IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT NEAL SPIELMAN'S MOTION TO DISMISS

Defendant Neal Spielman ("Spielman") files this Motion to Dismiss seeking the dismissal of all claims asserted by Plaintiffs against him. In support thereof, Defendant would respectfully show the Court the following:

I.
SUMMARY OF THE ARGUMENT

This case stems from "conspiracy" claims and other allegations against lawyers, judges, and court personnel involved in a bitterly contested probate matter in Harris County Probate Court No. 4. The Plaintiffs "claims," which are nearly incomprehensible are nothing more than incredible conspiracy theories suggesting that the Harris County Probate Court is the home of a nefarious, shadowy syndicate with designs on stealing "familial wealth." The Plaintiffs Original Complaint has alleged Spielman and other Defendants for (1) violations of the Racketeer Influence Corrupt Organization Act ("RICO"), 18 U.S.C. § 1962(c) and conspiracy to violate the same; (2) conspiracy to commit Honest Services Fraud, 18 U.S.C. § 1346; (3) conspiracy to commit Mail Fraud, 18 U.S.C. § 1341; (4) conspiracy to commit Wire Fraud, 18 U.S.C. § 1343; (5) Hobbes Act Extortion 15 U.S.C. §1951(b)(2); (6) conspiracy to obstruct justice, 18 U.S.C.

§371; and state law theft, Texas Penal Codes 31.02 & 31.03. Despite the litany of allegations, Plaintiffs have failed to plead any facts suggesting any wrongdoing by Spielman. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not "plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"). For this reason, Plaintiffs' Original Complaint against Spielman should be dismissed with prejudice.

II.
BACKGROUND

Plaintiffs' suit arises from a case pending in Harris County Probate Court Number 4, Cause No. 412.249-401, *Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al.*, ("the Probate Matter"). The Probate Matter involves a dispute between the Brunsting siblings over the administration over their late parents' estate. Rather than litigate their claims in the proper forum—Probate Court No. 4—Plaintiffs have filed this suit, naming every person remotely involved with the Probate Matter—including the judge, court personnel, Defendant Spielman, and "99 Jane and John Does"—in an apparent attempt to avoid participating in the court-ordered mediation in the Probate Matter.[1]

Spielman is attorney of record for Amy Brunsting in the Probate Matter. *See* Plaintiffs' Verified Complaint for Damages. Plaintiffs appear to have asserted only one claim specifically against Spielman: that Spielman "obstructed justice" by assenting to the postponement of a summary judgment hearing, somehow depriving Curtis access to the courts and other due process rights. *See* Plaintiffs' Verified Complaint for Damages ¶131. Besides this one specific act, the remainder of Plaintiffs' allegations against Spielman consists of unintelligible and boilerplate criminal "conspiracy" claims and allegations against all Defendants. Without

[1] In the Plaintiffs' Verified Complaint for Damages, Plaintiff Curtis has characterized the pending mediation of the probate matter as "predetermined by the personal interests of enterprise acolytes and not by law." *See* ¶¶ 113-115.

anything more, the Plaintiffs have not pleaded facts to support a claim for relief, nor can their claims be cured through a new pleading. Therefore, the Court should dismiss this claim with prejudice. *Caroll v. Fort James Corp.* 470 F.3d 1171, 1177 (5th Cir. 2006).

III.
ARGUMENTS AND AUTHORITIES

A. Plaintiffs' Claims Are Barred by "Attorney Immunity" Doctrine.

Plaintiffs' claims should be dismissed pursuant to the "Attorney Immunity Doctrine". *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) ("[A]ttorneys are immune from civil liability to non-clients for actions taken in connection with representing a client in litigation."). More so, in Texas, "attorney immunity is properly characterized as a true immunity from suit." *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346-48 (5th Cir. 2016). This immunity "not only insulates the [attorney] from liability, but also prevents the [attorney] from being exposed to discovery and/or trial." *Id.* At 346. The only exceptions to attorney immunity is if the attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduction "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Byrd*, 467 S.W.3d at 482.

It is undisputed fact that Spielman was acting at all times as the attorney for Amy Brunsting. In Plaintiffs' Verified Complaint for Damages, they state "[d]efendant Amy Brunsting is proximately related to Harris County Probate Court . . . **through her attorney, Defendant Neal Spielman** and co-conspirator Defendant Candace Kuntz-Freed." *See* ¶ 27 (emphasis added). The facts the Plaintiffs allege as forming the basis of her claims against Spielman arise from the discharge of Spielman's duties in representing Amy Brunsting. There are no allegations in the Plaintiffs' pleadings that would suggest Spielman's conduct fell into any

exception to the attorney immunity doctrine. Thus, as Spielman's conduct is immune from suit, Plaintiffs' claims must be dismissed.[2]

B. Plaintiffs' Claims Should be Dismissed Pursuant to Federal Rule 12(b)(6) for Failure to State a Claim.

The remainder of Plaintiffs' claims against Spielman should be dismissed because the Complaint fails to allege facts supporting any valid claims for relief. Plaintiffs complaints are simply conclusory allegations of law, inferences unsupported by facts, or formulaic recitations of elements. These types of complaints are not sufficient to defeat a 12(b)(6) motion. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

In order to defeat a Rule 12(b)(6) motion, Plaintiffs must plead enough facts to "state a claim to relief that is **plausible on its face**." *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A claim is "facially plausible" if the facts plead allow the court to draw reasonable inferences about the alleged liability of the defendants. *Id.* Here, the Plaintiffs' allegations facially fail to meet this standard. In the RICO complaint against Spielman, Plaintiffs allege simply:

> **[Spielman and others] did at various times unlawfully, willfully and knowingly combine, conspire and agree with each other to violate 18 U.S.C. Section 1962(c), by participating, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity involving multiple predicate acts within the meaning of 18 U.S.C. §1961(1) in violation of 18 U.S.C. §1962(c) and (d) to wit[].**

Plaintiffs' Verified Complaint for Damages, ¶59.

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[2] Alternatively, Plaintiffs' claims are barred by lack of attorney-client privity. Barcelo v. Elliott, 923 S.W.2d 575, 577 (Tex. 1996).

Each of the Plaintiffs claims against Spielman follow the same formulaic pattern. *See* ¶¶ 121, 122, 124, 131, 132, 139. As the Plaintiffs' claims have not met the "fair notice" pleading standards Rule 12(b)(6), these claims should be dismissed.

C. Plaintiffs' Fail to Plead Particular Acts of Fraud.

Federal Rule 9(b) requires a heightened pleading standard when the claims allege acts of fraud. *See* FRCP 9(b). The Federal Rules requires plaintiffs to plead allegations of fraud "with particularity." *ABC Arbitrage Plaintiffs Grp. V. Tchuruk*, 291 F.3d 336, 350 (5th Cir. 2002) (to satisfy the particularity standard, a party must "specific the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent") (internal quotations and citations omitted). The Plaintiffs plead, *inter alia*, that Spielman was part of an over-arching conspiracy, (referred to alternatively as "the Enterprise," the "Harris County Tomb Raiders," the "Probate Mafia", and the "Probate Cabal") whose purpose was to commit acts of fraud to "judicially kidnap and rob the elderly, our most vulnerable citizens of their freedom, dignity, fundamental human and civil rights and property accumulated throughout a lifetime, often also robbing heirs and beneficiaries of familiar relations and inheritance expectancies." *See* Plaintiffs' Verified Complaint for Damages ¶¶ 59-71. As these pleadings require the heightened standard, Plaintiff's allegations are facially insufficient and should be dismissed.

D. Plaintiffs' Fail to Plead Particular Conduct of the Defendant.

The pleading requirements under the Rule 9(b) also require that claimants allege specific and separate allegations against each defendant. *See Unimobil 84, Inc. v. Spurney,* 797 F.2d 214, 217 (5th Cir. 1986)(affirming dismissal of fraud claim for not stating with particularity "what representations each defendant made"). It is "impermissible to make general allegations that

lump all defendants together, rather, the complaint must segregate the alleged wrongdoing of No. 1 from another."). *In re Parkcentral Glob. Litig.,* 884 F. Supp. 2d 464, 471 (N.D. Tex. 2012).

Here, Plaintiffs' complaints consist of generalized allegations concerning "conspiracies" and "enterprises." The claims do not differentiate between what acts each member committed nor what role each defendant played. Nothing in the pleadings is informative enough to prepare a proper defense. Without discernible, specific acts alleged against the Defendants, the Plaintiffs have failed to meet the pleading standards required by the Federal Rules.

E. Plaintiffs Lack Privity With Defendant Spielman to Maintain a Suit.

Plaintiff's claims against Spielman arise from his role as an attorney for Amy Brunsting. Texas law dictates that an attorney only owes a duty of care to a person with whom the attorney has a professional attorney-client relationship. *Barcelo v. Elliott*, 923 S.W.2d 575, 577 (Tex. 1996). A non-client may not maintain a suit for the negligence of another's attorney. *See Gillespie v. Scherr*, 987 S.W.2d 129 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). Spielman and Plaintiffs have never had an attorney-client relationship; the Plaintiffs themselves do not dispute this fact. Without a relationship of "privity" between the attorney and the claimants, the claimant is not a proper party to sue. The rationale between the "privity" required to obtain standing is, that without it, attorneys would be subject to endless liability. *Barcelo*, 923 S.W.3d at 577. Texas has uniformly applied the doctrine of a "privity barrier" in estate planning contexts. *Id.* At 579.

Because Spielman and Plaintiffs never had an attorney-client relationship, nor do Plaintiffs allege an attorney-client relationship existed, they do not have standing to sue Spielman. Therefore, the Plaintiffs' claims must be dismissed.

IV.
CONCLUSION

For the reasons stated above, Defendant Neal Spielman requests that this Court grant Defendant's Motion to Dismiss on all claims with prejudice.

Respectfully submitted,

WINGET, SPADAFORA, & SCHWARTZBERG, L.L.P.

By: _____

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record through the Court's CM/ECF system on this date: October 3, 2016.

_____
Martin S. Schexnayder