceedings had, there be


judgment in favor of Petitioners, William M. Magee and Salvador J. Liberto, Jr., against Defendant, Kenneth A. Kulik in an amount which is more than \$50,000.00, together with legal interest thereon from date of judicial demand until paid and for all costs of these proceedings, that he should further be ordered by permanent injunction ordering the defendant to cease communicating the false and defamatory statements made against "Magee" and "Liberto" and to formally and effectively retract all publications of the false and defamatory statements in a manner that insures the damages will cease being incurred by these plaintiffs.

Respectfully submitted,

All parties in proper person:


SALVADOR J. LIBERTO, JR.
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PLEASE SERVE: Original petition and attached discovery on:

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71300 St. Mary Street
Abita Springs, LA 70420

Nicole Easterwood Martin
71300 St. Mary Street
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Carol Robinson
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Abita Springs, Louisiana 70420

Andrea Smith Lampo
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Kenneth A. Kulik
Hold for Service Instructions

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