

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	Case No. 0916-CV38273
v.)	Div.IS
)	
CHAPEL RIDGE)	
MULTIFAMILY, LLC <i>et al.</i>)	
)	
Defendants.)	

DEFENDANT CHAPEL RIDGE MULTIFAMILY, LLC'S
MOTION TO DISMISS PLAINTIFF'S PETITION
AND MEMORANDUM IN SUPPORT

Defendant Chapel Ridge Multifamily, LLC ("Chapel Ridge") hereby moves this court to dismiss with prejudice Plaintiffs claims against Chapel Ridge, pursuant to Missouri Rule of Civil Procedure 55.27(a) on the grounds that Plaintiff fails to state a claim upon which relief can be granted against Chapel Ridge. In support of this motion, Chapel Ridge respectfully states the following:

Background

Plaintiff Samuel K. Lipari ("Lipari") has filed a 63 page Petition against Chapel Ridge and a wide variety of other random and unrelated defendants pursuant to The Racketeer Influenced and Corrupt Organizations (RICO) Act. Plaintiff Lipari has alleged that Chapel Ridge and the other defendants have conspired to intentionally frustrate his medical supply business through the commission of alleged mail and wire fraud transactions. These allegations are entirely baseless and are a complete waste of judicial time and resources.

Chapel Ridge is a Missouri limited liability company that owns and operates an apartment complex known as The Fairways at Lakewood in Lee's Summit, Missouri. Plaintiff is a former resident of this apartment complex. On or about July 22, 2009, attorneys for Chapel Ridge (who have also been named as individual defendants in this action) sent Plaintiff a letter stating that he was in default for failing to pay \$1,184.96 in past due rent. Plaintiff failed to cure the default and thus action to collect this debt was taken against him in the Circuit Court of Jackson County, Missouri. Plaintiff appeared in court at this debt collection proceeding and was provided the opportunity to present evidence and to be heard. Nevertheless, judgment was entered against Lipari and in favor of Chapel Ridge. Plaintiff has now retaliated by filing this frivolous action against Chapel Ridge for alleged RICO violations purportedly stemming from its debt collection efforts.

Allegations against Chapel Ridge

Plaintiff claims that Chapel Ridge committed a variety of acts, either alone or in concert with others, to somehow harm Plaintiff and his medical supply business. These claims make no sense and are not ever explained or remotely put into context. Even if taken as the truth, none of the alleged acts form the basis for a claim for relief against Chapel Ridge. A summary of Plaintiffs allegations against Chapel Ridge is as follows:

- Chapel Ridge allegedly committed various acts of mail and wire fraud by (1) sending a debt collection letter to the Plaintiff, (2) allegedly backdating a letter to the Plaintiff, (3) procuring a judicially ordered garnishment of Plaintiffs bank account, and (4) generally using mail, fax and email to allegedly defraud the court. (See Amended Petition at ~184-187, 256-270)

- Chapel Ridge allegedly conspired with numerous defendants (most of whom are unknown to Chapel Ridge) to artificially inflate hospital supply costs in an "ongoing ... scheme to loot Medicaid, Medicare and private insurance companies" in violation of the RICO Act. (See Amended Petition ~ 280-298).

Standard for Dismissal

"In reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, we determine whether the facts pleaded and the inferences reasonably drawn therefrom state any ground for relief. All ... averments are taken as true and no attempt is made to weigh the facts alleged as to whether they are credible or persuasive."

Jones v. Kennedy, 108 S.W.3d 203, 206 (Mo. App. 2003).

Argument

While Plaintiff has offered a complex and voluminous Petition against Chapel Ridge, Plaintiff has not, and simply cannot, allege any facts sufficient to support his far-fetched claims. This is a simple matter of a disgruntled debtor who is angry that the Court and his creditors have forced him to pay his bills. This matter should be dismissed against Chapel Ridge.

A. Plaintiff's RICO Conspiracy Claim Fails and Should be Dismissed.

Plaintiff has alleged that Chapel Ridge was part of a RICO conspiracy under 18 U.S.C. 1862(c) and (d). Claims under RICO require a showing of all of the following (1) an enterprise; (2) defendant's association with that enterprise; (3) defendant's participation in predicate acts of racketeering, and (4) a pattern of racketeering activity.

Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479,496 (1985). Plaintiff fails to properly plead any of these necessary elements.

First, Plaintiff has failed to plead or show the existence of an enterprise or Chapel Ridge's involvement in that enterprise. A criminal enterprise requires there be a common purpose among associates. *Atlas Pile Driving Co. v. DiCon Fin. Co.*, 886 F.2d 986, 995 (8th Cir. 1989). Plaintiff has failed to demonstrate any connection whatsoever between Chapel Ridge and these alleged conspirators. Chapel Ridge is completely unrelated to the other defendants in this action. Chapel Ridge's alleged wrongdoing arises out of efforts to collect past due rent from the Plaintiff. Chapel Ridge was acting in its own interest when it attempted to collect this debt - it clearly was not working in concert with others or in furtherance of any sort of broader purpose or scheme.

Second, Plaintiff has failed to show the predicate acts of racketeering, or the pattern of racketeering, necessary for the claim. A predicate act must "amount to or pose a threat of continued criminal activity." *United HealthCare Corp. v. Am. Trade Ins. Co., Ltd.*, 88 F.3d 563, 571 (8th Cir. 1996). Chapel Ridge's alleged predicate acts are mail and wire fraud, but Plaintiff has failed to plead these alleged frauds with any particularity, as required, and as discussed in further detail below. Plaintiffs RICO claims against Chapel Ridge should be dismissed.

B. Plaintiff's Mail and Wire Fraud Claims are Fatally Flawed and Should Be Dismissed.

Rule 55.15 of the Missouri Rules of Civil Procedure requires that circumstances constituting fraud be pled with particularity. See e.g. *Bohac v. Walsh*, 223 S.W.3d 858 Mo. App. 2007). Missouri courts have defined "circumstances" as the facts comprising

the fraud. *Heitman v. Brown Group, Inc.*, 638 S.W.2d 316 (Mo. App. 1982). All elements of a fraud must be pled, and failure to plead anyone essential element renders the claim fatally defective. *Schauer v. Gundaker MOvits Real Estate Co.*, 813 S.W.2d 112 (Mo. App. 1991).

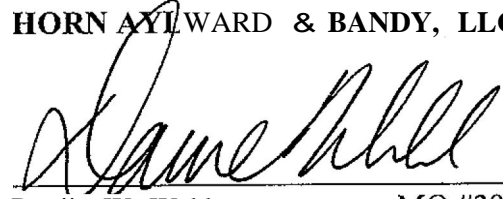
Mail and wire fraud claims under RICO must identify the "who, what, where, and how of the alleged fraud." *BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908,917 (8th Cir. 2007). Plaintiff offers nothing more than conclusory statements that fail to identify the alleged fraud committed by Chapel Ridge. It appears that Chapel Ridge's alleged fraud relates somehow to letters it sent to the Plaintiff and to the Court as part of its rent collection effort against the Plaintiff. Plaintiff implies that these letters contained misrepresentations, and because they were sent via electronic mail and the U.S. Mail, constitute mail and wire fraud. Plaintiff has not stated what he believes to be the misrepresentation (other than to generally state his belief that one of the letters was backdated) and offers insufficient facts to determine what constitutes the alleged fraud.

Conclusion

For the reasons set forth above, Plaintiff has failed to state a claim upon which relief can be granted against Chapel Ridge. Plaintiff has failed to properly plead his claims of mail fraud, wire fraud, and violations under the RICO Act. Plaintiff has not and cannot plead these alleged frauds with particularity, as required. Plaintiff's claims against Chapel Ridge should be DISMISSED WITH PREJUDICE, with Chapel Ridge to be awarded its costs, expenses and attorneys' fees in defending this action, together with any further relief the Court deems just and proper.

Respectfully submitted,

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Attorneys for Defendant

Chapel Ridge Multifamily, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class mail on this 5th day of March, 2010, to the following, with a courtesy copy to Plaintiff only via e-mail at: "Saml@MedicalSupplyChain.com":


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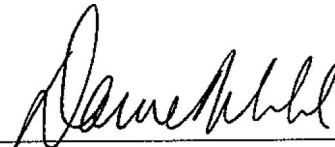
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Defendants.)

NOTICE OF HEARING

Defendant Chapel Ridge Multifamily, LLC ("Chapel Ridge") hereby provides notice that its Motion to Dismiss shall be taken up for hearing on Tuesday, April 6, 2010 at 2:00 p.m., or as soon thereafter as it may be heard, in conjunction with the motions to dismiss filed by other defendants in this case.

Respectfully submitted,

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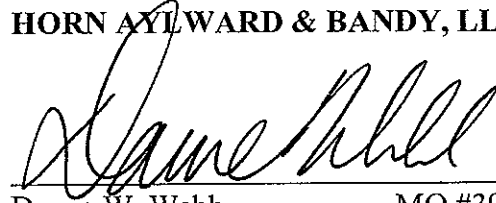
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Conclusion

For the reasons set forth above, Plaintiff has failed to state a claim upon which relief can be granted against Chapel Ridge. Plaintiff has failed to properly plead his claims of mail fraud, wire fraud, and violations under the RICO Act. Plaintiff has not and cannot plead these alleged frauds with particularity, as required. Plaintiff’s claims against Chapel Ridge should be DISMISSED WITH PREJUDICE, with Chapel Ridge to be awarded its costs, expenses and attorneys’ fees in defending this action, together with any further relief the Court deems just and proper.

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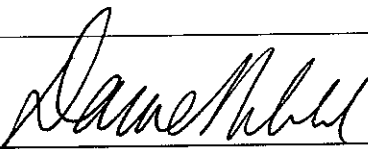
Attorneys for Defendant

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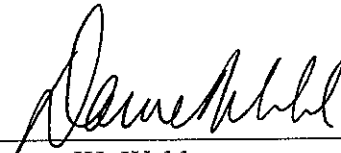
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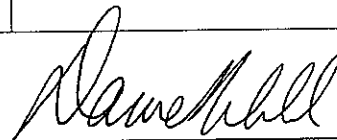
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