

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTHONY BARBEE,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 04-4063
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY and	:	
COMP SERVICES, INC.,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

APRIL 11, 2005

I. INTRODUCTION

Presently before this Court is Defendant's, Compservices, Inc. ("Compservices"), Motion to Dismiss Plaintiff's claims against it pursuant to Federal Rule of Civil Procedure Rule 12(b)(6).¹ Compservices filed its Motion to Dismiss on February 11, 2005. Plaintiff, Anthony Barbee ("Barbee") filed a response to that Motion on March 21, 2005.² For the following

¹ The other Defendant, Southeastern Pennsylvania Transportation Authority ("SEPTA"), has filed a separate Motion to Dismiss, or in the alternative, for Summary Judgment. That Motion will be examined separately and will not be discussed in this Memorandum.

² Having not received a response from Plaintiff, on March 10, 2005, at my instruction, chambers called Plaintiff's counsel to inquire if the Motion was opposed as it had gone unanswered. Plaintiff's counsel advised chambers that the responses to the Motion would be filed by Monday, March 14, 2005. On that date, no response was filed by Plaintiff, but Plaintiff's counsel called chambers and advised that he had been in an automobile accident and stated that a response would be filed by March 18, 2005. Apparently, Plaintiff's counsel was not keeping defense counsel abreast of his problems because on March 18, 2005, I received a letter from SEPTA's counsel explaining Local Rule of Civil Procedure 7.1(c). Using my discretion, however, I will consider Compservices' Motion on its merits.

reasons, Compservices' Motion will be granted.

II. BACKGROUND³

Plaintiff was employed by SEPTA as a bus driver and was injured in a bus accident in June 2002. He was ultimately terminated from employment by SEPTA on January 17, 2003. Compservices is the third-party administrator for SEPTA's workers' compensation program. Plaintiff asserts that Compservices "acted to deny plaintiff needed medical care and recognition of his pain and suffering as a direct result of the bus accident of June 16, 2002." (Compl. ¶ 31). Furthermore, Plaintiff alleges that "[t]he actions of defendant Compservices were a direct result of its contract with SEPTA which provided that if [sic] controlled medical costs in work injury claims of SEPTA employees it would be paid more money for its services as third party administrator of SEPTA work injury claims." (Id. ¶ 32).

Plaintiff asserts two claims against Compservices. Barbee's claims against Compservices are plead under the Racketeer Organized and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. ("RICO") and the Pennsylvania Workers' Compensation Act, 77 P.S. § 1 et seq. ("Workers' Compensation Act"). Presumably, Barbee's Workers' Compensation Act claim is being brought against Compservices due to its failure to provide medical benefits to him as third-party administrator for SEPTA. Barbee's RICO claim is apparently being asserted due to Compservices' contract with SEPTA.

III. STANDARD

A motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), tests

³ As this Memorandum examines Compservices' Motion only, I will only recite the facts relevant to the Plaintiff's claims against it.

the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a Motion to Dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

IV. DISCUSSION

Barbee has brought two claims against Compservices. The first claim against Compservices is being brought under the RICO statute and the second is under the Pennsylvania Workers' Compensation Act.

A. RICO

Aside from stating that Compservices violated the RICO statute, Plaintiff has provided this Court with no information in either his Complaint or his Brief in Opposition regarding what section of the RICO statute his claim is pled under. However, 18 U.S.C. § 1962(c) is the most relevant RICO section on point. Indeed, Compservices cites to this provision in its Brief as the relevant section, and Plaintiff does not contest such an assumption by Compservices in his Brief in Opposition. Section 1962(c) reads as follows:

[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Id. Thus, to state a cause of action under Section 1962(c), a plaintiff must allege the following

four elements:

- (1) the existence of an enterprise affecting interstate commerce;
- (2) that the defendant was employed by or associated with the enterprise;
- (3) that the defendant participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and
- (4) that he or she participated through a pattern of racketeering activity that must include the allegation of at least two racketeering acts.

Stewart v. Assocs. Consumer Disc. Co., 1 F. Supp. 2d 469, 474 (E.D. Pa. 1998)(citations

omitted). Section 1961 sets forth the following definitions of terms under the RICO statute:

- (1) “racketeering activity” means . . . (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of Title 18, United States Code: . . . Section 1341 (relating to mail fraud), section 1344 (relating to wire fraud) . . .
- (3) “person” includes any individual or entity capable of holding a legal or beneficial interest in property;
- (4) “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;
- (5) “pattern of racketeering activity” requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity; . . .

18 U.S.C. § 1961.

I find that Plaintiff’s Complaint fails to properly assert a claim under Section 1962(c). For example, Barbee has not alleged any predicate acts of “racketeering activity” necessary to plead a claim under RICO. Indeed, the only claim is that Compservices was

engaged in a contract with SEPTA so as to reduce medical costs and that Compservices denied him medical benefits. Also, to the extent that Barbee is attempting to plead a RICO claim based on wire or mail fraud, Barbee's Complaint is lacks the heightened pleading requirement under Federal Rule of Civil Procedure 9(b) necessary to plead such a claim. See Stursberg v. Todi, No. 04-1333, 2004 WL 2244539, at *5 (E.D. Pa. Oct. 1, 2004)(citing Warden v. McLelland, 288 F.3d 105, 114 (3d Cir. 2002)).

Additionally, it appears as if Plaintiff has failed to distinguish between the "person" and the "enterprise" necessary to establish a Section 1962(c) claim. As the courts have noted:

Section 1962(c) applies to a culpable "person" engaged in the conduct of an "enterprise" through a pattern of racketeering activity." Pell v. Weinstein, 759 F. Supp. 1107, 1106 (M.D. Pa. 1991), aff'd, 961 F.2d 1568 (3d Cir. 1992); see Sedmina, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985). "In the Third Circuit, the culpable 'person' and the 'enterprise' must be separate and distinct entities That is, the person charged with the RICO violation under § 1962(c) cannot be the same entity as the alleged enterprise." Pell, 759 F. Supp. at 1116.

Data Comm Comm., Inc. v. Caramon Group, Inc., No. 97-0735, 1997 WL 792998, at *3 (E.D. Pa. Nov. 26, 1997). Stated differently, "to establish liability under Section 1962(c), one must allege and prove the existence of two distinct entities: (1) a 'person' and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name." Stursberg v. Todi, No. 04-1333, 2004 WL 2244539, at *6 (E.D. Pa. Oct. 1, 2004). In this case, I find that Barbee has failed to allege a culpable person separate and distinct from the enterprise. Indeed, the only allegation is that the Defendants acted in concert and connection with Barbee's work injury claim so as to violate the RICO statute. Such an allegation does not properly set forth a Section 1962(c) RICO

claim. Thus, for the foregoing reasons, Barbee's RICO claim against Compservices must be dismissed.

B. WORKERS' COMPENSATION ACT

Barbee also attempts to assert a Pennsylvania Workers' Compensation Act claim against Compservices. This claim arises from the allegation that Compservices, as third-party administrator of SEPTA's workers' compensation program, improperly denied him medical care benefits in violation of the Pennsylvania Workers' Compensation Act. In Winterberg v. Trans. Ins. Co., 72 F.3d 318, 322 (3d Cir. 1995), the United States Court of Appeals for the Third Circuit ("Third Circuit") stated that the "Pennsylvania's Workmen's Compensation scheme provides that it is the exclusive remedy available to employees against employers for work-related injuries . . . The same exclusivity of remedy is applied in cases against an employer's insurer." Id. The Third Circuit continued by noting that "[b]ecause of the historical background for Pennsylvania's workmen's compensation system, courts have been very cautious about permitting common law litigation in matters arguably connected with work-related injuries." Id. Here, Barbee's Workers' Compensation claim against Compservices is in its capacity as third-party administrator of SEPTA's workers compensation program. Such a claim is barred by the exclusivity provision of the Pennsylvania Workers' Compensation Act. Thus, Plaintiff's Workers' Compensation Act claim against Compservices must also be dismissed.

V. CONCLUSION

I have considered Compservices' Motion to Dismiss Plaintiff's claims against it pursuant to Federal Rule of Civil Procedure 12(b)(6). Specifically, I considered whether Plaintiff's RICO and Workers' Compensation claims against Compservices should be dismissed.

I have found that dismissal of these claims is proper.

An appropriate Order follows.

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SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY and	:	
COMPSERVICES, INC.,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 11th day of April, 2005, upon consideration of Defendant's, Compservices, Inc., Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 5) and the Response thereto, it is hereby **ORDERED** that the Motion is **GRANTED** and the claims against Compservices, Inc. are hereby **DISMISSED**.

BY THE COURT:

/s/ Robert F. Kelly
Robert F. Kelly _____ Sr. J.