

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.* §
§
VS. §
§ Civil Action No. 4:16-cv-01969
CANDACE KUNZ-FREED, *ET AL.* §
§
§

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE’S REPLY TO PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) and (6)

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants, the Honorable Judges Christine Riddle Butts and Clarinda Comstock and substitute Court Reporter Tony Baiamonte (collectively, “Harris County Defendants”) file this Reply to Plaintiffs’ Response to their Motion to Dismiss and would respectfully show the Court as follows:

Plaintiffs fail to controvert the facts that belie jurisdiction

Plaintiffs contend the “only facts under consideration” in the subject Motion to Dismiss are *judicial acts* -- those taken by Judge Comstock in deciding “what gets set for hearing and when, and what does not find it way to the calendar.” [Doc. 57, ¶¶ 33-34]. Instead of addressing the complete lack of subject matter jurisdiction by this Court, Plaintiffs instead contend the probate court had no subject matter jurisdiction over the underlying probate proceeding. [Doc. 57, ¶¶ 37-38; 41-42]. *Plaintiff Curtis* sought remand of her prior federal suit *to the state probate court*. Plaintiffs then attempt to bootstrap this nonsensical argument to render immunity void in the

present case.

Plaintiff Munson's response to his lack of standing is he was "compelled to combat this public corruption at great personal expense in time and resources." [Doc. 57, ¶ 51]. This does not confer standing.

Lacking any evidence of any conspiracy or any injury, Plaintiffs contend the "mere fact of the attempt to extort is sufficient." [Doc. 57, ¶ 52]. This argument, unsupported by any legal authority likewise fails.

Failure to be "satisfied" with a response is not actionable

In response to the argument that Plaintiffs have failed to state a claim against substitute Court Reporter Tony Baiamonte, Plaintiffs contend that "Munson spoke with Mr. Baiamonte and *was not satisfied with the answer* to inquiries regarding unavailability of a transcript for September 10, 2015." [Doc. 57, ¶ 66] (emphasis added). Apparently, Mr. Baiamonte was sued for the singular reason that he "promised to reply with an email" and when that was not received, he was "added to this complaint." [Doc. 57, ¶ 67]. Not only are the claims against Mr. Baiamonte frivolous, they are certainly sanctionable.

Conclusion & Prayer

Plaintiffs wrongly believe that following a "form" is all they need to do to meet the stringent requirements of a RICO claim. [Doc. 57, ¶ 83]. Plaintiffs have not met the legal standard to bring a claim under RICO or any other state law. Harris County Defendants are entitled to dismissal as a matter of law, because the claims against the Honorable Judges are barred by judicial, official and governmental immunity. Likewise, the claims against Tony Baiamonte are barred by governmental, qualified and official immunity.

Harris County Defendants are entitled to dismissal on these additional grounds: (1) the Complaint fails to state a claim sufficient to meet the requirements of Rules 8 and 9(b), (2) the Complaint fails to state a RICO claim or RICO conspiracy claim against the Harris County Defendants, (3) the Complaint fails to allege standing under RICO, (4) the Complaint fails to allege a conspiracy, (5) the Complaint is not plausible, (6) the Complaint fails to plausibly allege the existence of an "enterprise" or "association-in-fact," and (7) the Complaint is frivolous.

Plaintiffs have failed to present any facts, argument or legal authority to refute these grounds for dismissal and the Harris County Defendants pray the Court grant their Motion to Dismiss the Plaintiffs' Verified Complaint for Damages [Doc. 1] with prejudice, sanction the Plaintiffs for filing a frivolous and groundless lawsuit, and award the Harris County Defendants such other and further relief, at law or in equity, to which they may show themselves to be justly entitled.

Dated: October 17, 2016.

Respectfully Submitted,

/s/ Laura Beckman Hedge

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 17th day of October, 2016, via ECF.

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