IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE H. GRESS, on behalf of himself and others similarly situated,	)	
Plaintiff,	)	Case No. 20 CV 756
v.	)	Hon. Robert M. Dow, Jr.
SAFESPEED, LLC., *et al.*,	)	
Defendants.	)	

DEFENDANT SERGIO RODRIGUEZ'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

NOW COMES Defendant SERGIO RODRIGUEZ ("Mayor Rodriguez")[1], by and through his attorney, K. Austin Zimmer, of Del Galdo Law Group, LLC., and for his Motion to Dismiss Plaintiff's Complaint herein, argues:

Introduction

Plaintiff, LAWRENCE H. GRESS ("Gress"), purporting to file on behalf of a class of motorists ticketed after traveling through intersections in the Chicago suburbs monitored by red light cameras, is an Illinois resident who in December 2018 was cited after a right turn onto westbound 22nd Street at its intersection with Illinois Route 83 in Oakbrook Terrace. *Compl.* ¶¶ 12, 63-66. He brings a two (2) count complaint under 18 U.S.C. §1962(C) for alleged participation in racketeering (Count I) and 18 U.S.C. §1962(D) for alleged conspiracy (Count II), aimed at public officials, municipalities and consultants tied to red light camera contracts.

Though his individual citation forms the nexus of Gress's claimed connection to the putative class, his Complaint does not substantively contest the ticket – it contains no allegation that he did properly stop at the intersection's red light before making his turn – and instead focuses on the process that led to the red light camera's installation. Broadly, Gress contends that red light cameras

[1] Collectively, Mayor Rodriguez, JOHN KOSMOWSKI ("Chief Kosmowski") and BILL MUNDY ("Mundy") are "Summit Defendants."

proliferated not to protect public safety, but to funnel fines toward municipalities and officials in violation of federal racketeering and corrupt organization statutes (hereafter "RICO")[2]. See generally *Compl.* He extensively discusses a plea to bribery charges by co-defendant MARTIN A. SANDOVAL ("Sandoval"), and seeks treble damages, attorneys fees, and other relief. *Compl.* ¶ 181, *et seq.*, and at Prayer for Relief.

But whatever the merits, if any, of Gress's allegations against other co-defendants, he has not stated and cannot state a claim against Mayor Rodriguez by mere association, especially where he does not even deny his underlying traffic infraction. Even if it was true that, as his Complaint alleges, the Village of Summit ("Village") was "corruptly induced" to install red light cameras from a co-defendant company, SAFESPEED, LLC. ("SafeSpeed"), that does not show that Gress was harmed where he does not contest the ticket issued, and it will not suffice to make Mayor Rodriguez (or any other Village agent) an active participant in a racketeering enterprise, nor to show his coordination or intent to further such a plan, absent explanation of any direct involvement. Cf. *Compl.* ¶ 36 (m).

The Village is no more than a location in Gress's story, and Mayor Rodriguez is entitled to dismissal of all claims pled against him as a result.

Standard of Review

A motion to dismiss under Rule 12(b)(6) does not test the merits of a claim; rather, it tests the sufficiency of the complaint. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). In deciding such a motion, the Court accepts all well-pled facts as true – but to survive, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

[2] 18 U.S.C. 1961, *et seq*.

Argument

A. Fact Summary – Or Lack Thereof.

At the outset, a summary of the pleadings concerning Mayor Rodriguez is warranted for the plain reason that such a summary is brief: There are few facts pled that directly reference any Summit Defendant whatsoever, beyond their initial introduction at Complaint, Para. 36.

Referring to "Defendants" generically, Gress does contend there is a question about use of the U.S. mail to convey violation notices originating from red light cameras allegedly corruptly placed. *Compl.* ¶ 50(b). He contends there is question about misinformation concerning support for red light cameras. *Id.* ¶ 50(d). He contends there is a question as to whether "Defendants" engaged in bribery and conspired with one another. *Id.* ¶ (e), (h). And he offers a series of allegations which paint the motives behind red light camera placements as profit-driven but cloaked in altruism. See, e.g. *Compl.* ¶ 81 ("sole purpose was to generate mountains of cash for the Defendants") and ¶ 82 ("suppliers … have generally incentivized municipalities … not with promises of enhanced safety but rather by offering to split the collected proceeds of any tickets issued").

But Mayor Rodriguez individually appears nowhere in the Complaint after his identification as a party and cursory inclusion as a supposed participant by virtue of being "corruptly induced." See *Compl.*, ¶¶ 27, 30, 31, 36, *et seq.*

The bulk of Gress's tale instead involves a history of red light cameras in the Chicagoland area. He begins with the awarding of a contract to Redflex Traffic Systems ("Redflex") by a Chicago committee in 2003 with the support of former Chicago Assistant Transportation Commission John Bills ("Bills") (*Compl.* ¶¶ 85, 87-88, 90-91)—after which Bills was convicted on bribery, conspiracy and fraud charges (*Compl.* ¶¶ 95, 98, 100). And he describes SafeSpeed as following in Redflex's footsteps in the Chicago suburbs, protected by campaign contributions to Sandoval which preceded obstruction of anti-red light camera legislation (*Compl.* ¶¶ 107, 116, 120, 131, 154-161).

Mayor Rodriguez is nowhere to be found in this story. Gress pleads that in September 2019, the Federal Bureau of Investigation ("FBI") raided Village hall in connection with its investigation of Sandoval. *Id.* ¶¶ 174-175. He offers nothing, however, to indicate that the result was any discovery of a link between Mayor Rodriguez and any impropriety. As further argued below in Secs. C-D, that dooms Gress's claims against Mayor Rodriguez.

B. Standing/Claim Preclusion.

But in addition to the paucity of factual allegations against Mayor Rodriguez, Gress's Complaint also reveals a standing issue in its attempt to indirectly challenge the legitimacy of state traffic court proceedings through a federal suit. The preclusion rules of Illinois apply in federal court. *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481-482 (1982). And Illinois' *res judicata* law has three requirements, each of which are satisfied here for the basic reason that the doctrine bars not only those issues decided in the prior suit but also all other issues which could have been decided: (1) an identity of parties or their privies; (2) an identity of causes of action; and (3), a final judgment on the merits. *Dookeran v. Cnty. of Cook*, 719 F.3d 570, 575-576 (7th Cir. 2013).

Here, Gress is an identical party and the individual officials he targets are in privity with the governmental agencies prosecuting his red light violation. Because, again, the doctrine contemplates all issues which "could" have been raised, there is sufficient overlap as to causes of action – though Gress labels his Complaint as sounding in RICO and civil conspiracy claims, they function as objections to the propriety of prosecution of his traffic violation. And there is no indication that his traffic violation was not fully adjudicated.

Put simply, Gress had the opportunity to litigate the red light citation fully and finally in state court. See, e.g. *Armstrong v. City of Chicago*, 2013 WL 251737 (N.D. Ill. Jan. 23, 2013) (federal due process claims could have been joined to administrative appeal and so civil rights lawsuit over traffic tickets and vehicle impoundment was barred). Having failed to do so, he cannot succeed in an end

run around that process now. See *Davit v. Davit*, 366 F.Supp.2d 641, 650-652 (N.D. Ill. Nov. 22, 2004) (Hon. J. Filip) (collateral attacks on state proceedings disallowed).

C. Participation (Count I).

But even if Gress could proceed abstractly, to plead a claim under RICO subsection (C), a plaintiff must allege: (1) the conduct; (2) of an enterprise; (3) through a pattern of "racketeering activity," generally defined as at least two acts that are indictable under a lengthy, but not unlimited, list of statutes, or involve an act or threat of a list of infractions chargeable under state law. *Salinas v. U.S.*, 522 U.S. 52 (1997); 18 U.S.C. § 1961(1). "Racketeering" acts under such a paradigm are more than merely outside of the authority of the law or "wrongful," but must be "criminal" in nature. See, e.g. *Beck v. Prupis*, 529 U.S. 494 (2000) (wrongful termination not sufficient); see also *Starfish Inv. Corp. v. Hansen*, 370 F.Supp.2d 759, 772 (N.D. Ill. May 20, 2005) (Hon. J. Castillo) ("Not all crimes or misdeeds constitute racketeering…").

These elements, too, present a problem for Gress at multiple junctures: First, he has not identified any conduct or pattern of Mayor Rodriguez at all, let alone the requisite two acts sufficiently implicating potential criminal culpability. Second, even in a generous reading of the Complaint which would attribute to Mayor Rodriguez either some sort of acquiescence to statewide red light camera enforcement or implied approval of the status quo due to the generation of funds for local governments, there is still no explanation of what acts performed by Mayor Rodriguez would constitute criminal measures in support of legislative corruption. Put another way, even if a camera would not have been in a particular location absent Sandoval's improper influence, that does not transform municipal use of police power to review of available footage for potential violations of the Illinois Vehicle Code from which to issue citations into a somehow criminal act. To the contrary, as alluded to above, it is unclear whether what is functionally an appeal of a separate state court proceeding – a traffic citation – is even permissible in a federal complaint. See *Davit*, *supra*.

Regardless, at best, on the facts pled, Gress asks the Court to infer that local officials were complicit in a bribery scheme to influence state legislation simply because their employer was empowered to install and financially benefit from red light cameras as a result. But municipal profit motive is not itself illicit—municipalities regularly collect taxes to generate revenue and fund operations as well, without being labeled a criminally coercive syndicate as a result. Even if Mayor Rodriguez had any awareness of Sandoval's underhanded dealing – and it is far from clear that he did – it does not follow that Mayor Rodriguez had any involvement in it whatsoever. The members of the Village Board, which would have to approve any contracts between SafeSpeed and the Village, are not named. The Village is not named. If Gress is implying that Mayor Rodriguez personally benefitted from Village revenue in some improper fashion, the basis for the implication is entirely omitted from his Complaint, and that precludes it from proceeding against them.

Count I should be dismissed.

D. Conspiracy (Count II).

Count II suffers from the same flaws. To begin with, it assumes the sufficiency of Count I – otherwise there would not be a racketeering enterprise over which to conspire. See *R.E. Davis Chem. Corp. v. Nalco Chem. Co.*, 757 F.Supp. 1499, 1515 (N.D. Ill. 1990) (Hon. J. Rovner) (sub-section (D) claim requires a substantive underlying violation).

But just as importantly, it assumes coordination in a manner that is unwarranted from the skeletal facts pled. Traditionally, civil conspiracy claims require a showing of: (1) an agreement between two or more persons for the purpose of accomplishing either an unlawful purpose or a lawful purpose by unlawful means; and (2) at least one tortious act by one of the co-conspirators in furtherance of the agreement. *Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502, 509 (7th Cir. 2007).

RICO claims as a particular type of conspiracy are no different with respect to the requirement of a common plan. They require intentionality and "knowing" participation. See *Menzies*

v. Seyfarth Shaw LLP., 197 F.Supp.3d 1076 (N.D. Ill. July 15, 2016) (Hon. J. Blakey). Mere association does not suffice. *Goren v. New Vision Intern., Inc.*, 156 F.3d 721, 731-732 (7th Cir. 1998) (a plaintiff must allege agreement to the objective of a violation of RICO); see also *Adcock v. Brakegate, Ltd.*, 164 Ill.2d 54, 64 (1994) ("There is no such thing as accidental, inadvertent or negligent participation in a conspiracy.").

That Village officials saw an opportunity to raise revenue from violations of the Illinois Traffic Code – if that is even true (and it is not explicitly pled) – is not the same as agreement that Sandoval or anyone else should accept bribes or improperly block state legislation to allow such an arrangement to continue.[3] Here, there is no description of any communications between Mayor Rodriguez and any other defendant whatsoever – with Gress's Complaint actually hinting that Mayor Rodriguez was himself a victim, too. See *Compl.* ¶ 36, *supra.* (indicating Summit Defendants were "induced" to install red light cameras).

That is not a basis to proceed against him, where long-standing case law commands that conclusory pleadings of a conspiracy must be dismissed. *Winterland Concessions Co. v. Trela*, 735 F.2d 257, 262 (7th Cir. 1984).

Count II should be dismissed, too.

Conclusion

Plaintiff in this case turned right on red, was caught by a red light camera, and now hopes to tar a broad number of local governmental officials with accusations of conspiracy and racketeering because of his displeasure with that event. But because he has no details about any criminal act by any Village official, his Complaint falls far short. For the reasons here stated, Mayor Rodriguez is entitled to dismissal of Gress's claims, in their entirety.

[3] Frankly, it is not even clear that a profit motive would be mutually exclusive of a public safety interest, where Gress's own Complaint even acknowledges academic studies found murky conclusions about the impact of cameras. See *Compl*. ¶ 75 ("T-bone collisions did indeed decrease").

Respectfully submitted,
SERGIO RODRIGUEZ

By: _/s/ *K. Austin Zimmer*_____
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