

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

BRUCE AND WENDY	)	
ANDERSON,	)	
Plaintiffs,	)	
-vs-	)	
	)	
AMWAY/QUIXTAR, INC., a	)	CASE NO.: 3:07-CV-844-J-25JRK
corporation,	)	
MICHAEL YOUNG	)	
MCCORMICK,	)	
DONALD E. CHRISTOPHER,	)	
HAL GOOCH,	)	
Defendants.	)	
_____	)	

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS  
UNDER RULES 12(b)(1) AND 12(b)(6), FED.R.CIV.P.**

**I. INTRODUCTION**

This is Defendant CHRISTOPHER’s second Motion to Dismiss the Amended Complaint. By order dated January 24, 2008, this Court denied the first motion, which was based solely on lack of diversity. “[C]onsidering Plaintiffs’ *pro se* status,” the Court granted Plaintiffs’ motion to amend, “constru[ing] the Complaint as alleging federal question jurisdiction.”

In this memorandum, Defendant CHRISTOPHER will address other grounds requiring dismissal of the Amended Complaint.

In *Bell Atlantic Corp. v. Twombly*, 550 U.S. \_\_\_, 127. S.Ct. 1955, 167 L.Ed. 2d 929 (2007), the United States Supreme Court jettisoned the “no set of facts” standard for Rule 12(b)(6) dismissal adopted in *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 20 L.Ed. 2d 80 (1957), stating “after puzzling the profession for 50 years, this famous observation has earned its retirement. *Id.*, 167 L.Ed. 2d at 945.

The “plausibility” standard adopted in *Twombly* is hardly a model of clarity. It requires that, to state a claim, a complaint must “allege enough factual matter (taken as true)” to “raise a reasonable expectation that discovery will reveal evidence” of the violation of law that is claimed. *Id.* at 940. The *Twombly* opinion was handed down on May 21, 2007, approximately six weeks after the United States Court of Appeals for the Eleventh Circuit decided *Ambrosia Coal & Const. Co. v. Pages Morales*, 482 F.3d 1309, 1316 (11<sup>th</sup> Cir. 2007), in which the Court upheld dismissal of *Ambrosia*’s civil RICO claims under the “increased level of specificity” standard of Rule 9(b), Fed.R.Civ.P.

The Amended Complaint does not allege facts – as opposed to legal conclusions and gibberish – which are sufficient to state a claim under *Twombly*’s plausibility standard, generally; and, insofar as Plaintiffs intend to state a civil RICO claim, the few well-pleaded facts in the Amended Complaint fail to satisfy the “increased level of specificity” required by *Ambrosia*.

Moreover, the allegations of the Amended Complaint establish that the injury which Plaintiffs claim did not directly flow from any RICO predicate act and compel dismissal of the Amended Complaint because Plaintiffs lack standing to assert a RICO claim.

Before demonstrating that the Amended Complaint must be dismissed for the foregoing reasons, Defendant CHRISTOPHER will pierce the heart of Plaintiffs’ true objective in the Amended Complaint: to reverse the results of two final judgments against them entered by Florida state courts. As shown in the next part of this memorandum, under the *Rooker-Feldman* doctrine, this Court does not have subject matter jurisdiction to consider Plaintiffs’ collateral attack on those final judgments.

**II. THE ROOKER-FELDMAN DOCTRINE BARS PLAINTIFFS’  
COLLATERAL ATTACK ON FINAL JUDGMENTS ENTERED BY FLORIDA  
STATE**

Plaintiffs’ extraordinary Motion to Vacate Arbitration Award clearly and succinctly revealed that Plaintiffs filed this lawsuit to overturn the results of at least two final state court judgments. Defendant CHRISTOPHER is a named defendant in the Amended Complaint (“A/C”) based on Plaintiffs’ allegations that:

1. He “concealed” from Plaintiffs a September 6, 2000 Order on Plaintiffs’ Motion to Seize Malaheel Luster’s Chose In Action, entered by United States Magistrate Judge Barry Seltzer, in Case No. 00-6357-ZLOCH, in the United States Court for the Southern District of Florida. A/C ¶¶28-31, 34, 36. In the September 6, 2000 Order, Judge Soltzer directed that six named plaintiffs, including the Andersons, “be immediately substituted as real parties in interest to pursue counterclaims” asserted by Mahaleel Lee Luster in a lawsuit styled, *Gooch Support Systems, Inc., Gooch Enterprises, Inc., Hal Gooch and Chris Gooch v. Malaheel Luster*, Case No. 94-0988113), then pending in the Circuit Court of the 17<sup>th</sup> Judicial Circuit, in and for Broward County, Florida. A/C, Exhibit 6.<sup>1</sup>

2. In September 2003, Defendant CHRISTOPHER lied under oath in “[a] ‘non-jury trial’ ... by claiming to never have received the Order.” *Id.*, ¶32, Exhibit 7.<sup>2</sup>

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<sup>1</sup> In deciding a motion to dismiss, the Court may consider the content of a document attached to the complaint if the document is (1) central to the plaintiffs’ claim and (2) undisputed. *See, e.g., Day v. Taylor*, 400 F.3d. 1272, 1276 (11<sup>th</sup> Cir. 2005).

<sup>2</sup> The two documents which comprise Exhibit 7 disprove the “concealment” and the perjury allegations.

The factual allegations after paragraph 32, when stripped of legal conclusions, quotations of irrelevant federal statutes, and accusations of “fraud” and violations of criminal statutes, reveal that the primary focus of the Amended Complaint is a “forced arbitration” on April 30, 2004, in which Defendant Hal Gooch and non-Defendant Susan Gooch were awarded \$728,792.14; and which ultimately resulted in entry of the Second Amended Final Judgment and Order Confirming Awards In Arbitration against the Plaintiffs on September 27, 2005. *Id.*, ¶33; Exhibit 8.

The Amended Complaint also alleges that, in February 2007, Defendant Amway/Quixtar, Inc. obtained a Final Judgment against the Plaintiffs for \$10,000 “to force an additional fraudulent arbitration award.” A/C ¶35; Exhibit 9.

Quite simply, beneath a mountain of angry allegations, the Amended Complaint is founded on two core contentions. (1) Defendants HAL GOOCH and QUIXTAR illegally obtained final state court judgments against the Plaintiffs; and (2) this Court should award damages against the Defendants to compensate the Plaintiffs for the damages that they paid, or will pay, to satisfy those final judgments.

Under the *Rooker-Feldman*<sup>3</sup> doctrine, this Court does not have subject matter jurisdiction. The Eleventh Circuit described this doctrine as follows:

*Rooker-Feldman* bars lower court jurisdiction where four criteria are met: (1) the party in federal court is the same as the party in state court; (2) the prior state court ruling was a final or conclusive judgment on the merits; (3) the party seeking the relief in federal court had a reasonable opportunity to raise its federal claims in the state court proceeding; and (4)

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<sup>3</sup> See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16, 44 S. Ct. 149, 150, 68 L.Ed. 2d 362 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476, 82, 103 S.Ct. 1303, 75 L.Ed. 2d 206 (1983).

the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment.

*Storck v. City of Coral Springs*, 354 F.3d 1307, 1310 n.1 (11<sup>th</sup> Cir. 2003), quoting *Amos v. Glynn County Board of Tax Assessors*, 347 F.3d 1265 n.11 (11<sup>th</sup> Cir. 2003). (internal citations omitted).

The colorful and inflated allegations of the Amended Complaint cannot avoid satisfaction of the *Rooker-Feldman* criteria: (1) the Plaintiffs were the same parties in the state court cases; (2) the judgments were final on the merits; (3) the Plaintiffs could have presented in state court their fundamental contentions "of fraud" –repackaged now as RICO violations based on imagined violations of federal criminal statutes; and (4) the issues before this Court are inextricably intertwined with the state court's judgments against the Plaintiffs.

Accordingly, this Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine, and can only dismiss the Amended Complaint.

### **III. THE AMENDED COMPLAINT FAILS TO STATE A CIVIL RICO CLAIM.**

The Amended Complaint purports to allege violations of RICO under 18 U.S.C. Sections 1962(c) and 1962(d). In *Ambrosia Coal & Const. Co. v. Page Morales*, 482 F.3d 1309, 1316-17 (11<sup>th</sup> Cir. 2007), the Eleventh Circuit affirmed dismissal of *Ambrosia's* civil RICO claims under Rule 12(b)(6), explaining:

Civil RICO claims, which are essentially a certain breed of fraud claims, must be pled with an increased level of specificity... (citations omitted). To satisfy the Rule 9(b) standard, RICO complaints must allege:

(1) the precise statements, documents, or misrepresentations made; (2) the time and place of and person responsible for the statement; (3) the content and manner in which the statements misled the Plaintiffs; and (4) what the Defendants gained by the alleged fraud. In *Brooks*,<sup>4</sup> we concluded that the complaint alleging a RICO claim did not meet the Rule 9(b) particularity standard because it was devoid of specific allegations with respect to each defendant; the plaintiffs lumped together all of the defendants in the allegations of fraud.

The Amended Complaint fails to meet the requirements for pleading civil RICO claims set forth in *Ambrosia*. Foremost, the ANDERSONS do not allege “the precise statements, documents, or misrepresentations” made by Defendant CHRISTOPHER which constituted a RICO predicate act; or “the time and place” that Defendant CHRISTOPHER participated in any crime that would qualify as a RICO predicate act. Plaintiffs cursorily allege that one or more Defendants committed extortion under the Hobbs Act, 18 U.S.C. §1951 (A/C at page 12); obstructed justice under 18 U.S.C. §1563 (A/C at page 14); committed perjury under 18 U.S.C. §1621 (A/C at page 14-15); committed extortion under 18 U.S.C. §880 (A/C at page 15); and committed mail fraud, wire fraud, bank fraud, and interstate transportation of a stolen vehicle (A/C at pages 16-17).

Plaintiffs’ descriptions of CHRISTOPHER’s conduct which allegedly violated federal criminal states are painfully frivolous. Defendant CHRISTOPHER is accused of two “crimes”:

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<sup>4</sup> *Brooks v. Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1380-81 (11<sup>th</sup> Cir. 1997)

1. Concealing the September 6, 2000 Order from the ANDERSONS, a charge which is directly contradicted by the “9/11/00” entry on September 29, 2000 Statement for Services addressed to Bruce Anderson, included in Exhibit 7: “DEC Receive and review court order granting Andersons’ and Haugen’s motion to seize Mahaleel Luster’s chose in action.” If Defendant CHRISTOPHER did not send the Andersons a copy of the September 6, 2000 Order, he certainly described the order in sufficient detail to notify him of its existence and its basic content. In any event, even if CHRISTOPHER “concealed” the Order, he did not commit any crime, much less a “predicate” crime under RICO.

2. Committing perjury in testimony at a nonjury trial in Circuit Court in Broward County on June 23, 2003. A/C ¶32. The one page of transcript of CHRISTOPHER’s trial testimony included in Exhibit 7 does not remotely constitute a statement under oath “claiming to have never received the Order of September 6, 2000.” A/C at page 15. At most, it reflects CHRISTOPHER’s recollection of the Order, without the benefit of having it before him when he testified:

Q. Did you get an order from the judge down there permitting your client to be substituted as a party plaintiff?

A. No, I don’t think so. I think that what the federal court ordered was that we were allowed to execute on that cause of action....

If what CHRISTOPHER recalled the order stated was not accurate, his erroneous recollection of the Order was not a false statement of material fact that constituted perjury under federal or Florida law. Nevertheless, assuming *arguendo* that it was perjury, that “perjury” occurred in state court in violation of Florida law. Perjury under state law does not qualify as a RICO predicate act.

The Amended Complaint also alleges that CHRISTOPHER “conspired” to hide an “embarrassing videotape” from the Plaintiffs (A/C ¶8); and that he “conspired” with Defendant Gooch to conceal the September 6, 2000 Order. A/C ¶46. Again, even if CHRISTOPHER agreed with another Defendant to hide an embarrassing videotape from the Plaintiffs and/or to “conceal” the September 6, 2000 Order, such an agreement or agreements cannot constitute a RICO conspiracy under 18 U.S.C. §1962(d). To allege a civil RICO conspiracy, Plaintiffs must first plead facts sufficient to support a civil RICO claim. *G.E. Inv. Private Placement Partners II v. Parker*, 247 F.3d 543, 551 n.2 (4<sup>th</sup> Cir. 2001); *Efron v. Embassy Suites (P.R.), Inc.*, 223 F.3d 12, 21 (1<sup>st</sup> Cir. 2000).

Because Plaintiffs failed to plead a civil RICO claim under 18 U.S.C. §1962(c), they necessarily failed to plead a RICO conspiracy claim under 18 U.S.C. § 1962(d).

**IV. PLAINTIFFS FAILED TO PLEAD FACTS WHICH SHOW THAT THE ALLEGED RICO VIOLATION CAUSED THEM DIRECT INJURY.**

The crux of Plaintiffs’ Amended Complaint is that the Defendants’ purported racketeering activity resulted in purported “frauds” on state courts, which entered final judgments for damages against the Plaintiffs. Nevertheless, Plaintiffs cannot establish that Defendant CHRISTOPHER’s purported “concealment” of the September 6, 2000 Order, or his purported false testimony in June 2003, directly or foreseeably caused (1) the arbitrator to enter the \$729,000 damages award against them in April 2004; or (2) Florida state courts to enter separate final judgments against them in 2005 and 2007.

“In order for a pattern of racketeering activity to be a cognizable cause of civil RICO injury to a private plaintiff, one or more of the predicate acts must not only be the ‘but for’ cause of the injury, but the proximate cause as well.” *Greenleaf Nursery v. E.I.*

*DuPont DeNemours and Co.*, 341 F.3d 1292, 1307 (11<sup>th</sup> Cir. 2003). “Plaintiffs must show a ‘direct relation between the injury asserted and the injurious conduct alleged.’” *Id.*, quoting *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268, 112 S.Ct. 1311, 117 L.Ed. 2d 532 (1992). Unless the alleged injury was directly caused by the RICO violation, Plaintiffs lack standing to assert a claim under RICO. *Greenleaf Nursery*, 341 F.3d at 1308.

Because allegations of the Amended Complaint establish that Plaintiffs were not directly injured by any RICO predicate acts, they lack standing to assert a civil RICO claim.

**V. CONCLUSION.**

The Amended Complaint must be dismissed because:

1. This Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine.
2. The Amended Complaint fails to state a civil RICO claim.
3. Plaintiffs lack standing to assert a civil RICO claim.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 7, 2008 I electronically filed the foregoing Motion to Dismiss with the Clerk of the Court by using the CM/ECF system.

I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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/s/ Keith E. Rounsaville  
Keith E. Rounsaville