

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE,

CASE NO.: 08-CIV- 80893 – MARRA/JOHNSON

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendants.

Defendant, Jeffrey Epstein's Reply to Plaintiff's Response In Opposition to Defendant's Motion To Dismiss, For More Definite Statement & To Strike Directed To Plaintiff Jane Doe's Amended Complaint, With Incorporated Memorandum Of Law

Defendant, Jeffery Epstein, by and through his undersigned counsel, hereby files his Reply to Plaintiff's Response In Opposition to Defendant's Motion To Dismiss, For More Definite Statement & To Strike Directed To Plaintiff Jane Doe's Amended Complaint, With Incorporated Memorandum of Law. In support of his motion, Defendant states:

I. Introduction

a. The Amended Complaint, The Motion to Dismiss and Plaintiff's Response In Opposition

The Amended Complaint attempts to allege four counts, entitled Count I – "*Sexual Battery Upon a Minor*," Count II – "*Cause of Action Pursuant to 18 USC §2255*," Count III – "*Intentional Infliction of Emotional Distress*," Count IV – "*Civil Remedy for Criminal Practices*" and Count VI – "*Cause of Action Pursuant to Florida Statute 796.09 Against Defendant, Jeffrey Epstein*." Defendant seeks dismissal of Counts II and IV of the Amended Complaint or, alternatively, a motion for more definite statement as requested.

Plaintiff filed her Response in Opposition to the Motion to Dismiss. As to Count II, Plaintiff conceded in her opposition motion that Epstein correctly argued that punitive damages

are not recoverable under 18 U.S.C. §2255. Therefore Plaintiff “agreed to strike her claim for punitive damages under Count II only.” See Response In Opposition, p.3. As such, any court order should reflect Plaintiff’s concession.

As to the remaining arguments concerning 18 U.S.C. §2255 in Section III of Epstein’s Motion to Dismiss the Amended Complaint, Epstein chooses to stand on same and incorporates those arguments herein. Plaintiff continues to fail to plead any factual allegations whatsoever pertaining to violations of the specified “predicate acts,” and fails to provide any reliable basis in her opposition motion not to grant the motion to dismiss or provide a more definite statement. See the Amended Complaint, which only tracks portions of the applicable statutory text and Epstein Motion to Dismiss. Moreover, Plaintiff has not cited one case to refute the arguments set forth in Epstein’s Motion to Dismiss. This is telling, and reason enough to grant dismissal as to Count II.

Likewise, Epstein stands on his arguments set forth in the following section of the Motion to Dismiss - IV.(b), IV.(b)(i), IV.(c)(d)(e), IV.(e)(i), IV.(e)(ii), V. and VI. As such, those arguments are incorporated herein by reference. Epstein, however, will Reply to and expound upon Plaintiff’s inartful arguments in her opposition motion addressing Section IV.(a) of Epstein’s Motion to Dismiss the Amended Complaint.

II. Plaintiff Lacks Standing To Bring The FCRCP Claim, Count IV, As She Seeks To Recover Personal Injury Damages

Significantly, Fla. Stat. Chapter 772., the Florida Civil Remedies Criminal Practices Act (hereinafter “FCRCP” or “Florida’s RICO Statute”) is patterned after the Federal Rico Act, 18 U.S.C. 1964(c). Therefore, as set forth in Epstein’s Motion to Dismiss, Florida’s RICO statute must be construed alongside the Federal Rico Act to obtain its true meaning and application. As such, it is without question that Florida looks to Federal authority in construing its own RICO

statute to accomplish the true meaning of the Federal Rico Act and the Florida statute, and each statutes effect, objective and the purpose of the enactment of each statute. The outcome is simple - personal injury damages are not cognizable under FCRCP. To hold otherwise would fly in the face of the several RICO decisions interpreting Florida Rico and its application, and would open the flood gates for every personal injury claim to be transformed into a Rico claim. In line with the cases cited in Epstein's Motion to Dismiss, such a result was clearly not what congress intended, and Plaintiff has not and cannot cite to one state or federal court decision proving otherwise or to any legislative authority contradicting the fact that personal injury damages are not recoverable under Federal or Florida Rico.

Plaintiff, on the other hand, wishes for this court to dismiss the objective and purpose of the Federal Rico statute and FCRCP in her flawed attempt to maintain a Florida Rico claim against Epstein under Fla. Stat. Chapter 772. In particular, Plaintiff wishes for this court to dismiss the significant fact that RICO was NOT enacted to address and provide recovery for personal injury damages, but was enacted to provide recovery to those injured in their business or property. See Section IV.(a) of Epstein's Motion to Dismiss, incorporated herein by reference and 18 U.S.C. 1964(c). In fact, Plaintiff all but concedes that argument by claiming that she has alleged "economic injury" (e.g., loss to business or property), but conveniently forgets the elementary principle that in order for her to recover those "economic damages" she must first be entitled to recover under the personal injury tort for which she has chosen to travel (e.g, Sexual Battery-Count I or Intentional Infliction of Emotional Distress – Count III, each of which are personal injury type claims not recoverable under RICO). See Opposition Motion at pp. 3-4; Stansfield v. Starkey, 269 Cal. Rptr., 337, 348 (Cal. App. 3d 1990)(affirming trial court's ruling – **general damages** (emotional distress, anguish, shock, nervousness, pain and

suffering) are not recoverable under RICO), *citing*, Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1169 (3d Cir. 1987)(congress intended RICO to exclude personal injuries). *Id.* at 348. Plaintiff cannot argue around the application of the statute. In fact, Plaintiff concedes that “[w]ith regard to these parallel provisions, it may make sense in some cases to give persuasive effect to federal decisions.” Opposition Motion at p. 6.

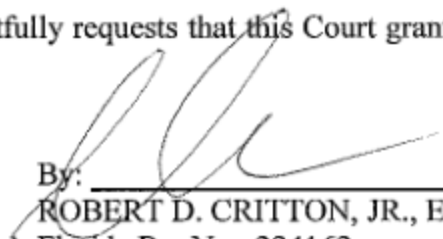
Despite Plaintiff’s concession in her opposition motion, she claims that the Florida Rico statute must be strictly construed without looking to the Federal Application of the Federal Rico statute and various decisions. To support her argument, Plaintiff then claims that Epstein’s Motion to Dismiss only cites 11th Circuit cases for the proposition that Florida’s racketeering statutes must be interpreted using the Federal RICO Act and its cases and their application of RICO. While 11th Circuit cases are certainly enough to support this well reasoned and parallel application and construction of the Federal and Florida Rico statutes, Plaintiff fails to highlight for the court the additional cases cited by Epstein in his Motion to Dismiss. *See e.g., Palmus Y Bambu, S.A. v. E.I. Dupont De Nemours & Company, Inc.*, 881 So.2d 565 (Fla. 3rd DCA 2004)(because of the similarities between the Florida and Federal Rico Acts, Florida looks to Federal authority regarding the interpretation and application of its Acts, *citing* 18 U.S.C. 1961, *et seq.* and Fla. Stat. 772.104); O’Malley v. St. Thomas Univ., Inc., 599 So.2d 999, 1000 (Fla. 3d DCA 1992)(“Since Florida Rico is patterned after Federal RICO. . . . [f]ederal decisions should be accorded great weight,” and further confirming that a Plaintiff only has standing to sue if he/she is injured in their “business or property” (emphasis added)); RLS Business Ventures, Inc. v. Second Chance Wholesale, Inc., 784 So.2d 1194, 1195, n.2 (Fla. 2d DCA 2001)(“Florida courts have held that cases interpreting the Federal Rico Statute, title 18, U.S.C., are persuasive as to the meaning of Florida’s Rico statute. . . .”); Connor v. Halifax Hospital Medical Center,

135 F.Supp.2d, 1198, 1219 (██████, Fla. 2001); and Magnum v. Archdiocese of Philadelphia, 253 Fed.Appx. 224 (3rd Cir. 2007)(underlying wrong of continued childhood sexual abuse brought against the Archdiocese did not allow for recovery under RICO). Moreover, despite Plaintiff's reaching arguments, she fails to cite any supporting case law or legislative authority contradicting the fact that Federal decisions must be applied to give Florida's Rico statute meaning and to achieve its true application and effect. This alone provides reason to dismiss Count IV of the Motion to Dismiss, with prejudice.

Finally, this is not the first time that a state statute is construed along side a Federal statute or act in order to determine the true meaning and application of same. See e.g., Moore v. State, 452 So.2d 559 (Fla. 1984)(Supreme Court construes state rule in accordance with federal court decisions interpreting the federal rule); Harper v. Blockbuster Entertainment, Corp., 139 F.3d 1385, 1387 (11th Cir.1998)(the Florida Civil Rights Act is patterned closely after Title VII, and Court's have construed the state act consistent with the federal statute).

Applying the above law with the cases cited *supra* and in Epstein's Motion to Dismiss, it is clear that Count IV fails legally because Plaintiff seeks, but cannot recover, personal injury damages under any RICO standard, Florida or Federal. Therefore, the Rico Count, Count-IV, must be dismissed with prejudice.

WHEREFORE, Defendant respectfully requests that this Court grant his motion directed to Plaintiff's Amended Complaint.

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Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following service list in the manner specified via transmission of Notices of Electronic Filing generated by CM/ECF on this 28 day of July, 2009:

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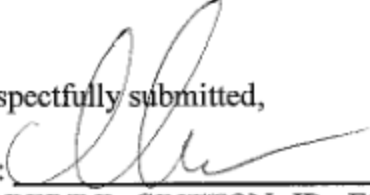
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