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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Albert L. Peia, Plaintiff	)	**CASE NO. 3:05cv1029 (SRU)**
-vs-	)	
Richard M. Coan, Coan, Lewendon,	)	
Gulliver, and Miltenberger, LLC.,	)	
John Doe Surety 1, John Doe Insurer 2,	)	
John Does 3 – 10, Defendants	)	**August 15, 2005**

PLAINTIFF ALBERT PEIA'S RESPONSE TO DEFENDANT COAN'S REPLY AND SUPPLEMENTAL PROFFER IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR ENTRY OF JUDGMENT ON THE PLEADINGS IN THE SUM CERTAIN AMOUNT OF $5 MILLION AS DEMANDED IN THE VERIFIED COMPLAINT.

Albert L. Peia, plaintiff in the instant cause, of full age, hereby declares/certifies in response to defendants' reply and proffers in support of plaintiff's cross-motion for the entry judgment on the pleadings in the sum certain amount of $5 Million demanded in the Verified Complaint as supported therein and by the Affidavit, Rico Statement, and Exhibits thereto and filed concurrently therewith, as follows:

1. **Defendant Coan through counsel Miltenberger apparently clings to his misstatement of the number of actions against defendants Coan and Coan *et als* yet now claims their lack of relevance. He also asserted to this Court that defendant Coan owed to plaintiff no fiduciary duty, yet in his own sworn testimony before Judge Robert N. Chatigny, Chief Judge, U.S.D.C., District of Connecticut, defendant Coan acknowledged his fiduciary duty to debtor's estate and debtor thereby. Annexed hereto as Exhibit "A" at page 37, page 15 hereof. [It should be noted that Mr. Miltenberger was present at said hearing].**
2. **Plaintiff attempted to discern the precise status of plaintiff/debtor's estate by way of some**

25 phone calls to Defendant Coan et als spanning almost five months (1-5-04 to 5-14-04) with no response other than from Mr. Miltenberger that his client had not gotten back to him as set forth in plaintiff's Affidavit, and annexed hereto as Exhibit "B" at pages 3-10 to facilitate review thereof.

3. As set forth in plaintiff's Declaration/Certification/Opposition/Cross-Motion filed on July 29, 2005 herein, the application for leave was filed in both the RICO enterprise/associated in fact RICO enterprise bankruptcy court as well as in the U.S. District Court, District of Connecticut, with bankruptcy court reference, which case was assigned to Judge Kravitz, New Haven Division. Collectively annexed hereto as Exhibit "C".

4. On or about April 28, 2005, I received a call from a person named Sandra who identified herself as an employee of the U.S. Bankruptcy Court, Bridgeport Division, who stated that the subject bankruptcy case had been closed on October 20, 2004 and a final report filed, the details of which I set forth in my affidavit dated 5-2-05, filed with the court on 5-4-05, and referenced in my motion/application to withdraw as moot the application for leave to file the complaint in light of same, which was granted by Judge Kravitz without prejudice while denying the request for criminal referral except as to the local police which I delivered by hand to the LAPD, Attention: William Bratton (LAPD Chief), set forth in Exhibit "A" thereto, and consistent therewith. Said application to withdraw as moot preceded receipt of any purported opposition by defendants coan et als. Filed copy attached as Exhibit "D".

5. There has never been a hearing on the merits of the RICO claims against defendant Coan who at all times has attempted to evade jurisdiction and avoid accountability for his wrongful and illegal conduct. As such, there is no *res judicata* argument other than in bad faith by defendant Coan in light of the closure of the bankruptcy case despite my inquiries, lack of

notice thereof, and my having sought leave without knowledge thereof.

6. The second case which had been filed in the U.S. District Court for the District of Connecticut, was presided over by J. Dorsey and in which defendant Coan, though acknowledging receipt of the papers, contested sufficiency of service, and in which plaintiff was ordered to effect personal service. Plaintiff effected personal service upon defendant Coan therein, at which time, despite the prior ruling of Judge Robert N. Chatigny, Chief Judge, U.S.D.C., District of Connecticut, to the contrary, defendant Coan moved to dismiss as here, for lack of subject matter jurisdiction, which embarrassingly for the court in light of Judge Chatigny's prior ruling was granted by J. Dorsey and equally embarrassingly for the 2nd Circuit but not surprisingly as set forth in the 1997 Affidavit of 2nd Circuit FBI Agent Richard M. Taus attesting to RICO predicate acts endemic to the 2nd circuit as were part of the pattern herein (now mooted by the 10-20-04 closure). Exhibit "E".

7. Upon entry of judgment and payment thereof, I am willing to do what defendant Coan has failed to do, by paying legitimate creditors, performing, and filing a report under penalty of perjury with this or other court. Alternatively, the John Doe Insurer/Surety should assume their duties and obligations as contractually they are so bound in the within matter. To repeat, the assets substantially exceeded liabilities herein.

8. The Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Sections 1961-1968, Section 904(a) of the Organized Crime Control Act of 1970 expressly provided that "the provisions of this title [RICO] shall be liberally construed to effectuate its remedial purposes." The RICO predicate acts of (illegal drug) money laundering, bankruptcy fraud/offenses involving fraud connected with a case under Title 11, U.S.C., obstruction of justice, and racketeering are set forth with particularity at pages 4-18 in Plaintiff's Verified

Complaint, pages 10-35 in Plaintiff's Affidavit, and pages 1-12, 18-30 in Plaintiff's RICO Statement, and in Exhibits thereto.

9. It should be noted that a cause of action under RICO is fundamentally recognized for losses (to ie., creditors, the debtor, lienholders, etc.) caused by sales of a debtor's assets in bankruptcy proceedings at submarket prices. *See, e.g., Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla.,* 140 F.3d 898,908(11th Cir. 1998). In the instant case, defendant Coan's acts are even more egregious and within the ambit of RICO inasmuch as he has at all times relevant hereto purposefully and flagrantly damaged assets of plaintiff debtor's estate, purposefully causing dismissal of adversary proceedings involving RICO claims ripe for entry of default (judgment), Exhibit "A" Verified Complaint, Exhibit "B" Affidavit, Exhibit "A" RICO Statement, obstructing justice thereby, damaging plaintiff (debtor, as well as, ie., creditors, lienholders, etc.) , while concomitantly benefiting RICO co-conspirators, and committing a fraud upon the estate of debtor and creditors/lienholders thereby (violations of Sections 1513, 102 and that concerning extortion would also have been appropriate). The same violations apply to the adversary proceeding where the Trustee was named as a party plaintiff concerning junkie and thief, David George Swann (DOB 4-6-60; three guilty pleas to theft in less than 5 years residence in California) who stole (bankruptcy) estate among other assets of plaintiff and against whom default (judgment) was ripe for entry. Defendant Coan has neither abandoned nor re-brought same, violating Section 1503 and (defrauding) damaging plaintiff thereby.

10. It should be emphasized as a fundamental principle of RICO law that RICO standing requires only harm resulting proximately from the predicate offenses. It does not also require that this harm give rise to a civil claim based upon those predicate

offenses. *Holmes v. Securities Investor Protection Corp*., 503 U.S. 258 (1992). Additionally, the RICO plaintiff need not have suffered harm from each predicate offense comprising the pattern. *H.J. Inc. v Northwestern Bell Tel. Co.*, 492 U.S. 229, 242 (1989). *See, e.g., Ford Motor Co. v. Summit Motor Prods., Inc.,* 930 F.2d 277 (3d Cir.), *cert. denied,* 502 U.S. 939 (1991) (permitting a RICO claim based on violation of a court order to which plaintiff was not a party: the "standing inquiry in any civil RICO case depends solely on demonstrating injury to business or property, and not on satisfying any standing requirement attached to the predicate act"). Defendant Coan's wrongful and illegal acts have proximately caused plaintiff's damages within the meaning of RICO. The case of *Hecht v. Commerce Clearing House, Inc.,* 879 F.2d 21 (2d Cir. 1990) is instructive and apposite herein stating in pertinent part, "the RICO pattern or acts proximately cause a plaintiff's injury if they are a substantial factor in the sequence of responsible causation, and if the injury is reasonably foreseeable or anticipated as a natural consequence". Engaging in the RICO violation (ie., "any offense involving fraud connected with a case under Title 11, Title 18 U.S.C. § 1961(1)(D), among other violations as set forth), constitutes associating with the (RICO) enterprise within the meaning of §1962(c) of Title 18, U.S.C..

11. In the alternative, or additionally, defendant Coan was clearly negligent as set forth in Plaintiff's Verified Complaint, negligence being pleaded generally. It is hornbook law that a reasonable (and competent) person/lawyer would have foreseen the damage to plaintiff as documented under penalty of perjury in the instant case (Verified Complaint, RICO Statement, Affidavit, Exhibits incorporated therein). Moreover, any bad faith assertion that no duty, fiduciary or otherwise, existed between

the trustee (Coan) and beneficiary (creditors, debtor, lienholders, etc.) is frivolous on its face and demonstrates defendant's unfitness to either practice law or act as a panel trustee. Moreover, defendant Coan et als have cost plaintiff the equivalent of hundreds of thousands of dollars attributable to defendant Coan's wrongful conduct alone over a 9 year period based on current billing rates, fees, time expended, and for which plaintiff respectfully requests be awarded, along with the balance set forth in plaintiff's schedule of damages, and hereby oppose any award of fees to defendant Coan and company whose own lack of communication/notice of the case closure (despite my requests for status) and wrongful conduct necessitated the re-filing reflecting same herein (nor do I have such amount if so ordered having been reduced to near abject penury by the wrongful conduct of defendants and the protracted proceedings herein).

12. It is important to emphasize that the action brought by defendant Coan had a (this defendant) bankruptcy court reference, viz., Bankruptcy No. 95-51862, No. 3:97-CV1165(RNC). Indeed, in light of defendant Coan's illegal acts to damage plaintiff and to benefit other RICO co-conspirators/defendants, I made no secret of my intent to utilize the judicial process to seek damages against defendant Coan for his intentional and illegal acts damaging me, and coincidentally, any legitimate creditors of my estate. (Parenthetically, it should once again be emphasized that it was defendant Coan's own knowledge of his own illegal acts damaging me that did prompt the subject action before Judge Chatigny to preclude me from suing him without leave of court). This intent to sue defendant Coan for damages arising from his illegal acts in the context of his purported role as trustee of my Chapter 7 estate in bankruptcy was clearly articulated and subsumed in the proceeding before Judge Chatigny and included his past, current (and anticipated future) illegal acts

violative of RICO and other federal law. Specifically, in Judge Chatigny's own concluding words in pertinent part,

> **'On the existing record, a "leave of court" requirement should *not* (emphasis supplied) be imposed on Peia with regard to *any* (emphasis supplied) future legal action he might bring against plaintiff Coan……If Peia does sue Coan, and the complaint proves to be frivolous, appropriate sanctions can be imposed by the judge who gets that complaint, including an order prohibiting Peia from filing another action without leave of court.' 212 B.R. 217, 220 (D.Conn.1997).[1]**

Additionally, in his own sworn testimony before Judge Robert N. Chatigny, Chief Judge, U.S.D.C., District of Connecticut, defendant Coan acknowledged his fiduciary duty to debtor's estate and debtor thereby. His bad faith, frivolous assertions herein to the contrary demonstrate his unfitness to either practice law or act as a panel trustee. It should also be noted that the filings, *viz*., Verified Complaint/Affidavit/RICO Statement, have been sent to FBI Agent Barndollar, Exhibit "F", to whom, along with then FBI Director Freeh and FBI Agent Hayes (California-by hand) prior inculpatory documents had been forwarded/delivered.

13. THE 1881 CASE OF *BARTON V. BARBOUR* IS NOT APPOSITE, RELEVANT, OR IN THE ALTERNATIVE IS MOOT IN LIGHT OF CLOSURE OF THE BANKRUPCY CASE ON OCTOBER 20, 2004, FINAL REPORT SUPPOSEDLY RENDERED, THE DAMAGE TO DEBTOR CONSUMATED BY DEFENDANT COAN AT SAID POINT IN TIME (NO NOTICE TO EITHER PLAINTIFF OR CREDITORS). The 1881 case of *Barton v. Barbour*, 104 U.S. 126 (1881), involved a plaintiff that had brought an action for injuries sustained while a passenger in a train, which railroad was currently in receivership. Said plaintiff brought the action against the receiver without having sought leave of court from the court that had appointed

him. It is important to emphasize that there was no allegation or even a hint of impropriety, culpability, or illegality on the part of either the receiver or the subject court that had appointed him. Indeed, the fundamental and underlying *ratio decidendi* and policy considerations leading ineluctably to said Court's conclusion was that to permit such an action without leave of court would potentially impair the (value of the) property in the hands of the receiver, to the detriment of existing creditors and prior claimants. Id.,127-129. In the case *sub judice*, the precise opposite is true where defendant Coan has through his wrongful acts/conduct/negligence impaired the (value of the) property in to the detriment of existing creditors and prior claimants. Moreover, there was no RICO statute extent at said time to address the endemic and pervasive corruption that has become synonomous with America today and that the RICO statute was enacted thwart consistent with the liberal construction to be accorded said remedial legislation as per the Court in *Sedima, S.P.R.L. v. Imrex Co., Inc*., 473 U.S. 479 (1989). Specifically, plaintiff/ appellant's action herein was to preserve the estate which has been purposefully and consistently damaged by defendant coan consistent with a pattern of racketeering activity by an enterprise of which defendant coan along with the U.S. Bankruptcy court that appointed him was a part. It should further be noted *a fortiori* that plaintiff/appellant's action would inure to the benefit of the estate and consequently, legitimate creditors and/or claimants thereof. It further is true that at the eviden- tiary hearing before Judge Chatigny as discussed infra, on cross examination by plaintiff/appellant and repeated in follow-up questioning by Judge Chatigny, defendant coan admitted he did not know of any legal way a real property as plaintiff/appellant's could have been sold during the pendancy of the automatic stay (and the consequent

fraud concerning surplus funds among other causes/predicate violations, etc.), and those ripe for the entry of default (/judgment), etc.. (ReCiting the 1951 case of *Mosser v. Darrow*, 341 U.S. 267, 71 S.Ct. 680, 95 L.Ed. 927 (1951), the *Court in Conn. Gen. Life Ins. V. Universal Ins. Cos.*, 838 F.2d 612 (1st Cir. 1988), sets forth the words of the Supreme Court as are apposite here and provided in pertinent part, "a trusteeship is serious business and is not to be undertaken lightly or so discharged. The most effective sanction for good administration is personal liability for the consequences of forbidden acts……", Id. at 621, and hence, defendant coan's personal liability herein, having been sued individually herein. Indeed, said Court in Conn. Gen. Life Ins., supra, continues stating that federal courts have uniformly held that bankruptcy trustees are subject to personal liability for the willful and deliberate violation of their fiduciary duties, and even for negligent acts by said trustees. *Id.*; *see e.g., In re Gorski*, 766 F.2d. 723,727 (2d.Cir.1985*); In re Cochise College Park, Inc*., 703 F.2d. 1339, 1357 (9th Cir. 1983). Moreover, the U.S. District Court has a significant in- terest in overseeing and correcting the conduct of (corrupt) trustees as defendant coan herein, and where jury trial is demanded as in Plaintiff/Appellant's Verified Complaint in the instant case. *See generally, In re Lehal Realty Associates*, *supra* at 275,277.*IN RE LEHAL ASSOCIATES* DOES NOT EVEN REMOTELY SUPPORT DEFENDANT COAN'S POSITION. *In re Lehal Associates*, 101 F.3d 272 (2nd Cir. 1996), is clearly distinguishable from the instant case inasmuch as the trustee in that case had benefited the estate through his actions, as opposed to coan who has purposefully and illegally damaged plaintiff's estate, benefitting RICO defendants, consistent with the RICO violations and conspiracy. Specifically, in *In re Lehal Associates*, the trustee's efforts in the bankruptcy

case resulted in payment of all legitimate creditors and administration expenses in full and a return to debtor of several million dollars. *Id*.. DEFENDANT COAN IS ESTOPPED FROM RELITIGATING AN ISSUE DECIDED AT THE EVIDENTIARY HEARING BEFORE JUDGE CHATIGNY BY THE DOCTRINES OF RES JUDICATA/COLLATERAL ESTOPPEL IN LIGHT OF THE 10-20-04 CLOSURE OF THE BANKRUPTCY CASE. Contrary to defendant's unsupported/bald assertion, defendant coan's illegal acts are part of the pattern of racketeering activity set forth in the subject litigation /adversary proceedings; that is, defendant coan is merely another RICO conspirator (continuing) in the RICO violation to commit bankruptcy fraud, obstruct justice, etc., as set forth in plaintiff's verified complaint, and to defraud plaintiff's estate, creditors thereof, and plaintiff herein.

14. The following counts from the verified complaint are set forth for the Court's ease of reference in rebutting the bad faith, false assertion by defendant Coan at page 6 that "19. His (my) complaint never alleges, nor can it, that Mr. Coan owed a fiduciary duty – or any other kind of duty – to Mr. Peia. 20. Mr. Peia never alleges that Mr. Coan had any duty whatsoever to Mr. Peia that could be breached by any act or failure to act."

Despite defendant Coan's Counsel's false statement, the Verified Complaint says:

"THIRD COUNT - NEGLIGENCE/BREACH OF FIDUCIARY DUTY

50. Plaintiff repeats and realleges the averments contained in paragraphs 1 through 49 as if set forth at length herein.

51. On or about May 1, 1996, defendant Richard M. Coan succeeded to the interests of the estate of plaintiff herein in his capacity as Chapter 7 Trustee, said case having originated under Chapter 13 of Title 11, U.S.C., and designated as Case No. 95-51862, United States Bankruptcy Court, in the District of Connecticut.

52. At all times relevant hereto, Richard M. Coan had a fiduciary duty to said estate, creditors thereof including the U.S. government, which duty he breached through wrongful and otherwise negligent and culpable conduct.

53. To wit, Richard M. Coan, in his capacity as successor plaintiff was ordered by the court to file papers consistent with his capacity and duty as successor plaintiff and Trustee, in a number of adversary proceedings brought by debtor/plaintiff herein for which the entry of default had been requested and the entry of default judgment appropriate inasmuch as proper service had been made with some matters being without defense, ie., properties (outside the state of Connecticut, ie., New Jersey) sold during the pendency of the automatic stay pursuant to §362 of Title 11, U.S.C., unaccounted for substantial funds (in New Jersey) generated from said wrongful acts, theft of personalty/business assets (in California, New Jersey, and Connecticut), loss of rents (in New Jersey, California, and Connecticut), among other causes and damages, including a substantial fraud on debtor/plaintiff herein perpetrated by R.I.C.O. defendants/co-conspirators involved in laundering drug money through the Trump (of New York) casinos (in New Jersey) along with other criminal activities covered by and violative of federal law.

54. All of said matters were meritorious, substantial, some without defense, as well as some for which partial settlements and/or payments had been made.

55. Richard M. Coan, in his capacity as Trustee and to cover-up various criminal activities including, *inter alia,* illegal drug money laundering, bribery, fraud, theft, other violations of federal law including §362 of Title 11, U.S.C., and the illegal, wrongful and culpable failure to conclude the 1989 Virginia Chapter 7 proceeding under Title 11 in accordance with federal law, among others, wrongfully, negligently, and culpably failed to file any document whatsoever.

56. As a direct consequence of the aforesaid negligent, wrongful and culpable breaches of fiduciary duty the subject adversary proceedings were dismissed with prejudice as set forth in Exhibit "A", annexed hereto and incorporated herein by reference thereto, causing and resulting in great damage to plaintiff herein.

57. Defendant Richard M. Coan is liable to plaintiff for the damages caused by said negligent, wrongful and culpable breaches of fiduciary duty, in amounts compensatory and punitive, to be determined at trial.

FOURTH COUNT - NEGLIGENCE

58. Plaintiff repeats and realleges the averments contained in paragraphs 1 through 57 as if set forth at length herein.

59. On or about May 1, 1996, defendant Richard M. Coan succeeded to the interests of the estate of plaintiff herein in his capacity as Chapter 7 Trustee, said

case having originated under Chapter 13 of Title 11, U.S.C., and designated as Case No. 95-51862, United States Bankruptcy Court, in the District of Connecticut.

60. At all times relevant hereto, defendant Richard M. Coan, acting within the scope of his employment, and defendant Coan, Lewendon, Gulliver, and Miltenberger, LLC., thereby
(1) had a duty to act as a reasonable and prudent person in performing his duties in his capacity as Chapter 7 Trustee, consistent with his duties as a fiduciary and the foreseeabilty of harm/injury/damage to plaintiff in failing to so conform to said standard of care;
(2) defendant Richard M. Coan, acting within the scope of his employment and defendant Coan, Lewendon, Gulliver, and Miltenberger, LLC., thereby, breached said duty of due care in failing to perform his duties in accordance with reasonable prudence by, *inter alia,* failing to timely file documents pursuant to court order and otherwise act in a reasonably prudent manner;
(3) as a direct and proximate result of the aforesaid breach of duty by defendant Richard M. Coan, acting within the scope of his employment and defendant Coan, Lewendon, Gulliver, and Miltenberger, LLC., thereby,
(4) plaintiff has sustained substantial harm/injury/damage.

61. As a result of the negligence of defendant Richard M. Coan, acting within the scope of his employment and defendant Coan, Lewendon, Gulliver, and Miltenberger, LLC., thereby, said defendants are liable to plaintiff for damages in an amount to be determined at trial."

15. The within referenced filings with exhibits thereto, along with the specious, spurious opposition by defendant Coan have been sent to FBI. Defendant Coan has not rebutted even one sworn statement by plaintiff herein and in the paramount judicial interests of truth and justice, plaintiff respectfully requests that defendant Coan et als' relief be denied and respectfully cross-moves and requests the entry of judgment in the sum-certain amount of $5 Million as demanded in the Verified Complaint, and supported by the sworn Affidavit, RICO Statement and exhibits thereto. In the alternative, plaintiff respectfully requests that defendant(s) be ordered to turn the instant case over to their (John Doe Surety1/ Insurer 2) carrier(s) pursuant to the duty to defend for independent evaluation in accordance with the contractual provisions and obligations under the applicable policies/coverages and/or trial hereof.

The foregoing statements made by me are true under penalty of perjury pursuant to the laws of the United States of America.

Dated: 8-15-05

Respectfully Submitted and Signed: _____
Albert L. Peia, Plaintiff Pro Se

CERTIFICATION OF SERVICE

I, Albert L. Peia, hereby certify that copies of the within and foregoing plaintiff's response and supplemental proffer in support of cross-motion for judgment have been served by regular first class mail, postage prepaid on this ____ day of August, 2005, upon the following:

Richard M. Coan,

Coan, Lewendon, Gulliver, and Miltenberger , LLC.,

495 Orange St.
New Haven, Ct. 06511

Dated: **Signed:_____**

Albert L. Peia