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 JILL WILLARD YOUNG'S
REPLY IN SUPPORT OF MOTION TO DISMISS

Plaintiffs' Response further highlights the infirmities of their Complaint, which should be dismissed because of the attorney–immunity doctrine, Plaintiffs' failure to plead the elements of a RICO claim, and the delusional and implausible nature of Plaintiffs' allegations.

I. Ms. Young is protected by the attorney–immunity doctrine.

Plaintiffs' Response to Defendant Young's Motion to Dismiss highlights the Complaint's inescapable—and irremediable—failure: In Texas, a Plaintiff cannot avoid the attorney immunity doctrine by "[m]erely labeling an attorney's conduct 'fraudulent.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 483 (Tex. 2015); *Dixon Fin. Services, Ltd. v. Greenberg, Peden, Siegmyer & Oshman, P.C.*, No. 01-06-00696-CV, 2008 WL 746548, at *9 (Tex. App.—Houston [1st Dist.] Mar. 20, 2008, pet. denied) ("Characterizing an attorney's action in advancing his client's rights as fraudulent does not change the rule that an attorney cannot be held liable for discharging his duties to his client."). Plaintiffs' cannot overcome Ms. Young's immunity for two reasons:

First, although Plaintiffs' Response to Ms. Young's Motion to Dismiss contains many factual assertions, those assertions are entirely absent from Plaintiffs' Complaint—*none* of the factual assertions made in the Response appears in the Complaint. And whether Ms. Young's Motion to Dismiss should be granted is based on the assertions made in Plaintiffs' Complaint—not other filings. Second, Plaintiffs fail to address the law cited in Ms. Young's Motion. Instead, they try to justify their denomination of the fictitious criminal enterprise as the "probate mafia" and "Harris County Tomb Raiders." But these arguments do not change Ms. Young's "true immunity from suit" relating to her representation of Temporary Administrator Lester. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016). And Plaintiffs have only alleged acts relating to Ms. Young's routine handling of legal tasks as counsel for Temporary Administrator Lester. Specifically, the only assertion (although regurgitated in many different

ways) made in the Response against Ms. Young is that she represented Temporary Administrator Lester in his preparation of a single report. *See* Response [DKT. 41], at ¶¶ 22–29, 32–34, 47–48, 51, 59–60 (all discussing the "report" and Ms. Young's representation of Temporary Administrator Lester).

Plaintiffs do not dispute the law cited by Ms. Young, nor do they dispute that their allegations arise only out of Ms. Young's representation of Temporary Administrator Lester. Plaintiffs' assertion that the report is somehow fraudulent or incorrect does not change Ms. Young's complete immunity from suit, because Plaintiffs have only alleged acts relating to Ms. Young's routine handling of legal tasks as counsel for Temporary Administrator Lester. *See Byrd*, 467 S.W.3d at 481–83; *see also* Order Granting Motion to Dismiss (DKT. 320), *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733, at *9 (S.D. Tex. Oct. 7, 2016) (dismissing almost identical allegations because "**routine litigation conduct . . . cannot become a basis for a RICO suit**") (emphasis added). Thus, Plaintiffs' Complaint should be dismissed.

II. Plaintiffs' Complaint is too delusional to state a valid claim for relief.

In the last week, another Court has considered and rejected almost identical allegations to those made by Plaintiffs. *See* Order Granting Motion to Dismiss (DKT. 320), *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733 (S.D. Tex. Oct. 7, 2016). In *Sheshtawy*, three groups of plaintiffs alleged parties and attorneys practicing before Harris County Probate Court No. 1 were members of a RICO conspiracy, along with two judges. The *Sheshtawy* plaintiffs' alleged "proof" of conspiracy was that "Defendant Judge Loyd Wright and Defendant Associate Judge Ruth Ann Stiles always ruled against . . . the Plaintiffs." *See* Amended Complaint, *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733, ¶ 359 (DKT.. 102). The Court dismissed the matter, holding that the plaintiffs' allegations were "pure zanyism." *Id.* at *9.

Here, Plaintiffs make similar allegations against the parties, attorneys, and judges in Probate Court No. 4. And as in *Sheshtawy*, the allegations are frivolous, because they are too fanciful, fantastic, and delusional to state a valid claim for relief.

III. Plaintiffs still cannot articulate the elements of a RICO claim against Ms. Young.

In Ms. Young's Motion to Dismiss, Ms. Young showed that Plaintiffs' RICO claim should be dismissed for two independent reasons—Plaintiffs have not shown they suffered any injury proximately caused by a violation of RICO by Ms. Young, and Plaintiffs have failed to plead with particularity any predicate acts of mail or wire fraud by Ms. Young. Plaintiffs address neither failure.

A. Plaintiffs have not alleged they suffered any injury proximately caused by a violation of RICO by Ms. Young.

First, Plaintiffs admit that they have not suffered any injury proximately caused by a violation of RICO by Ms. Young. Indeed, Plaintiffs admit that they were not injured by the only wrongful act of Ms. Young that they allege—Ms. Young's representation of Temporary Administrator Lester, who prepared the report. Response at ¶ 28. Specifically, Plaintiffs admit that the they were not injured by the report, and, instead, the "'Report' was nothing but a vehicle for threatening Plaintiff Curtis with injury to property rights if she did not agree to enter into a mediated settlement agreement." *Id.*

But the threat of injury is not actual injury and does not create a RICO claim. *See* 18 U.S.C. § 1964(c) ("Any person injured in his business or property by reason of a violation of [RICO] may sue."). And Plaintiffs' allegations are much too tenuous to give rise to standing under RICO. Plaintiffs appear to assert that there must be some connection between Ms. Young's representation of Mr. Lester, Mr. Lester's creation of the report, the Plaintiffs' alleged fear of the "threat" of the report, and then the mediated settlement agreement that was entered

into by Plaintiffs. Response at ¶ 28. That is not sufficient under RICO. Instead, a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury." *Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015). Proximate cause requires "directness"—"the injury or damage was either a direct result or a reasonably probable consequence of the act." *Plambeck*, 802 F.3d at 676.

Here, Plaintiffs do not plead facts showing they suffered any financial loss that directly resulted from any alleged RICO violation by Ms. Young. *See Gil Ramirez Grp., L.L.C.*, 786 F.3d at 408. They argue only that they felt "threatened" by the report, which led them to agree to enter into a settlement. That cannot create an injury that creates standing to sue under RICO.

B. Plaintiffs have not pleaded facts that Ms. Young engaged in a "racketeering activity."

Even in Plaintiffs' Response, Plaintiffs fail to assert Ms. Young engaged in a pattern of "racketeering activities" sufficient to trigger the RICO statute. Under Rule 9(b), predicate RICO acts must be pleaded under the heightened pleading requirements of Rule 9(b), which requires a plaintiff to plead "with particularity." FED. R. CIV. P. 9(b). Plaintiffs have made no assertion of any predicate acts of Ms. Young they claim constitute RICO predicate acts.[1] Alleging simply that Ms. Young represented Mr. Lester and that Mr. Lester prepared the report is insufficient. That allegation alone can never rise to the level of mail fraud, wire fraud, or violations of the Hobbs Act. Further, that allegation can never constitute a "pattern" of racketeering acts by Ms. Young. Plaintiffs fail to allege "the particulars of time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." *Tel-Phonic*, 975 F.2d at 1139. Nor have they pled what Ms. Young obtained by making the alleged misrepresentation.

[1] As shown in Ms. Young's Motion to Dismiss, Plaintiffs' wire fraud, mail fraud, and Hobbs Act claims fail, because they cannot be asserted as private causes of action. Plaintiffs do not dispute this.

IV. Plaintiffs' Complaint remains too implausible to state a valid claim for relief.

Plaintiffs try to argue their Complaint is plausible because "Defendants . . . cannot[] point to the record in any proceeding where Plaintiffs have been on the losing end of any fully litigated state court determinations . . . ." Response at ¶ 18. Plaintiffs completely miss the mark.

Plaintiffs' attempts to re-litigate as RICO claims issues decided in state court fail. If Plaintiffs desired to challenge determinations made in state court, there are appellate processes for that. Plaintiffs also ignore that Ms. Young **was not party to the underlying proceedings**. Whether Plaintiffs were on the "winning" or "losing end" of any determination in state court has nothing to do with Ms. Young, who merely acted as the attorney for Temporary Administrator Lester. Thus, Plaintiffs' Complaint remains too implausible to state a claim against Ms. Young.

V. Plaintiffs' references to a prior lawsuit are irrelevant.

Plaintiffs repeatedly reference a prior suit in this district, *Curtis v Brunsting*, No. 4:12-cv-0592, which was remanded to state court. But Plaintiffs' references make no sense and are irrelevant. That matter was remanded to Harris County **at Plaintiff Curtis's own request**. *See* Order Granting Unopposed Motion to Remand by Candace Louise Curtis, *Curtis v Brunsting*, No. 4:12-cv-0592 (DKT. 112) (S.D. Tex. May 15, 2014). Plaintiff Curtis cannot relitigate as some kind of fraudulent act something she requested from the Court. Second, Plaintiffs' references to that matter are also irrelevant to its claims against Ms. Young. Neither Ms. Young nor her state court client, Temporary Administrator Lester, had any involvement in the prior federal court matter—they were not parties to that matter, they never acted as attorneys in that matter, and they never appeared in that matter.

VI. Conclusion

For the reasons stated above and in Ms. Young's Motion to Dismiss, this Court should dismiss Plaintiffs' claims against Ms. Young with prejudice.

Dated: October 11, 2016

Respectfully submitted,
/s/ Robert S. Harrell

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ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Certificate of Interested Parties has been served on October 11, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
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