UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRYAN ANTHONY REO,	Case No. 1:19-cv-02589-CAB
Plaintiff,	Hon. Christopher A. Boyko
v.	Mag. Thomas M. Parker
MARTIN LINDSTEDT.,	
Defendant.	

REO LAW, LLC
Bryan Anthony Reo (#0097470)
P.O. Box 5100
Mentor, OH 44061
(T): (440) 313-5893
(E): reo@reolaw.org
Pro se Plaintiff

MARTIN LINDSTEDT
338 Rabbit Track Road
Granby, MO 64844
(T): (417) 472-6901
(E): pastorlindstedt@gmail.com
Pro se Defendant

PLAINTIFF BRYAN ANTHONY REO'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO AMEND PLEADINGS

NOW COMES Bryan Anthony Reo ("Plaintiff"), *pro se*, and hereby propounds upon Martin Lindstedt ("Defendant") and this Honorable Court Plaintiff Bryan Anthony Reo's Brief in Opposition to Defendant's Motion to Amend Pleadings.

Defendant's pleadings to date have all been frivolous and abusive. His purported counter-claims have all failed to state claims upon which relief can be granted, and his proposed amendments would be futile and thus leave need not be granted where the proposed amendment would be futile. While leave to amend is to be liberally granted, it is apparent here that the proposed amendment would be futile.

Assuming that everything Defendant alleges against Plaintiff's counsel in an ongoing South Dakota state court proceeding is true, Plaintiff's counsel in that action is absolutely privileged to represent Plaintiff in that action, there is nothing actionable in tort based upon that representation. Defendant merely wants to bog down the instant action with more of his nonsense and drivel, such should not be permitted.

Federal Rule of Civil Procedure 15(a)(2) permits a party to amend its pleading only with the opposing party's written consent or the court's leave. It further specifies that "the court should freely give leave when justice so requires."

In determining whether "justice so requires," a court may balance harm to the moving party if he or she is not permitted to amend against prejudice caused to the other party if leave to amend is granted. See Foman v. Davis, 371 U .S. 178, 182 (1962).

"[T]he most important factor in determining whether leave to amend the complaints should be granted is whether the opposing party will be prejudiced if the movant is permitted to alter his pleadings." *State of Tenn. ex rel. Pierotti v. 777 N. White Station Road*, 937 F.Supp. 1296 (W.D.Tenn.1996).

Here Plaintiff would be prejudiced to the extent that bogging down the pleadings with additional irrelevant [and insufficient] claims and unrelated and irrelevant parties would needlessly delay the instant action and complicate the instant action, which is likely the goal of Defendant

Lindstedt. It is painfully obvious that this court has no personal jurisdiction over Robert Konrad, who is a South Dakota attorney representing Bryan Reo in an action pending in South Dakota. Defendant's proposed amendment would seek to join Robert Konrad into this case solely on the basis that Mr. Konrad is representing Plaintiff in an action in South Dakota. There are no legally sufficient or cognizable claims that Defendant has against Mr. Konrad, the claims would likely be dismissed on a Rule 12(b)(6) motion, and there are obvious issues with personal jurisdiction. However, such amendment, if permitted, would cause needless delay and would therefore likely be frivolous or vexatious on the part of Defendant as he seeks to bog down the instant action with frivolous counter-claims and the joinder of parties whose presence in the case is completely inappropriate and irrelevant to the adjudication of the instant action on the merits.

Furthermore, Mr. Konrad enjoys absolute immunity as to whatever Lindstedt believes Mr. Konrad may have done to him in relation to the litigation in South Dakota. Mr. Konrad has absolute litigation privilege and immunity for anything that Mr. Lindstedt believes Mr. Konrad has done to him in regards to possibly defaming Lindstedt in pleadings in South Dakota. See *Surace v. Wuliger*, 25 Ohio St. 3d 229, 495 N.E.2d 939 (1986), where the court held-

> Thus, we hold that as a matter of public policy, under the doctrine of absolute privilege in a judicial proceeding, a claim alleging that a defamatory statement was made in a written pleading does not state a cause of action where the allegedly defamatory statement bears some reasonable relation to the judicial proceeding in which it appears.
>
> *Id* at 493

In *Day v. John Hopkins Health System Corporation*, 907 F.3d 766 (4th Cir. 2018), the United States Court of Appeals for the Fourth Circuit dealt with a case in which the "Witness Litigation Privilege"—which appears to be yet another term for the judicial proceedings privilege

/ judicial proceedings privilege / litigation privilege / judicial privilege—was deemed to apply to RICO claims brought forth in federal court. Said the *Day* court in pertinent part:

> Our law affords absolute immunity to those persons who aid the truth-seeking mission of the judicial system. This protection extends to judges, prosecutors and witnesses. *See Pierson v. Ray,* 386 U.S. 547, 554, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967); *Imbler v. Pachtman,* 424 U.S. 409, 427, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976); *Briscoe v. LaHue,* 460 U.S. 325, 330-34, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983). Immunity for witnesses-commonly known as the Witness Litigation Privilege-is a longstanding and necessary part of the common law's approach to adversarial adjudication. In fact, "the immunity of parties and witnesses from subsequent damages liability for their testimony in judicial proceedings was well established in English common law." *See Briscoe*, 460 U.S. at 330-31, 103 S.Ct. 1108. When a witness takes the oath, submitting his own testimony to cross-examination, the common law does not allow his participation to be deterred or undermined by subsequent collateral actions for damages. The vital protection afforded all participants in litigation is unwavering. It is a bedrock of our law today just as it was centuries ago. *See Rehberg v. Paulk,* 566 U.S. 356, 363, 132 S.Ct. 1497, 182 L.Ed.2d 593 (2012); *Bradley v. Fisher,* 80 U.S. 13 Wall. 335, 346-47, 20 L.Ed. 646 (1871).
>
> The Witness Litigation Privilege is a broad one. It applies to those who come forward of their own volition as well as those who are compelled, *see Briscoe,* 460 U.S. at 333, 103 S.Ct. 1108; * * * and to those who act with malice or ill will as well as those who are simply mistaken in their recollections. * * * The Witness Litigation Privilege in other words is foundational to any system of adversary justice, and is therefore vital to both federal law and the law of the sovereign states.
>
> * * *
>
> As with any other privilege or immunity, there will of course be questions about its scope. Litigants may fight about who counts as a witness or whether proceedings are sufficiently judicial in character. *See, e.g., Franklin v. Terr,* 201 F.3d 1098, 1102 (9th Cir. 2000) (finding that witnesses who conspire to present perjured testimony are shielded by immunity)[.] * * * Once the witnesses' actions fall within the scope of the immunity, however, its protection is absolute.
>
> * * *
>
> The Witness Litigation Privilege is part of both federal common law and the state law of Maryland. The absolute immunity found in both bodies of law are coextensive. *Compare O'Brien & Gere Eng'rs v. City of Salisbury,* 447 Md. 394, 135 A.3d 473, 482 (2016) ("The litigation privilege dates back 500 years to the English Court of Queen's Bench. The privilege rests on the vital public policy of the free and unfettered administration of justice." (quotations omitted)), *and*

N*orman v. Borison*, 418 Md. 630, 17 A.3d 697, 708 (2011) ("For witnesses ... we employ the 'English' Rule, which provides that the putative tortfeasor enjoys absolute immunity from civil liability."), *with Briscoe*, 460 U.S. at 331, 103 S.Ct. 1108 ("[W]itnesses ha[ve] an absolute privilege ... from subsequent damages liability for their testimony in judicial proceedings.").

* * *

Appellants' sole federal claim arises under the civil cause of action created by the Racketeer Influenced and Corrupt Organizations Act (RICO), Pub. L. No. 91-452, Title IX (1970) (codified at 18 U.S.C. § § 1961-1968 (2012)). The Witness Litigation Privilege is a part of federal common law. Congress clearly has the power to displace common law protections by statute if it so desires. *See Pulliam v. Allen*, 466 U.S. 522, 529, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984). Federal courts, however, do not leave this question to ordinary interpretive parsing. Instead, common law immunities function as implied limits on congressional statutes, operative until they are expressly removed.

Congress frequently enacts statutes in harmony with the common law. Sometimes legislators borrow terms familiar to our common law tradition. *See, e.g.*, *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322, 112 S.Ct. 1344, 117 L.Ed.2d 581 (1992) ("Where Congress uses terms that have accumulated settled meaning under the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms."). At other times Congress assumes that common law principles will inform the causes of action that it creates. *See, e.g.*, *Meyer v. Holley*, 537 U.S. 280, 286, 123 S.Ct. 824, 154 L.Ed.2d 753 (2003) (applying "ordinary background tort principles" to statutory cause of action under the Fair Housing Act). When Congress seeks to displace a common law immunity, it therefore must do so in clear terms. Absent an indication of a contrary purpose, the courts "must presume that Congress intended to retain the substance of the common law." *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 538, 133 S.Ct. 1351, 185 L.Ed.2d 392 (2013) (quoting *Samantar v. Yousuf*, 560 U.S. 305, 130 S.Ct. 2278, 2289-90, 176 L.Ed.2d 1047 (2010)); *see also United States v. Texas*, 507 U.S. 529, 534, 113 S.Ct. 1631, 123 L.Ed.2d 245 (1993). *Cf. Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985) (requiring "unmistakably clear" language to abrogate state sovereign immunity).

* * *

RICO's civil cause of action manifests no intention to displace the Witness Litigation Privilege. In enacting RICO, Congress stated that "it is the purpose of this Act to seek the eradication of organized crime in the United States." Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 1. To further this purpose, RICO lists a range of prohibited "racketeering activities," 18 U.S.C. § 1961, and allows for both civil and criminal enforcement. *Id.* § § 1963, 1964. To bring a claim under

> the civil provision, a plaintiff must demonstrate that he is "injured in his business or property." *Id.* § 1964(c).
>
> Rather than develop a new category of prohibited acts, RICO borrowed other provisions of the federal criminal law to define "racketeering activities." 18 U.S.C. § 1961(1). The statute cross-references various acts of witness tampering and obstruction of justice, but it does not include the criminal sanction for perjury, found at 18 U.S.C. § 1621. As the Second Circuit explained, "Congress did not wish to permit instances of federal or state court perjury as such to constitute a pattern of RICO racketeering activities, [demonstrating] an understandable reluctance to use federal criminal law as a back-stop for all state court litigation." *United States v. Eisen*, 974 F.2d 246, 254 (2d Cir. 1992). Moreover, the RICO statute makes no reference to witness testimony. This is not because the issue slipped Congress' mind. The statute providing witnesses with a general "use immunity" from federal criminal prosecutions was passed as Title II of the very same law that included RICO. *See* Pub. L. No. 91-452, Title II (1970).
>
> Given the complete absence of direction on the subject of witness immunity, as well as the explicit decision to not include perjury within the definition of racketeering activities, we cannot conclude that RICO abrogated witness immunity.

Day, 907 F.3d at 771-773, 775-777.

Mr. Konrad enjoys litigation privilege and immunity as a litigator of, and prosecutor of, a civil action ongoing in South Dakota and cannot be held civilly liable by Lindstedt, let alone in Ohio, for conduct, even if allegedly tortious, that is occurring in proceedings in South Dakota. If Mr. Konrad has violated any of the applicable civil rules or the rules of professional conduct in the ongoing action in South Dakota, then the court in South Dakota where the action is presently pending and ongoing, would have inherent power to sanction as it deems appropriate. However, respectfully, this Court has no authority to sanction Mr. Konrad or to render judgment against Mr. Konrad for what may or may not be occurring in ongoing litigation in a South Dakota state court.

All of the properly served counter-defendants named by Defendant Lindstedt in his original pleadings have already filed motions to dismiss under Federal Rule 12(b)(6) or 12(b)(2), those

motions are pending and ripe for ruling, and allowing Lindstedt to amend his pleadings would cause prejudice as all of those parties would have to revise those motions and file new ones, triggering a delay of at least 4-8 weeks.

Plaintiff opposes Defendant's proposed amendments, does not believe that the proposed amendments would state any legally cognizable claims, and believes the amendment would be futile. Defendant's proposed amendment should be denied in toto. The most procedurally correct and efficient course of action is to deny Defendant's motion for leave to amend, rule on all pending motions to dismiss, grant Plaintiff leave to file for summary judgment, and permit Plaintiff to file a summary judgment motion that will ideally dispose of the entire instant action.

Respectfully submitted,

REO LAW, LLC

/s/ Bryan Anthony Reo
Bryan Anthony Reo (#0097470)
P.O. Box 5100
Mentor, OH 44061
(T): (440) 313-5893
(E): reo@reolaw.org
Pro se Plaintiff

Dated: July 14, 2020

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRYAN ANTHONY REO,	Case No. 1:19-cv-02589-CAB
Plaintiff,	Hon. Christopher A. Boyko
v.	Mag. Thomas M. Parker
MARTIN LINDSTEDT.,	
Defendant.	

REO LAW, LLC
Bryan Anthony Reo (#0097470)
P.O. Box 5100
Mentor, OH 44061
(T): (440) 313-5893
(E): reo@reolaw.org
Pro se Plaintiff

MARTIN LINDSTEDT
338 Rabbit Track Road
Granby, MO 64844
(T): (417) 472-6901
(E): pastorlindstedt@gmail.com
Pro se Defendant

CERTIFICATE OF SERVICE

I, Bryan Anthony Reo, affirm that I am a party to the above-captioned civil action, and on July 14, 2020, I served a true and accurate copy the foregoing document upon Martin Lindstedt, 338 Rabbit Track Road, Granby, MO 64844, by placing the same in a First Class postage-prepaid, properly addressed, and sealed envelope and in the United States Mail located in City of Mentor, Lake County, State of Ohio.

I have also electronically filed the foregoing document which should serve notice of the filing of the same upon each party who has appeared through counsel, via the court's electronic filing notification system.

/s/ Bryan Anthony Reo
Bryan Anthony Reo (#0097470)
P.O. Box 5100

Mentor, OH 44061
(T): (440) 313-5893
(E): reo@reolaw.org
Pro se Plaintiff

Dated: July 14, 2020