

POINT VII

PLAINTIFFS FAIL TO STATE A CLAIM FOR A SHERMAN ACT VIOLATION.

Plaintiffs' Sherman Act claims should be dismissed due to their failure to satisfy the threshold pleading requirements for the Act. See 15 U.S.C §§ 1 & 2. To survive a motion to dismiss, Plaintiffs must state factual allegations that give rise to an inference of conspiracy. To do this, the complaint must provide circumstantial evidence that the activity resulted from an agreement rather than just parallel conduct.⁹ Bell Atl. Corp. v. Twombly, 127 S.Ct at 1966. Here, plaintiffs assert nothing more than parallel conduct at most. Plaintiffs state that the alleged whitewashing of the attorney complaints allowed the alleged violations of intellectual property rights to continue, which allegedly resulted in a restraint of trade. See Am. Complaint ¶ 1073. Such allegations do not create an inference that an agreement to restrain trade existed. Since plaintiffs have failed to plead any facts which create an inference that the State Defendants had an agreement to restrain trade, the § 1 count should be dismissed.

Similarly, plaintiffs have failed to state a claim for relief under 15 U.S.C. § 2. At minimum, plaintiffs were required to set forth "factual allegations sufficient 'to raise a right to relief above the speculative level.'" Goldstein v. Pataki, 516 F.3d 50, 56 (2d Cir. 2008). Plaintiffs have failed to provide any facts connecting the alleged whitewashing with an attempt, intent, or desire of the State Defendants to monopolize the market for video and imaging encoding. The information provided is insufficient to raise the right to relief to a speculative level. Thus, the § 2 action should be dismissed.

⁹ "A [§ 1] claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made...[A]n allegation of parallel conduct and a bare assertion of conspiracy will not suffice." Bell Atl. Corp. v. Twombly, 127 S.Ct at 1966.

POINT VIII

NO PRIVATE RIGHT OF ACTION EXISTS FOR ALLEGED VIOLATIONS OF FEDERAL OR STATE CRIMINAL LAWS.

Plaintiffs seemingly allege civil claims for the alleged violation of federal and state criminal provisions, including 18 U.S.C. §§ 1014 (Bank Fraud), 1341 (Mail Fraud), 1503 (Obstruction of Justice), 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), and 1511 (Obstruction of State and Local Enforcement) and New York Penal Law §§ 155.40 (Grand Larceny, Extortion), 175.35 (Offering a false instrument for filing, Fraud on Government Agencies), and 200.00 (Bribery). See Complaint, ¶¶ 54-62. However, both federal and state law preclude these civil claims.

No private right of action or civil causes of action exist for alleged violations of the criminal statutes contained in Title 18 of the United States Code unless the statute specifically creates a private right. Powell v. Kopman, 511 F. Supp. 700, 704 (S.D.N.Y. 1981); Katz v. Molic, 1984 U.S. Dist. LEXIS 22546 (S.D.N.Y. 1984); See also Shaw v. Neece, 727 F.2d 947, 949 (10th Cir. 1984), cert. denied, 466 U.S. 976, (1985); Del Elmer; Zachay v. Metzger, 967 F. Supp. 398, 403 (S.D. Calif. 1997). With the exception of the civil RICO claims, plaintiffs Title 18 allegations do not specifically create private rights of action.

Similarly, no private right of action or civil causes of action exist under the criminal statutes contained in the New York Penal Law. Luckett v. Bure, 290 F.3d 493, 497 (2d Cir. 2002); Crandall v. Bernard, Overton & Russell, 133 A.D.2d 878, 879, (3rd Dept. 1987), app. dismissed, 70 N.Y.2d 940, (1987). Accordingly, all claims and request for damages under the respective federal and state criminal statutes should be dismissed.


CONCLUSION

For the foregoing reasons, State Defendants ask that the Court issue an order granting State Defendants' motion to dismiss the Amended Complaint as against all State Defendants, with prejudice, and granting such other and further relief as the Court deems just, proper and appropriate.

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