

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION, by and through its lawful
governing body, the CAYUGA NATION
COUNCIL,

Plaintiff,

vs.

DUSTIN PARKER, NORA WEBER,
JOSE VERDUGO, JR., ANDREW
HERNANDEZ, PAUL MEYER, BLUE
BEAR WHOLESALE, LLC, IROQUOIS
ENERGY GROUP, INC., JUSTICE FOR
NATIVE FIRST PEOPLE, LLC, C.B.
BROOKS LLC, and JOHN DOES 1-10,

Defendants.

Case No: 5:22-cv-128
(BKS / ATB)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
COMPLAINT ON BEHALF OF DEFENDANTS PAUL MEYER, JUSTICE FOR
NATIVE FIRST PEOPLE, LLC and C.B. BROOKS LLC**

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INTRODUCTION

Defendants Paul Meyer, Justice for Native First People, LLC and C.B. Brooks LLC hereby move under Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure for an order dismissing the Complaint with prejudice.

ARGUMENT

I. Dismissal is warranted under Rule 12(b)(1) due to the non-justiciability of the intra-tribal dispute as to who can engage in the lucrative “Indian smoke shop” business.

Defendant Paul Meyer and his two solely-owned limited liability companies— Justice for Native First People, LLC and C.B. Brooks LLC—are not alleged to have any role in running Defendant Parker’s smoke shop business (because they have no role whatsoever) and instead are alleged to have entered into two commercial real estate transactions with Parker. Before addressing the insufficiency of the RICO pleadings generally and specifically in relation to the few peripheral allegations pertaining to Meyer and his companies, Meyer joins in Parker’s challenge to the existence of subject matter jurisdiction.

The present controversy is an intra-tribal dispute over who has the right to engage in the lucrative business of selling untaxed/unstamped cigarettes: Is it only the Tribe through its Amended and Restated Business License and Regulation Ordinance, as the Tribe’s current leaders claim (Complaint ¶ 43), or do individual members have the ability to compete in that lucrative trade? Make no mistake about it: the Tribe engages in the very same conduct that it alleges constitute predicate acts under RICO when done by Defendant Parker. Compare Affidavit of David Miller (Exhibit 1 to Complaint, ECF No. 1-1)

(documenting sales of unstamped tobacco products at Pipekeepers store operated by Parker) with Declaration of Vincent Vance dated March 11, 2022 (ECF No. 30-2 (documenting sales of identical products at Tribe's Lakeside Trading store in the Village of Union Springs)).¹ For the reasons stated in the Memorandum of Law in Support of Motion to Dismiss on Behalf of Dustin Parker, Nora Weber and Andrew Hernandez ("Parker Mem.") at 3-6, that intra-tribal dispute is not a justiciable controversy in this Court because the Tribe is looking to have this Court apply the tribal ordinance to prohibit competition. Federal courts have no role to play in interpreting and applying tribal laws against tribal members.

II. Plaintiff's RICO allegations against Meyer are patently deficient.

Defendant Paul Meyer is not Native American and his only "association" with Defendant Parker is formerly acting as his landlord at 126 Bayard Street in Seneca Falls (from June 2021 to January 1, 2022) and the fact that Meyer sold Parker a commercial property in Montezuma on January 11, 2022. These two commercial real estate transactions are detailed in the Declaration of Paul Meyer (ECF No. 31-1) and exhibits attached thereto. These documentary materials are properly considered by the Court under Rule 12(b)(6) because Plaintiff expressly references in the Complaint both the lease (Complaint ¶¶ 4, 38, 39, 40) and the sale (*id.* ¶¶ 64-65), and even attaches as Exhibit 2 to the

¹ The Court may consider such declarations in determining challenges to federal subject matter jurisdiction pursuant to Rule 12(b)(1). *Makarovia v. United States*, 201 F.3d 110, 113 (2d Cir. 2000).

Complaint the property transfer report pertaining to the sale. *See Fed. Deposit Ins. Corp. v. U.S. Mortg. Corp.*, 132 F. Supp. 3d 369, 379 (E.D.N.Y. 2015) (“In adjudicating 12(b)(6) a motion, the Court may only consider: (1) facts alleged in the complaint and documents attached to it or incorporated in it by reference, (2) documents ‘integral’ to the complaint and relied upon in it, even if not attached or incorporated by reference, and (3) documents or information contained in defendant's motion papers if plaintiff has knowledge or possession of the material and relied on it in framing the complaint”).

Meyer and his two companies are at the periphery of the intra-tribal dispute between Plaintiff and Parker and receive accordingly light treatment in the Complaint. Meyer and his companies are named in the caption; identified as defendants in the introductory paragraph of the complaint; partially named in the list of parties (Complaint ¶ 17); and then mentioned in 6 out of the 95 paragraphs that make up the Complaint. Plaintiff’s claims against Meyer, such as they are, are limited to two completed commercial real estate transactions with Defendant Dustin Parker: (1) a sublease at 126 Bayard Street in Seneca Falls that started in June 2021 and ended January 1, 2022, upon Parker’s unlawful eviction by the Tribe; and (2) the sale of commercial property at 7153 State Route 90N in Montezuma on January 11, 2022.

The Declaration of Paul Meyer documents the arm’s length, market rate commercial transactions between Meyer and Parker under the lease (Meyer Decl. at ¶¶ 3-18) and sale of the commercial property. *Id.* at ¶¶ 19-24. Plaintiff has no actual knowledge of these transactions and is forced to speculate about

their terms, alleging on information and belief that Meyer charged above market rates, “essentially profiting from Pipekeepers illicit business.”

Complaint ¶ 40 (Upon information and belief, the lease between Meyer and the Seneca-Cayuga Nation was below market rate and Meyer charged Parker “a substantial payment each month, essentially profiting from Pipekeepers’ illicit cigarette business.”). Likewise, with respect to the sale of the commercial property in Montezuma, Plaintiff alleges on information and belief that C.B. Brooks purchased the property for \$30,000 and sold it to Parker “at the grossly inflated price of \$180,000.” Complaint ¶ 65. It is based on this alleged purported overcharging that the Tribe imputes RICO liability to Meyer, apparently drawing the inference that Meyer charged a premium due to the “illicit” nature of Parker’s business. The Tribe’s speculative allegations in that regard are flat out untrue. Meyer Decl. ¶¶ 19-24. But even if accepted as true, they are inadequate to support RICO liability. Indeed, under Plaintiff’s rank speculation (belied by the actual facts) any landlord would be liable for the activities of every tenant. Even more absurd, every seller of commercial property would be on the hook for the activities of the buyer in perpetuity. Such unprincipled and limitless liability has no place under RICO and rests on pure contrary-to-fact speculation. Such pleadings are deficient on their face. *See Torio v. Wells Fargo Bank, N.A.*, No. 5:16-cv-00704-HRL, 2016 WL 2344243, at *3 (N.D. Cal. May 4, 2016) (dismissing RICO claims as “utterly inadequate” when defendants are named only twice in in the complaint and

allegations, based on information and belief, only asserted defendants' status as "buyer and broker doing business in [California]").

Moreover, RICO liability does not extend to commercial actors who engage in their normal course of business even in the face of allegations that they facilitated or directly aided and abetted RICO violations. *See Reves v. Ernst & Young*, 507 U.S. 170 (1993); *Azirelli v. Cohen Law Offices*, 21 F.3d 512, 521-522 (2d Cir. 1994); *New York v. United Parcel Serv., Inc.*, 15-cv-1136 (KBF), 2016 US Dist. LEXIS 105038, at *20-*24 (S.D.N.Y. Aug. 9, 2016) (granting summary judgment dismissing substantive RICO claims against UPS premised on shipper knowingly transporting contraband cigarettes). In order for RICO liability to attach, such commercial actors must participate in the actual illegal activity; "performing tasks necessary or helpful to the enterprise does not meet the requirements of § 1962(c)." *United Parcel Serv.*, 2016 US Dist. LEXIS 105038, at *12 (citing *United States v. Viola*, 35 F.3d 37, 41 (2d Cir. 1994)). Thus, "providing ordinary but important business services to a RICO enterprise is not itself sufficient to meet the operation or management test." *Id.*, 2016 US Dist. LEXIS 105038, at *12 (citing *City of New York v. Smokes-Spirits.com, Inc.*, 541 F.3d 425, 449 (2d Cir. 2008) *rev'd on other grounds*, *Hemi Group, LLC v. City of New York*, 559 U.S. 1 (2010)). The Complaint utterly fails to establish any basis for RICO liability against Meyer, who at most participated in two commercial real estate transactions for his own business purposes. The fact that these transactions provided a location for the "enterprise" to operate is legally irrelevant, and does not constitute an attempt by Meyer to "direct" the

enterprises affairs within the meaning of § 1962(c). Indeed, “[a] defendant does not ‘direct’ an enterprise’s affairs under § 1962(c) merely by engaging in wrongful conduct that assists the enterprise.” *Id.*, 2016 US Dist. LEXIS 105038, at *12 (quoting *Redtail Leasing, Inc. v. Bellezza*, No. 95-civ-5191 (JFK), 1997 WL 603496, at *5 (S.D.N.Y. Sep. 30, 1997) (cleaned up)).

In addition, Plaintiff bears the burden to allege a pattern of ongoing activity in the form of an open-ended enterprise. See Parker Mem. at 10-12. In order to demonstrate a "pattern" of racketeering activity, as required by § 1962, a plaintiff must allege at least two predicate acts. *H.J. Inc. v. NW Bell Tel. Co.*, 492 U.S. 229, 237-38 (1989). The two predicate acts must not be isolated or sporadic; they must be related and amount to or pose a threat of continued criminal activity. *Id.* at 239. “The predicate acts of racketeering satisfy the relationship test if they `have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated.” *Corley v. Rosewood Care Ctr., Inc. of Peoria*, 142 F.3d 1041, 1048 (9th Cir. 1998). Proof of continued criminal activity may be established through a series of related acts that extend over a substantial period of time, known as close-ended continuity, or by a showing of a threat of repetition, known as open-ended continuity. See *Turner v. Cook*, 362 F.3d 1219, 1229-1230 (9th Cir. 2004). “Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this [continuity] requirement.” *H.J. Inc.*, 492 U.S. at 241; *Howard v. Am. Online Inc.*, 208 F.3d 741, 750 (9th Cir. 2000).

Here the two completed real estate transactions do not make out a pattern of racketeering activity. There is no prospect of any further actions by Meyer in doing further real estate deals with Parker, even if such arm's length transactions could qualify as predicate acts. There is no allegation of any continuing relationship between Parker and Meyer whatsoever. No factual or legal basis exists for holding a lessor liable for the acts of a lessee, much less a seller of commercial property for the actions of a buyer.

III. Plaintiff's RICO claims also fail for the reasons stated by Defendant Parker.

Defendant Parker (et al.) present arguments as to why the Plaintiff lacks standing to sue under RICO and has failed to state a cause of action. Parker Mem. at 7-9. Defendant Meyer (and his companies) adopt and incorporate by reference herein each of those arguments and seeks dismissal on those grounds.

CONCLUSION

For each of the foregoing reasons, Defendant Paul Meyer and his related companies, Justice for Native First People, LLC and C.B. Brooks LLC, respectfully request the Court grant their motion to dismiss the Complaint

with prejudice.

Dated: March 21, 2022

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