

**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, <i>et al.</i> ,)	
)	
Defendants.)	

**PLAINTIFF’S MOTION TO STRIKE DEFENDANT
CHAPEL RIDGE MULTIFAMILY LLC’S MOTION TO DISMISS**

The petitioner Samuel K. Lipari appears *pro se* and respectfully requests the court strike the defendant CHAPEL RIDGE MULTIFAMILY LLC’s motion for dismissal as untimely. The petitioner reserves his right to answer the defendants’ motion to dismiss if the court determines it is deviating from controlling Missouri authority requiring the defendant’s motion to be stricken.

STATEMENT OF FACTS

1. The Amended Petition was served on the defendant CHAPEL RIDGE MULTIFAMILY LLC on January 20, 2010.
2. The defendant CHAPEL RIDGE MULTIFAMILY LLC answered the Amended Petition without arguing for dismissal of the plaintiff’s claims on February 12, 2010,
3. The defendant CHAPEL RIDGE MULTIFAMILY LLC’s motion for dismissal is a second responsive pleading to the plaintiff’s January 20, 2010 Amended Petition.
4. The defendant CHAPEL RIDGE MULTIFAMILY LLC’s motion for dismissal was filed on March 5th, 2010.

SUGGESTION AT LAW

The petitioner Samuel K. Lipari gives the following suggestions of law revealing the frivolousness of CHAPEL RIDGE MULTIFAMILY LLC’s motion for dismissal:

A. Defendant’s Motion to Dismiss is Untimely Under Rule 55.27 (6)

CHAPEL RIDGE MULTIFAMILY LLC.’s motion for dismissal is a motion under Missouri Rules of Civil Procedure Rule 55.27 (6) seeking dismissal because CHAPEL RIDGE MULTIFAMILY LLC

claims the petitioner failed to state a claim upon which relief can be granted. Any of the eleven defenses enumerated in Rule 55.27 may be raised by way of responsive pleading or motion. *State ex rel. Metal Serv. Ctr. v. Gaertner*, 677 S.W.2d 325, 327 (Mo. banc 1984) (stating that the defenses enumerated in Rule 55.27 may be raised by answer or by motion at the option of the pleader).

CHAPEL RIDGE MULTIFAMILY LLC's motion for dismissal raises issues about the allegations in the Amended Petition regarding whether a RICO Enterprise and whether a RICO Conspiracy exists involving CHAPEL RIDGE MULTIFAMILY LLC. Under federal controlling precedent the Amended Petition adequately states CHAPEL RIDGE MULTIFAMILY LLC is part of the Novation LLC RICO Enterprise as a latecomer co-conspirator and is therefore responsible for RICO predicate acts alleged against defendant and non-defendant RICO co-conspirators because **requirements for pleading a RICO enterprise are minimal**. See *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 742 F.2d 786, 790 (3d Cir.1984), cert. denied, 469 U.S. 1211, 105 S.Ct. 1179, 84 L.Ed.2d 327 (1985).

CHAPEL RIDGE MULTIFAMILY LLC's association with the Novation LLC RICO Enterprise was adequately pled by averring CHAPEL RIDGE MULTIFAMILY LLC entered into an agreement to join the Novation LLC RICO conspiracy:

"The requirement of association with the enterprise is not strict. The RICO net is woven tightly to trap even the smallest fish, those peripherally involved with the enterprise. The RICO statute seeks to encompass people who are merely associated with the enterprise. The defendant need only be aware of at least the general existence of the enterprise named in the indictment, and know about its related activities."

U.S. v. Cianci, 378 F.3d 71 at 95 (1st Cir., 2004).

Any failure to state a claim of RICO Enterprise involving CHAPEL RIDGE MULTIFAMILY LLC is evidentiary and to be determined by the trier of fact a Jackson County jury.

The Petition and Amended Petition adequately gave notice to CHAPEL RIDGE MULTIFAMILY LLC of the open-ended continuity arising from the Novation LLC RICO conspiracy the defendants are alleged to have joined as latecomers,

"By specifying **the time period during which the alleged conspiracy operated**, the locations and courts, the principal actors, and, with some detail, the specific types of predicate crimes to be

committed and the modus operandi of the conspiracy, the indictment adequately enabled Glecier to prepare a defense.” [Emphasis added]

United States v. Glecier, 923 F.2d 496 at ¶ 11 (7th Cir. 1991).

Any failure to state a claim of RICO Conspiracy involving CHAPEL RIDGE MULTIFAMILY LLC is also evidentiary and to be determined by the trier of fact a Jackson County jury.

The court in *Romero v. Kansas City Station Corp.*, 98 S.W.3d 129 at 137 (Mo. App., 2003) after lengthy analysis treated a motion for summary judgment over lack of subject matter jurisdiction as a motion to dismiss. However the *Romero* court observed that subject matter jurisdiction under Rule 55.27(a)(1), is a question of fact for the trial court, requiring the court to consider and weigh the evidence, including disputed evidence, in deciding whether facts exist supporting subject matter jurisdiction (*id.* at 134) and found that evidence had not been presented.

Here the defendant CHAPEL RIDGE MULTIFAMILY LLC’s motion is untimely because the Amended Petition was served upon CHAPEL RIDGE MULTIFAMILY LLC on January 20, 2010 and a motion for dismissal was due thirty days later. Instead CHAPEL RIDGE MULTIFAMILY LLC filed an answer to the petition. The present motion was filed on March 5th, 2010 and is solely a response to the plaintiff’s Amended Petition.

CHAPEL RIDGE MULTIFAMILY LLC has violated the time limit of Rule 55.27(a):

“A motion making any of these defenses **shall be made within the time allowed for responding to the opposing party’s pleading**, or, if no responsive pleading is permitted, within thirty days after the service of the last pleading.” [Emphasis added]

Rule 55.27 Defenses And Objections How Presented By Pleading Or Motion For Judgment On The Pleadings. Under the rules of statutory construction, this court is required to make a literal, liberal, and fair reading and interpretation of the thirty day requirement in Rule 55.27(a) and deny the defendant’s motion as untimely. See *State ex rel. Ott v. Bonacker*, 791 S.W.2d 494 at 497 (Mo. App. S.D., 1990).

CONCLUSION

The petitioner respectfully requests the court strike the defendant CHAPEL RIDGE MULTIFAMILY LLC’s motion for dismissal as untimely.

Respectfully submitted,

S/ Samuel K. Lipari
SAMUEL K. LIPARI
PLAINTIFF *PRO SE*.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 8th day of March 2010 by hand delivery, by first class mail postage prepaid, or by email to:

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