

IN THE STATE OF MISSOURI
JACKSON COUNTY SIXTEENTH CIRCUIT COURT
AT INDEPENDENCE

SAMUEL K. LIPARI,)
)
 Plaintiff,)
)
 v.) Case No. 0916-CV38273
) Division 15
 CHAPEL RIDGE MULTIFAMILY LLC,)
 et al.,)
)
 Defendants.)

REPLY OF DEFENDANT TROPPITO & MILLER, LLC
TO PLAINTIFF'S RESPONSE TO ITS MOTION TO DISMISS

COMES NOW, Defendant Troppito & Miller, LLC, and makes this Reply to Plaintiffs Response to its Motion to Dismiss and states as follows:

I. STATEMENT OF FACTS

Named defendants, Chris M. Troppito, Nicholas L. Ackerman and Tony R. Miller have not been served with process in this case and therefore no answer is required of or from them.

Defendant Troppito & Miller, LLC has not, and has no obligation to, respond on behalf of defendants Chapel Ridge Multifamily, LLC, Regis PLC, Regis Management Group, LLC, Lianne Zellmer or Wachovia Dealer Services and Wells Fargo, which defendants are separately represented.

II. SUGGESTIONS IN OPPOSITION TO DISMISSAL

Plaintiff, in his Suggestions in Opposition to Defendant Troppito & Miller's Motion to Dismiss for Failure to State a Cause of Action, restates the same conclusions, not facts, which he asserts as the basis for his claim against the law firm.

There is no factual basis to connect the dots from plaintiffs conclusory allegation that this defendant joined a RICO enterprise aided by General Electric, called the Novation, LLC Cartel, which has as its goal artificially inflating hospital supply costs to skim Medicaid, Medicare and private insurance funds from hospitals and the legal action taken by Troppito & Miller, LLC on behalf of its client Wachovia Dealer Services when the plaintiff failed to make payments on his automobile.

Without identifying any facts, plaintiff blithely accuses Troppito & Miller, LLC with acts of mail fraud and wire fraud which in some contorted way associates them with plaintiffs claim of a RICO association dealing with overcharging of Medicare and Medicaid funds. It is not enough to say that any unfavorable occurrence that befalls the plaintiff subjects all possible parties thereto to claims of engaging in a pattern of racketeering resulting in damages to this plaintiff.

The motion of defendants Troppito & Miller, LLC to dismiss plaintiffs Petition for failure to state a cause of action should be sustained.

III. CONVERSION OF THE MOTION TO DISMISS INTO MOTION FOR SUMMARY JUDGMENT

Although plaintiff seeks to convert this defendant's pending motion into a motion for summary judgment and pleads that this action is compelled because this defendant attached exhibits outside the pleadings in its motion to dismiss. The fact is that the exhibits defendant attached were part of exhibits which plaintiff made a part of his original petition in this case.

Plaintiff's alleged motion for summary judgment fails to follow the dictates of Missouri Supreme Court Rule 74.04 and, for that reason, should be denied.

IV. STATEMENT OF FACTS

Each and every "fact" contained in paragraphs 1 through 11 of plaintiffs Statement of Facts is not a fact but a conclusory statement, and this defendant disputes each and every such statement.

1. Defendant disputes the statements in paragraph 1 which are not statements of uncontroverted material facts, but mere conclusions.

2. Defendant disputes the statements in paragraph 2 which are not statements of uncontroverted material facts, but mere conclusions.

3. Defendant disputes the statements in paragraph 3 which are not statements of uncontroverted material facts, but mere conclusions.

4. Defendant disputes the statements in paragraph 4 which are not statements of uncontroverted material facts, but mere conclusions.

5. Defendant disputes the statements in paragraph 5 which are not statements of uncontroverted material facts, but mere conclusions.

6. Defendant disputes the statements in paragraph 6 which are not statements of uncontroverted material facts, but mere conclusions.

7. Defendant disputes the statements in paragraph 7 which are not statements of uncontroverted material facts, but mere conclusions.

8. Defendant disputes the statements in paragraph 8 which are not statements of uncontroverted material facts, but mere conclusions.

9. Defendant disputes the statements in paragraph 9 which are not statements of uncontroverted material facts, but mere conclusions.

10. Defendant disputes the statements in paragraph 10 which are not statements of uncontroverted material facts, but mere conclusions.

11. Defendant disputes the statements in paragraph 11 which are not statements of uncontroverted material facts, but mere conclusions.

V. SUGGESTIONS IN OPPOSITION TO PLAINTIFF'S
PURPORTED MOTION FOR SUMMARY JUDGMENT

Consistent with the "allegations" of plaintiff's Petition and the ill-conceived Motion for Summary Judgment, plaintiff's Suggestions are replete with abstract statements of law which have no bearing on the issue before the Court, all of which was briefed by co-defendant Swanson Midgley, LLC which this defendant previously adopted and hereby readopts.

Plaintiff's "Motion for Summary Judgment" should be denied.

Respectfully submitted,

DEACY & DEACY, LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of March, 2010, a copy of the foregoing was sent to Plaintiff Samuel K. Lipari by email and also served by U.S. Mail, postage prepaid, and properly addressed to the following:

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