

CAUSE NO. 07-00168

UDO BIRNBAUM
Plaintiff

v.

RICHARD L RAY
Defendant

§ IN THE DISTRICT COURT
§
§
§ 294th JUDICIAL DISTRICT
§
§ VAN ZANDT COUNTY, TEXAS
§

FIRST AMENDED ORIGINAL PETITION

Comes now UDO BIRNBAUM ("Birnbaum"), Plaintiff, *Pro Se*, complaining of attorney RICHARD L. RAY ("Ray"), Defendant, and for cause of action would respectfully show the Court the following:

Udo Birnbaum is an individual residing in Van Zandt County, Texas. He may be served with process at 540 VZ CR 2916, Eustace, Texas 75124.

Richard L. Ray is an individual residing in Van Zandt County, Texas. He may be served with process at 300 S. Trade Days Blvd. (300 S. Hwy 19), Canton, Texas 75103.

NATURE OF THE CASE

1. Discovery is intended under Level 2. (RCP Rule 190.3)
2. Plaintiff complains under 18 U.S.C. § 1964(c) ("civil RICO") of injury to his property "by reason of" Defendant's "pattern of racketeering activity" in violation of 18 U.S.C. §1961 *et seq.* ("RICO").
3. State courts have concurrent jurisdiction to consider civil claims arising under RICO. Tafflin v. Levitt, 493 U.S. 455 (1990).

STATEMENT OF THE CASE

4. This action arises out of a scheme round and about the 294th District Court in Canton, Texas under judge Tommy Wallace, where lawyers enriched themselves by using their relationships in the Court to extort "legal fees" by the use of fraudulent documents, arguments, and corrupt court process, and protected their turf by running over and making an example of anyone who complained of the corruption, instead of quietly submitting to the injustice by paying one another's buddy to be their attorney.

5. In the pattern of this scheme, Defendant attorney Richard Ray fabricated, and to this day is maintaining, a totally fraudulent "beaver dam scheme" case upon Birnbaum:

6. Ray sued Birnbaum over natural BEAVERS who had once built a natural dam on a natural creek on Birnbaum's farm.

7. Defendant Ray's scheme was to get both Birnbaum and Ray's "client", a certain then already up-in-age retired military officer by the name of William B. Jones (deceased) entangled in court process to cause lots of "legal fees". (Cause 95-63, filed January 1995, still in there March 2007, more than twelve (12) years later, and despite a jury verdict of exactly ZERO damages way-back in March 1998, still pushing for \$10,000 in legal fees and a fraudulent injunction - to baby-sit natural BEAVERS in a natural creek - against Birnbaum, while concealing from the court that his client - and the BEAVERS - had DIED years ago.

8. Ray's "beaver dam" scheme is a "scheme to deprive of the intangible right of honest services". (i.e. the right to receive honest services from lawyers as "officers of the court")

9. Ray's use of the U.S. Mail and interstate capable communications equipment to execute such scheme provides the "*predicate acts*" of "*racketeering activity*" constituting the outlawed "*pattern of racketeering activity*" as defined under RICO.

"For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to **deprive** another of the **intangible right of honest services**". 18 U.S.C. § 1346

10. ALL of Plaintiff's injury was produced "*by reason of*" Defendant's "*pattern of racketeering activity*".

11. Before Ray's fraudulent beaver dam suit, Birnbaum had been quietly living on his farm tending to his cows and his invalid 90 year old mother, and had only known the courthouse from getting license plates.

THE PATTERN OF RACKETEERING ACTIVITY

12. The acts of "*racketeering activity*" shown below constitute a "*pattern of racketeering activity*" within the meaning of 18 U.S.C. § 1961(5). The acts complained of are not isolated events, but relate to each other by virtue of a common participant, a common method of commission, and the common purpose and common result of defrauding of honest service by a pattern of deception and lying by an officer of the Court.

- Predicate 1: Hauling Birnbaum into court in 1995 with his fabricated "The Dam" (William B. Jones vs. Udo Birnbaum, Texas 294th Cause No. 95-63) accusing Birnbaum of violating the Texas Water Code by having built a DAM in 1994, ("The Dam") when his client Jones (deceased) was complaining only of natural BEAVERS in a natural creek.
- Predicate 2: Sneaking in for default judgment on his fraudulent suit
- Predicate 3: Interrogatories co-mingling beaver dams with fraudulent "The Dam".
- Predicate 4: Abusive deposition of Birnbaum about everything but "The Dam".
- Predicate 5: Trying to "enforce mediation or enter judgment" on fraudulent suit.

- Predicate 6: Lying to the (then) TNRCC and threatening them with suit.
(Texas Natural Resource Conservation Commission - now has different name - which was investigating creek channel modification done by Jones)
- Predicate 7: First Amended Original Petition (again has fraudulent "The Dam").
- Predicate 8: Second Amended Original Petition (again has fraudulent "The Dam").
- Predicate 9: Fraudulent questions to jury (NOTHING about "The Dam")
- Predicate 10: Dishonest closing argument to jury (NOTHING about "The Dam")
- Predicate 11: Motion upon motion to enter judgment (ZERO damages verdict!)
- Predicate 12: Still seeking "legal fees", when he was NOT a winning party
- Predicate 13: Hiding that his client DIED long ago, and that he is FREELANCING
- Predicate 14: Still seeking injunction to remove "The Dam" which NEVER existed

THE VIOLATIONS OF RICO

18 U.S.C. § 1962(c)

"to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity"

- 13. The 294th District Court of Van Zandt County, Texas qualifies as an "enterprise".
- 14. This "enterprise" has some effect upon interstate commerce.
- 15. Defendant was associated with the enterprise.
- 16. Defendant played some part in directing the affairs of the enterprise.
- 17. Defendant engaged in the pattern of racketeering activity as outlined.
- 18. Defendant's association with the enterprise facilitated his commission of the acts.
- 19. The commission of these predicate acts did indeed have some effect on the "enterprise"

18 U.S.C. § 1962(b)

"through a pattern of racketeering activity, acquired or maintained, directly or indirectly, any interest in or control of any enterprise which engaged in, or the activities of which affect interstate or foreign commerce?"

- 20. Through the pattern of racketeering activity as described above he was able to just run over people in the name of the 294th District Court.

18 U.S.C. § 1962(a)

"receive any income derived, directly or indirectly, from a pattern of racketeering activity in which that defendant participated as a principal, and that the defendant used or invested, directly or indirectly, any part of that income, to acquire an interest in, establish, or operate an enterprise which is engaged in, or the activities of which affect, interstate commerce?"

21. Defendant caused income from a pattern of racketeering activity as described above to contribute towards the election of Judge Tommy Wallace to the 294th District Court.

INJURY

"by reason of the RICO violation"

22. All this thrashing upon Birnbaum in the 294th District Court, all produced by Mr. Ray's pattern of racketeering activity in violation of RICO as shown above, attracted other sharks hungry for "legal fees".

23. One of these was a certain Dallas lawyer by the name of G. David Westfall (now deceased) who solicited Birnbaum unbeknownst to Birnbaum. Westfall promised to "save" Birnbaum from the corruption in the 294th, if Birnbaum were to pay Westfall \$20,000 up front, and Birnbaum did. Birnbaum did not recognize injury until much later when Birnbaum discovered that he had been conned by Westfall, and Birnbaum fired Westfall.

24. As if this injury were not enough, Westfall went on to fabricate a \$18,121.10 "bill", filed suit against Birnbaum in the 294th District Court, a court where things can be made to move behind the courtroom as indicated by the pattern of racketeering as shown above.

25. Anyhow, by a pattern of lying, Westfall was able to obtain judgment against Birnbaum totaling \$85,207.46 plus FINE of \$62,885. "Legal fees", more "legal fees", and "legal fees" for collecting on fraudulent "legal fees".

26. And just this **Oct. 24, 2006** another FINE was assessed against Birnbaum, in the amount of **\$125,770**.

27. But for Richard L. Ray's RICO violation Birnbaum would never have been entangled in the 294th District Court, not with Ray, not with Westfall, not with elderly retired "visiting" judges getting mad at him. All of Birnbaum's injuries flowed from Defendant Ray's unlawful acts of racketeering activity, pattern of racketeering activity, and conduct of the affairs of the 294th District Court through a pattern of racketeering activity.

28. But for Richard Ray's conduct, judges would not be punishing Birnbaum to the tune of **HUNDREDS OF THOUSANDS of dollars**,

"to stop this litigant and others similarly situated",

"to stop Birnbaum and others like him",

"a deterrent to prevent Birnbaum from committing further similar acts in the future"

"delusional belief held only inside the mind of Birnbaum",

ALL from Birnbaum being wrongfully forced into court by Ray's fraudulent BEAVER DAM suit and entangled there by his ongoing pattern of racketeering activity.

SUMMARY OF THIS CAUSE

29. The RICO violation and scheme can be clearly seen from the "predicate acts" of "racketeering activity" constituting the "pattern of racketeering activity" as shown above. The Defendant's scheme was to use his attorney license to "participate in the conduct of the affairs" of the 294th District Court of Van Zandt County, Texas by fabricating a "beaver dam" scheme, and to execute the scheme by depriving the Court, Birnbaum, and the State of Texas of the "honest service" he owed as an "officer of the court".

30. "Legal fees", more "legal fees", and "legal fees" for collecting on "legal fees". As one justice once said, suits on legal fees must certainly be the "*least socially productive activity*" that he could think of.

31. Before Richard L. Ray's fraudulent "beaver dam" scheme, Birnbaum had been quietly living on his farm tending to his cows and his invalid 90 year old mother, and had only been in the Courthouse to pay for license plates.

PRAYER FOR RELIEF

Wherefore, Plaintiff Birnbaum seeks judgment against Defendant Richard L. Ray. Defendant's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregards for the rights of Birnbaum. Birnbaum is therefore entitled to an award of punitive damages. Birnbaum seeks judgment as follows:

- (a) \$1,032,000 as treble damages as proscribed by RICO
- (b) For the costs of suit, including reasonable attorney's fees, if any
- (c) Pre-judgment interest at the maximum rate allowed by law
- (d) Post-judgment interest at the maximum rate allowed by law
- (e) Punitive damages in an amount as the jury may award at its discretion
- (f) Such other relief, legal and equitable, special or general, as the Court deems proper and just

BIRNBAUM HEREBY DEMANDS A TRIAL BY JURY

Respectfully submitted,

Udo Birnbaum, *Pro Se*
540 VZ CR 2916
Eustace, Texas 75124
(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **First Amended Original Petition** was mailed today by REGULAR and CERTIFIED mail to attorney Joel C. Elliott, Offices of Ray and Elliott, 300 S. Trade Days Blvd, Canton TX 75103. This the _____ day of May, 2007.

UDO BIRNBAUM