United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

guel J. Cortez
Clerk

In Replying Give Number
Of Case And Names Of Parties

February 1, 1995

Mr. Lester Swartz
P.O. Box 27-3225
Boca Raton, Florida 33427-3225

RE: Misc. No. 95-1012, In the Matter of: LESTER SWARTZ

Dear Mr. Swartz:

Enclosed is an order of Chief Judge Gerald Bard Tjoflat which has been received and filed in this office and which is effective as of the date filed. This order determines the complaint of judicial misconduct earlier filed by you pursuant to 28 U.S.C. §372(c) and Addendum III of the Rules of the Judicial Council of the Eleventh Circuit. I also invite your attention to Rules 4, 5, 6 and 16 of Addendum III.

Sincerely,

Miguel J. Cortez
Clerk

MJC/emw

Enclosure

c: Hon. Phyllis A. Kravitch
Circuit Clerk Secured File

BEFORE THE CHIEF JUDGE

OF THE ELEVENTH JUDICIAL CIRCUIT

Miscellaneous Docket Nos. 95-1012, 95-1013, 95-1014, 95-1015, 95-1016, 95-1017, 95-1018, 95-1019, 95-1020, 95-1021, 95-1022, 95-1023 95-1024, 95-1025, 95-1026, and 95-1027

IN THE MATTER OF A COMPLAINT FILED BY LESTER SWARTZ

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IN RE: The complaint of Lester Swartz against United States Circuit Judges Phyliss A. Kravitch, R. Lanier Anderson, J. L. Edmondson, Emmett R. Cox, Stanley F. Birch, Joel F. Dubina, Susan H. Black, and Ed Carnes of the Eleventh Circuit; United States Chief District Judges Myron H. Thompson, of the Midddle District of Alabama, John H. Moore II, of the Middle District of Florida, Maurice M. Paul, of the Northern District of Florida, Norman C. Roettger, of the Southern District of Florida, Wilbur D. Owens, of the Middle District of Georgia, and B. Avant Edenfield, of the Southern District of Georgia; and United States District Judges James H. Hancock of the Middle District of Alabama and Alex T. Howard, Jr., of the Southern District of Alabama under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c).

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ORDER

On April 27, 1994, I entered orders dismissing three complaints Lester Swartz filed pursuant to 28 U.S.C. §372(c) against the members of the Eleventh Circuit Court of appeals panel that affirmed the dismissal of a suit Mr. Swartz had brought in the United States District Court for the Southern District of Florida. The panel's unpublished opinion in that case, Swartz v. The Florida Bar et. al, is attached to this order as Exhibit A.

Following my entry of these orders dismissing Mr. Swartz's complaints, Mr. Swartz appealed my decisions to the Eleventh Circuit Judicial Council. The Council affirmed my decisions. The instant complaints were brought against members of the Judicial Council who participated in such affirmances: Circuit Judges Kravitch, Anderson, Edmondson, Cox, Birch, Dubina, Black and Carnes; District Judges Owens, Edenfield, Hancock, Thompson, Howard, Paul, Moore and Roettger. Swartz contends that these judges, in voting to affirm, "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts," and therefore should be disciplined. Mr. Swartz's complaints are frivolous on their face and, accordingly, are DISMISSED.

Chief Judge
of the Eleventh Judicial Circuit

Dated this 27th day of January, 1995.

PERMANENT

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT



No. 91-5119
Non-Argument Calendar

D. C. Docket No. 90-6324-CIV-JCP

LESTER SWARTZ, Pro Se,

Plaintiff-Appellant,

versus

THE FLORIDA BAR, DAVID BARNOVITZ, JOHN BERRY, JOHN A. BOGGS, JOHN HARKNESS, JR., DON HEYMAN, STEPHEN N. ZACK, RICHARD LISS, THE PARTNERSHIP LAW FIRM OF "GARDNER AND MARGOLIN," PETER W. MARGOLIN, RICHARD H. MARGOLIN, JAMES S. MARGOLIN and FRED GARDNER,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

(June 22, 1992)

Before HATCHETT, ANDERSON and DUBINA, Circuit Judges.

PER CURIAM:

FACTS

On April 24, 1990, appellant Swartz brought suit in the District Court for the Southern District of Florida against numerous defendants comprising basically two separate groups.[1] The first group of defendants consists of appellees, the Florida Bar, David Barnovitz, John Berry, John A. Boggs, John Harkness, Jr., Don Hyman, Stephen Zack, and Richard Liss (hereinafter referred to as "Florida Bar Defendants"). The second group consists of appellees, the partnership law firm of "Gardner and Margolin," Peter W. Margolin, Richard H. Margolin, James S. Margolin, and Fred Gardner (hereinafter referred to as "Margolin Defendants"). Swartz' complaint alleged five counts against each group of defendants, including allegations against each group of "Pattern of Fraudulent Schemes," "RICO [Racketeer Influenced and Corrupt Organizations Act] Violations," "Deprivation of Rights," and pendent Florida claims.

Swartz' claims stem from a dispute between Swartz and appellee Peter Margolin over the adequacy of Peter Margolin's representation of Gene-ton, Inc., Swartz' company, in a lease dispute Gene-ton had with its landlord. Peter Margolin contends that he followed Swartz' directions by holding rent payments,

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[1] On May 11, 1990, Swartz filed an amended complaint that resulted in service upon the defendants. We note that Swartz originally filed suit both in his own name and derivatively as sole shareholder of Gene-ton, Inc. On September 25, 1991, this court dismissed Swartz' appeal on behalf of Gene-ton for want of prosecution because Swartz failed to retain private counsel to represent Gene-ton.

rather than delivering them to the landlord, and that a confirming letter dated February 14, 1986, that Margolin sent to Swartz provides evidence of the latter's directions. Swartz claims that he never received the confirming letter and that it was fabricated or back-dated to make it appear that Peter Margolin held the funds pursuant to directions which Swartz denies ever having given.

On January 24, 1988, following Gene-ton's eviction for non-payment of rent, Swartz filed a complaint with the Florida Bar against Peter Margolin. Swartz asked the Florida Bar to find that Peter Margolin had fraudulently manufactured the February 14, 1986, confirming letter to protect himself against liability for professional negligence with respect to his representation of Gene-ton in the lease dispute.[2] The Florida Bar found probable cause to pursue Swartz' complaint, and the action came to trial with Broward County Circuit Judge Leonard L. Stafford acting as referee. On March 3, 1989, Judge Stafford rendered his report which found in favor of Peter Margolin. The Florida Supreme Court subsequently upheld this factual finding.

In his amended complaint before the district court, Swartz based both his RICO and civil rights claims on allegations that

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[2] Later in 1988, Swartz and his wife brought suit for professional negligence against the Margolin Defendants in a state court action in Broward County, Florida. The court dropped Swartz and his wife as plaintiffs due to a lack of privity between Peter Margolin and themselves, and Gene-ton remained as the only plaintiff in the action. Swartz was unable to retain counsel to represent Gene-ton, and, accordingly, the state court dismissed without prejudice Gene-ton's negligence claims.

the Florida Bar Defendants and the Margolin Defendants engaged in a conspiracy to find Peter Margolin innocent of wrongdoing in the Florida Bar proceedings. In an order dated November 14, 1990, the district court dismissed Swartz' amended complaint in its entirety. The court held that it lacked subject matter jurisdiction to entertain Swartz' RICO claims against the Florida Bar Defendants and that Swartz had failed to state a civil rights claim against either the Florida Bar Defendants or the Margolin Defendants. The court further held that Swartz was collaterally estopped from pursuing his RICO claims against the Margolin Defendants. Having dismissed all of Swartz' federal claims, the court then exercised its discretion to dismiss Swartz' pendent state claims.

On January 10, 1991, the district court denied Swartz' motions for new trial and for leave to amend. On February 11, 1991, Swartz filed a notice of appeal from the court's order of dismissal and order denying motion for new trial. On April 4, 1991, the district court denied Swartz' motion to have the district court judge disqualify himself.

## DISCUSSION

After a careful review of the record on appeal and the briefs in this case, we affirm the district court's dismissal of Swartz' amended complaint in its entirety. With respect to Swartz' RICO claims against both the Florida Bar Defendants and the Margolin Defendants, we hold that Swartz has failed to

establish standing to raise these claims.[3] In Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, 105 S.Ct. 3275, 3285 (1985), the Supreme Court stated that a civil RICO plaintiff has standing to sue only if "he has been injured in his business or property by the conduct constituting the [RICO] violation." See also 18 U.S.C. § 1964(c). This court applied this rule in Pelletier v. Zweifel, 921 F.2d 1465, 1497 (11th Cir.), cert. denied, 112 S.Ct. 167 (1991), where this court noted:

> [A] private plaintiff who wants to recover under civil RICO must show some injury flowing from one or more predicate acts. A plaintiff cannot allege merely that an act of racketeering occurred and that he lost money. He must show a causal connection between his injury and a predicate act. If no injury flowed from a particular predicate act, no recovery lies for the commission of that act.

This court stressed that a plaintiff "has standing to sue under section 1964(c) only if his injury flowed directly from the commission of the predicate acts." Id. at 1499 (emphasis added).

In this case, Swartz has failed to articulate any injury to

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[3] Because we hold that Swartz lacked standing to bring his RICO claims, we need not address the district court's theory that Swartz was "essentially seeking a review . . . of the factual finding and subsequent decision of the Florida Supreme Court regarding the disciplinary proceedings initiated at the Plaintiff's behest against Defendant Margolin," Order of Dismissal, R.E. Tab 11 at 6, and that, accordingly, the Rooker/Feldman doctrine precluded the district court from entertaining Swartz' claims against the Florida Bar Defendants. But see Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983), cert. denied, 467 U.S. 1210 (1984) (Rooker/Feldman rule does not apply where plaintiff had no reasonable opportunity to raise federal claim in state proceeding). Similarly, we need not address the district court's theory that collateral estoppel barred Swartz from litigating his RICO claim against the Margolin Defendants. But see N.A.A.C.P. v. Hunt, 891 F.2d 1555, 1560-61 (11th Cir. 1990) (privity exists only where "nonparty's interests were represented adequately by the party in the original suit") (emphasis added).

his business or property that flowed from the alleged RICO violations. The only business loss to which Swartz' complaint refers is the demise of Gene-ton following its eviction for failure to pay rent. Swartz suffered these injuries in their entirety prior to the Florida Bar action, and, therefore, they cannot form the basis of his RICO claims.[4] Furthermore, the physical and emotional suffering the Florida Bar proceeding allegedly inflicted on Swartz does not confer standing to bring his RICO suit. See Grogan v. Platt, 835 F.2d 844, 848 (11th Cir.), cert. denied, 488 U.S. 981 (1988) (Congress did not authorize recovery for personal injury under RICO).

As for Swartz' civil rights claims, we agree with the district court that Swartz failed to allege facts which, if true, would establish that either the Florida Bar Defendants or the Margolin Defendants had deprived Swartz of "rights, privileges, or immunities secured by the Constitution or laws of the United States." Fullman v. Graddick, 739 F.2d 553, 561 (11th Cir. 1984) (quoting Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908, 1913 (1981)). While Swartz may be upset that the Florida Supreme Court did not find Peter Margolin guilty of unprofessional

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[4] Swartz claims that, because the Florida Supreme Court exonerated Peter Margolin of wrongdoing, Swartz could not retain counsel to represent Gene-ton in his Broward County professional negligence action and, consequently, was unable to recover for losses suffered as a result of Peter Margolin's alleged misconduct. However, even if Swartz could prove that the Florida Supreme Court's decision prevented him from prevailing in his suit, at best Swartz would establish that the alleged RICO violations deprived him of compensation for business losses which occurred prior to the Florida Bar action. The alleged RICO violations, however, were not the cause of those business losses.

conduct, the court's finding does not constitute a violation of Swartz' constitutional rights. In addition, we note that Swartz failed to allege any facts supporting his general allegation that the Margolin Defendants were acting under the color of state law. This failure is fatal to his civil rights claim against that group of defendants. See id.

For the foregoing reasons, we AFFIRM the district court's orders dismissing Swartz' amended complaint and denying his motion for a new trial.[5]

AFFIRMED.

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[5] In his briefs on appeal, Swartz does not allege any error in the district court's dismissal of his pendent state law claims, and, therefore, we deem this issue abandoned. See Rogero v. Noone, 704 F.2d 518, 520 n.1 (11th Cir. 1983). In addition, since the district court denied Swartz' motion to disqualify the district judge subsequent to Swartz' filing his appeal in this court and since Swartz failed to appeal separately from this denial, we do not have jurisdiction to address the parties' arguments with respect to the disqualification issue. Finally, Swartz' motion for disciplinary action is DENIED as frivolous.