

JEFFREY D. HILL,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	
	:	
vs.	:	NO. 04-00,515
	:	
EVELYN DERRICK,	:	
	:	
Respondent	:	1925(a) OPINION

Date: June 25, 2004

**OPINION IN SUPPORT OF THE ORDER OF APRIL 22, 2004 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Jeffrey Hill has appealed this Court's April 22, 2004 Order in which the Court denied his Motion for Leave to Proceed In Forma Pauperis and dismissed his Complaint as frivolous. Hill filed his Notice of Appeal on May 14, 2004. On May 20, 2004, this Court issued an Order in compliance with Pa.R.A.P. 1925(b) directing Hill to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the Order. Hill filed his Statement of Matters on May 26, 2004.¹

In the April 22, 2004 Opinion and Order, the Court determined that Hill was asserting a cause of action under section 1964(c) of the Racketeer Influence and Corrupt Organization (RICO) Act, 18 U.S.C. §§1961-1968. In his Complaint, Hill alleges that Defendant Evelyn Derrick is a racketeering criminal enterprise and that his civil and constitutional rights have been violated. Hill asserted that Derrick, the library staff, and members of the Muncy police department conspired to deny him his civil rights in that he is

¹ Hill's Statement of Matters reasserts the issues and arguments raised in his April 23, 2004 Writ of Error Coram Nobis. The Court denied that Writ on May 5, 2004 (filed May 10, 2004) stating that Hill did not cite to any authority that contradicted the Court's dismissal of his Complaint.

being denied access to the Muncy public library because of the threat of being charged with defiant trespass. On this basis, Hill sought compensation for alleged injuries to his reputation, physical and mental health, finances, and social life caused by the alleged violation of his civil and constitutional rights.

The Court held that Hill did not have standing to assert a cause of action under the RICO Act. To have standing to bring a cause of action under the RICO Act, the individual must have suffered an injury to his business or property as a result of a RICO Act violation. *Maio v. Aetna, Inc.*, 221 F.3d 472, 482 (3rd Cir. 2000); *Rehkop v. Berwick Healthcare Corp.*, 95 F.3d 285, 289 (3rd Cir. 1996). An individual cannot recover under the RICO Act for personal or emotional injuries that are alleged to have been caused by the RICO Act violation. *Genty v. Resolution Trust Corp.*, 937 F.3d 899, 918-19 (3rd Cir. 1991); *Zimmerman v. HBO Affiliates Grp.*, 834 F.2d 1163, 1169 (3rd Cir. 1987). The alleged injuries to Hill's reputation, physical and mental health, and social life are not recoverable under the RICO Act since such are personal and emotional injuries. Therefore, the Court determined that Hill lacked standing to bring a RICO cause of action and dismissed the Complaint as frivolous.

In his Statement of Matters, Hill points the Court's attention to the fact that he did plead in his Complaint that the violation of his civil and constitutional rights caused damage to his finances. Hill also notes that the Complaint pleaded that he was forced to travel to another library to access his e-mail account. Hill asserts that for RICO purposes property equals finances. Hill contends that his finances have been adversely affected since he has been forced to incur expenses associated with traveling to another library to use the computers. Hill further contends that his property rights are protected by Article I, sections 1 and 2 of the

Pennsylvania Constitution.² Hill argues that he does have standing to bring a cause of action under the RICO Act since the violation of his civil and constitutional rights caused injury to his property by having an adverse impact upon his finances.

The Court will first address Hill's assertion regarding the protection the Pennsylvania Constitution provides his property rights. While the Pennsylvania Constitution does guarantee Hill some property rights, that alone does not answer the question of whether or not Hill can use the RICO Act to protect the property right allegedly infringed upon in this case. In order to use the civil cause of action provision of the RICO Act as a shield against such infringement, Hill must comply with its requirements, just as if he were using a breach of contract or common law tort cause of action to protect his property. Again, the Court concludes that Hill cannot meet the requirements necessary to bring a cause of action under the RICO Act.

Hill contends that he has suffered an injury to his property in that he must incur expenses associated with traveling to another library to use the computers so that he could access his e-mail account. Hill argues that these expenses impose an unnecessary financial burden. What Hill is asserting is that his personal finances have been adversely affected by the alleged conduct of Derrick.

² "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring possession and protecting property and reputation, and pursuing their own happiness." Pa. Const. Art. I, §1.

"All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper." Pa. Const. Art. I, §2.

However, the Court believes that personal finances are not within the definition of property as used in the RICO Act. The Court has been unable to unearth a case during the course of its research, which permitted an injury to an individual's personal finances to satisfy the injury to property standing requirement. The closest case the Court could locate to Hill's situation is *Curley v. Cumberland Farms Dairy*, 728 F. Supp. 1123 (D.N.J. 1989).

In *Curley*, a group of low level convenient store employees sought to bring a class action suit against the defendant employer. The plaintiffs asserted that the defendant employer had engaged in a scheme whereby low level employees were wrongfully charged with stealing money and merchandise from the store and then the employees were coerced into signing confessions. 728 F. Supp. at 1126. One of the plaintiffs brought suit for "lost time and loss of the costs of travel." *Id.* at 1140. This plaintiff had quit and was asked to return to one of the stores for an interview. During the interview, the plaintiff was asked to confess to theft, but refused and left. The plaintiff sought to recover the cost of his travel from home to the store and for his time. *Ibid.*

The District Court held that such losses constituted an injury to the plaintiff's business or property under the RICO Act. The District Court likened such expenses to deductible business expenses. The District Court then stated that "an individual's expenses which are related to his or her employment are within the realm of the RICO standing requirement." *Curley*, 728 F. Supp. at 1140.

Unlike the plaintiff in *Curley*, Hill has not pleaded that the travel expenses he incurred to access his e-mail account are in anyway related to his employment or business. As

such, the alleged harm Hill suffered to his personal finances are not compensable under the RICO Act.

The Court is cognizant of the United States Supreme Court's instruction that the RICO Act is to be read broadly, *Sedima v. Imrex Co.*, 473 U.S. 479, 498 (1985), and that the civil cause of action provision has evolved beyond what the legislators may have originally intended. *Id.* at 499. However, that does not mean that the civil cause of action provision is all encompassing. The Court believes that the RICO Act does not include within the definition of business or property loss to personal finances. The type of injure to business or property envisioned under the RICO Act must be business or employment related. Such a conclusion is supported by the original focus and purpose of the RICO Act.

The purpose behind the RICO Act was to combat organized crime. "RICO was an aggressive initiative to supplement old remedies and develop new methods for fighting crime." *Sedima*, 473 U.S. at 498. The civil cause of action provision was included in the RICO Act to provide those injured by organized crime access to a legal remedy for the wrong. *Id.* at 487. The civil cause of action provision was viewed as " 'a major tool in extirpating the baneful influence of organized crime in our economic life.'" *Id.* at 488 (quoting 116 Cong. Rec. 25190 (1970)).

It would seem that the original purpose of the civil cause of action provision was to remedy the harm to legitimate business that organized crime had inflicted. While the RICO Act's civil cause of action provision has moved beyond targeting the traditional organized crime figure, the effect of RICO Act violations upon businesses still remains at the heart of the provision. Permitting the civil cause of action provision to include injuries to any and all types

of property would go well beyond the intent of the Legislators and anything they envisioned. Despite its expansion, the RICO Act must remain true to itself. Therefore, injuries to one's personal finances does not confer standing under the RICO Act.

Accordingly, the Superior Court should deny the appeal and affirm the April 22, 2004 Order of this Court.

BY THE COURT,

William S. Kieser, Judge

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Judges
Christian Kalas, Esquire
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