

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

Carolyn Ellis v. Richard E. Warner, et al.

No. 15-10134-CIV-GOODMAN, 2017 WL 651368 (S.D. Fla. Feb. 16, 2017) · No. CASE NO. 15-10134-CIV-GOODMAN

SUMMARY

The district court held that the Rooker-Feldman doctrine did not bar claims for damages based on alleged forgery of a will, but dismissed the federal RICO and RICO conspiracy claims without prejudice for failure to plead predicate acts with particularity under Rule 9(b). It found the amount in controversy satisfied and that the probate exception did not bar most state-law claims, though it dismissed the constructive trust claim; it sustained claims for tortious interference with inheritance and under Florida’s CRCPA based on allegations of forgery and a pattern of similar conduct, but dismissed the FDUTPA claim because attorney conduct in drafting estate documents does not constitute “trade or commerce.”

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Jonathan Goodman
JURISDICTION	Florida
DOCKET	CASE NO. 15-10134-CIV-GOODMAN
DISPOSITION	other
PROCEDURAL POSTURE	On motions to dismiss the Corrected Second Amended Complaint.
STANDARD OF REVIEW	Rule 12(b)(6) motion to dismiss; review for failure to state a claim upon which relief can be granted, with heightened pleading under Rule 9(b) for fraud-based claims.
PRECEDENTIAL VALUE	persuasive

TOPICS

- civil procedure
- motions to dismiss
- probate
- torts

PRACTICE AREAS

- Civil RICO
- Probate Litigation
- Florida Deceptive Trade Practices
- Tortious Interference

QUESTIONS PRESENTED

1. Whether the court has subject matter jurisdiction under the Rooker-Feldman doctrine.
2. Whether the amount in controversy satisfies diversity jurisdiction.
3. Whether the probate exception bars jurisdiction.
4. Whether Plaintiff stated a viable RICO claim with sufficient predicate acts.
5. Whether Plaintiff stated a RICO conspiracy claim.
6. Whether Plaintiff stated a claim under Florida's CRCPA.
7. Whether Plaintiff stated a tortious interference with inheritance claim.
8. Whether Plaintiff stated a FDUTPA claim against the Law Firm and Richard.
9. Whether a constructive trust claim is barred by the probate exception.

HOLDINGS

1. Rooker-Feldman does not bar jurisdiction where the plaintiff seeks monetary damages for independent tortious conduct and does not seek to overturn the state court judgment.
2. Plaintiff's allegations of mail and wire fraud failed to meet Rule 9(b)'s heightened pleading standard because they did not specify the time, place, exact statements, or each defendant's role.
3. Plaintiff failed to allege that the proceeds were derived from 'specified unlawful activity' as required by 18 U.S.C. § 1956(c)(7), and failed to allege intent to conceal.
4. A RICO conspiracy claim fails when the underlying substantive RICO claim is not viable.
5. The probate exception does not bar claims that seek monetary damages for tortious conduct and do not ask the court to dispose of property in the custody of a state probate court.
6. Plaintiff adequately alleged the crimes of forgery and uttering forged instruments, and alleged a pattern of criminal activity by including similar acts against non-party victims over a ten-year period, satisfying the more stringent CRCPA pattern requirement.
7. Attorney conduct in drafting estate documents and handling probate matters does not fall within the definition of 'trade or commerce' under FDUTPA.
8. Plaintiff sufficiently alleged the existence of an expectancy, intentional interference through tortious conduct (forgery, dissipation of property), causation, and damages; therefore, the claim survives dismissal.
9. The constructive trust claim seeks to impose a trust on property already distributed by the state probate court, thereby affecting the res; thus, the probate exception applies and the claim must be dismissed with prejudice.
10. Defendants failed to meet their burden of proving to a legal certainty that Plaintiff's claims do not exceed \$75,000; considering treble damages under CRCPA and emotional distress damages, the jurisdictional amount is satisfied.

KEY QUOTATIONS

*“If a federal plaintiff present[s] [an] independent claim, then it is not a bar to the exercise of federal jurisdiction that the same or a related question was at issue between the parties in state court.” (at *4)*

*“Where mail fraud is asserted as a predicate act for a civil RICO claim, a plaintiff must establish not only the statutory elements of mail fraud, but also that the defendant had a conscious, knowing intent to defraud and that a reasonably prudent person would have been deceived by the defendant's misrepresentations.” (at *6)*

*“Thus, crimes committed at the same time cannot qualify as separate incidents for purposes of proving racketeering conduct under the Florida act.” (at *20)*

FACTUAL BACKGROUND

Plaintiff Carolyn Ellis alleges that Defendants forged the will and estate documents of her deceased mother, Sally Buehler, to disinherit Plaintiff and funnel property proceeds to Forgotten Felines, a cat rescue charity. Sally died on May 22, 2011. Plaintiff claims Nancy Warner drafted estate documents naming Plaintiff as beneficiary, then later forged documents to give Nancy power of attorney and healthcare proxy. A new will executed shortly before Sally's death left 85% of estate proceeds to Forgotten Felines. Plaintiff further alleges a long-running scheme of similar conduct against other elderly clients in Key West.

PROCEDURAL HISTORY

Plaintiff filed a Corrected Second Amended Complaint (the fourth version) alleging RICO, state RICO, tortious interference with inheritance, FDUTPA, and constructive trust claims. Defendants moved to dismiss on jurisdictional and sufficiency grounds. The court granted in part and denied in part the motions.

DISPOSITION

other

CASES CITED

- Jackson v. Okaloosa Cty., Fla., 21 F.3d 1531 (11th Cir. 1994)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)
- Conley v. Gibson, 355 U.S. 41 (1957)
- Am. Dental Assoc. v. Cigna Corp., 605 F.3d 1283 (11th Cir. 2010)
- Oxford Asset Mgmt., Ltd. v. Jaharis, 297 F.3d 1182 (11th Cir. 2002)
- Magluta v. Samples, 375 F.3d 1269 (11th Cir. 2004)
- Marshall Cty. Bd. of Educ. v. Marshall Cty. Gas Dist., 992 F.2d 1171 (11th Cir. 1993)
- Arthur v. JP Morgan Chase Bank, N.A., 569 F. App'x 669 (11th Cir. 2014)
- Alvarez v. Attorney Gen. for Fla., 679 F.3d 1257 (11th Cir. 2012)
- Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005)
- Klayman v. Deluca, No. 15-cv-80310, 2016 WL 1045851 (S.D. Fla. Mar. 16, 2016)
- Siegel v. LePore, 234 F.3d 1163 (11th Cir. 2000)

- Merice v. Wells Fargo Bank, N.A., No. 15-80614-CIV-MARRA, 2016 WL 1170838 (S.D. Fla. Mar. 25, 2016)
- Kohler v. Garlets, 578 F. App'x 862 (11th Cir. 2014)
- Truong v. Bank of Am., N.A., 717 F.3d 377 (5th Cir. 2013)
- Laudien v. Caudill, 92 F. Supp. 3d 614 (E.D. Ky. 2015)
- In re Managed Care Litig., 298 F. Supp. 2d 1259 (S.D. Fla. 2003)
- McCulloch v. PNC Bank, Inc., 298 F.3d 1217 (11th Cir. 2002)
- Liquidation Comm'n of Banco Intercont'l, S.A. v. Renta, 530 F.3d 1339 (11th Cir. 2008)
- Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364 (11th Cir. 1997)
- Fla. Software Sys., Inc. v. Columbia/HCA Healthcare Corp., 46 F. Supp. 2d 1276 (M.D. Fla. 1999)
- U.S. v. Griffin, 699 F.2d 1102 (11th Cir. 1983)
- Bryan v. Countrywide Home Loans, No. 8:08-CV-794-T-23EAJ, 2008 WL 4790660 (M.D. Fla. Oct. 27, 2008)
- Green Leaf Nursery v. E.I. DuPont De Nemours & Co., 341 F.3d 1292 (11th Cir. 2003)
- Halpin v. David, No. 4:06CV457-RH/WCS, 2009 WL 1753759 (N.D. Fla. June 22, 2009)
- Schmuck v. United States, 489 U.S. 705 (1989)
- Parr v. United States, 363 U.S. 370 (1960)
- United States v. Phillips, 647 F. App'x 917 (11th Cir. 2016)
- Zigman v. Giacobbe, 944 F. Supp. 147 (E.D.N.Y. 1996)
- Advanced Optics Elecs., Inc. v. Robins, 633 F. Supp. 2d 1237 (D.N.M. 2008)
- Christensen v. Smith, No. 2:14-CV-00784-CW-DBP, 2016 WL 3360420 (D. Utah Mar. 21, 2016)
- Rock v. Bae Sys., Inc., No. 6:12-cv-1092-Orl-37GJK, 2013 WL 1091683 (M.D. Fla. Mar. 15, 2013)
- Georgian v. Zodiac Grp., Inc., No. 10-CIV-60037, 2011 WL 3349573 (S.D. Fla. Aug. 3, 2011)
- United States v. Church, 955 F.2d 688 (11th Cir. 1992)
- Jackson v. Bellsouth Telecomm., 372 F.3d 1250 (11th Cir. 2004)
- Spain v. Brown & Williamson Tobacco Corp., 230 F.3d 1300 (11th Cir. 2000)
- Super Vision Int'l, Inc. v. Mega Int'l Commercial Bank Co., 534 F. Supp. 2d 1326 (S.D. Fla. 2008)
- Rogers v. Nacchio, 241 F. App'x 602 (11th Cir. 2007)
- Federated Mut. Ins. Co. v. McKinnon Motors, LLC, 329 F.3d 805 (11th Cir. 2003)
- St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938)
- Burns v. Windsor Ins. Co., 31 F.3d 1092 (11th Cir. 1994)
- Mulia, Inc. v. Seaboard Warehouse Terminals, Inc., No. 08-20454-CIV, 2008 WL 1836372 (S.D. Fla. Apr. 23, 2008)
- Co. Prop. & Cas. Ins. Co. v. Metal Roofing Sys., No. 13-60659-CIV, 2013 WL 5770730 (S.D. Fla. Oct. 24, 2013)
- Roe v. Michelin N. Am., Inc., 613 F.3d 1058 (11th Cir. 2010)
- Pretka v. Kolter City Plaza II, Inc., 608 F.3d 744 (11th Cir. 2010)
- Broughton v. Fla. Intern. Underwriters, Inc., 139 F.3d 861 (11th Cir. 1998)

- Lindsay v. Am. Gen. Life & Accident Ins. Co., 133 F. Supp. 2d 1271 (N.D. Ala. 2001)
- Victory Int'l (USA), LLC v. Perry Ellis Intern, Inc., 08-20395-CIV, 2009 WL 1956236 (S.D. Fla. July 7, 2009)
- Morrison v. Allstate Indem. Co., 228 F.3d 1255 (11th Cir. 2000)
- HansaWorld USA, Inc. v. Davenport, No. 12-24510-CIV, 2013 WL 12094845 (S.D. Fla. Jan. 25, 2013)
- Simmons v. Taylor Childre Chevrolet-Pontiac, Inc., 629 F. Supp. 1030 (M.D. Ga. 1986)
- Love v. N. Tool & Equip. Co., Inc., No. 08-20453-CIV, 2008 WL 2955124 (S.D. Fla. Aug. 1, 2008)
- Brown v. Cunningham Lindsey U.S. Inc., No. 305CV141J32HTS, 2005 WL 1126670 (M.D. Fla. May 11, 2005)
- Barnes v. JetBlue Airways Corp., No. 07-60441, 2007 WL 1362504 (S.D. Fla. May 7, 2007)
- Vickie Lynn Marshall v. E. Pierce Marshall, Marshall v. Marshall, 547 U.S. 293 (2006)
- Markham, Alien Property Custodian, v. Allen et al., Markham v. Allen, 326 U.S. 490 (1946)
- Sarhan v. Rothenberg, No. 07-22818-CIV-LENARD, 2008 WL 2474645 (S.D. Fla. June 17, 2008)
- Freeman v. U.S. Bank, N.A., No. 8:13-CV-338-T-26MAP, 2013 WL 2147558 (M.D. Fla. May 16, 2013)
- Michigan Tech Fund v. Century National Bank of Broward, 680 F.2d 736 (11th Cir. 1982)
- Glickstein v. Sun Bank/Miami, N.A., 922 F.2d 666 (11th Cir. 1991)
- Saxton v. ACF Indus., Inc., 254 F.3d 959 (11th Cir. 2001)
- Consecro Ins. Co. v. Clark, No. 8:06CV462 T30EAJ, 2006 WL 2024401 (M.D. Fla. July 17, 2006)
- Whalen v. Prosser, 719 So. 2d 2 (Fla. 2d DCA 1998)
- Davison v. Feuerherd, 391 So. 2d 799 (Fla. 2d DCA 1980)
- Edward A. Schilling v. Maria Herrera, Schilling v. Herrera, 952 So. 2d 1231 (Fla. 3d DCA 2007)
- Jones v. Childers, 18 F.3d 899 (11th Cir. 1994)
- H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229 (1989)
- Lockheed Martin Corp. v. Boeing Co., 314 F. Supp. 2d 1198 (M.D. Fla. 2004)
- State v. Marks, 758 So. 2d 1131 (Fla. 4th DCA 2000)
- State v. Lucas, 600 So. 2d 1093 (Fla. 1992)
- Davis v. S. Bell Tel. & Tel. Co., No. 89-2839-CIV, 1994 WL 912242 (S.D. Fla. Feb. 1, 1994)
- SKS Constructors, Inc. v. Drinkwine, 458 F. Supp. 2d 68 (E.D.N.Y. 2006)
- Walters v. State, 245 So. 2d 907 (Fla. 1st DCA 1971)
- Rushing v. State, 684 So. 2d 856 (Fla. 5th DCA 1996)
- Koch v. Royal Wine Merchants, Ltd., 847 F. Supp. 2d 1370 (S.D. Fla. 2012)
- Llado-Carreno v. Guidant Corp., No. 09-20971-CIV, 2011 WL 705403 (S.D. Fla. Feb. 22, 2011)
- Jemison v. CitiMortgage, Inc., H-13-2475, 2015 WL 251754 (S.D. Tex. Jan. 20, 2015)
- Lone Star Ladies Inv. Club v. Schlotzsky's Inc., 238 F.3d 363 (5th Cir. 2001)
- Tyler v. Bank of Am, N.A., 5:12-cv-909-DAE, 2013 WL 5923717 (W.D. Tex. Oct. 31, 2013)
- Galstaldi v. Sunvest Cmtys. USA, LLC, 637 F. Supp. 2d 1045 (S.D. Fla. 2009)
- Rollins, Inc. v. Butland, 951 So. 2d 860 (Fla. 2d DCA 2006)

- *Librizzi v. Ocwen Loan Servicing, LLC*, 120 F. Supp. 3d 1368 (S.D. Fla. 2015)
- *Blair v. Wachovia Mortg. Corp.*, No. 5:11-CV-566-OC-37TBS, 2012 WL 868878 (M.D. Fla. Mar. 14, 2012)
- *Martorella v. Deutsche Bank Nat'l Trust Co.*, 931 F. Supp. 2d 1218 (S.D. Fla. 2013)
- *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So. 2d 489 (Fla. 4th DCA 2001)
- *Kelly v. Palmer, Reifler & Associates, P.A.*, 681 F. Supp. 2d 1356 (S.D. Fla. 2010)
- *Economakis v. Butler & Hosch, P.A.*, No. 2:13-cv-832-FtM-38DNF, 2014 WL 820623 (M.D. Fla. Mar. 3, 2014)
- *Florida v. Shapiro & Fishman, LLP*, 59 So. 3d 353 (Fla. 4th DCA 2011)
- *Law Office of David J. Stern, P.A. v. Florida*, 83 So. 3d 847 (Fla. 4th DCA 2011)
- *Kapila v. Militzok*, No. 15-60764-CIV, 2015 WL 7272761 (S.D. Fla. Nov. 18, 2015)
- *Echeverria v. BAC Home Loans Servicing, LP*, 523 F. App'x 675 (11th Cir. 2013)
- *U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805 (11th Cir. 2015)
- *Dresdner Bank AG v. M/V Olympia Voyager*, 463 F.3d 1210 (11th Cir. 2006)
- *Hoefling v. City of Miami*, 811 F.3d 1271 (11th Cir. 2016)
- *Proctor & Gamble Defense Corp. v. Bean*, 146 F.2d 598 (5th Cir. 1945)
- *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250 (5th Cir. 1998)

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