

CAUSE NO. _____

UDO BIRNBAUM

Plaintiff

v.

PAUL BANNER

Defendant

RON CHAPMAN

Defendant

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

ORIGINAL PETITION

Comes now UDO BIRNBAUM ("Birnbaum"), Plaintiff, *Pro Se*, complaining of PAUL BANNER ("Banner") and RON CHAPMAN ("Chapman") and for cause of action would respectfully show the Court the following:

Udo Birnbaum is an individual residing in Van Zandt County, Texas. He may be served with process at 540 VZ CR 2916, Eustace, Texas 75124.

Paul Banner is a retired Texas judge who may be served with process at First Administrative Judicial Region, 133 N. Industrial Blvd., LB 50. Dallas, Texas 75207

Ron Chapman is a retired Texas judge who may be served with process at First Administrative Judicial Region, 133 N. Industrial Blvd., LB 50. Dallas, Texas 75207

1. Discovery is intended to be conducted under Level 3. (RCP Rule 190.4)

STATEMENT ON JUDICIAL IMMUNITY

2. Defendant **Chapman's** conduct complained of was NOT in a judicial capacity -- there was nothing to adjudicate -- and nothing to magistrate -- and Defendant's conduct was also objectively unreasonable.

3. Defendant **Banner's** conduct complained of was as a WITNESS -- and also objectively unreasonable.

STATEMENT OF THE CASE

4. Plaintiff complains under 18 U.S.C. § 1964(c) ("civil RICO") of injury to his property by reason of Defendant's violation of 18 U.S.C. §1961 *et seq.* ("RICO").

"State courts have concurrent jurisdiction to consider civil claims arising under RICO". *Tafflin v. Levitt, 493 U.S. 455 (1990)*.

"For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to **deprive** another of the **intangible right of honest services**". *18 U.S.C. § 1346*

5. The scheme and pattern of racketeering activity complained of is open ended.

6. Injury amounting to \$125,770 was discovered shortly after Oct. 24, 2006.

THE SCHEME

7. Plaintiff Birnbaum complains of a scheme to punish and silence Birnbaum for having exercised his right of access to the courts, and to execute the scheme by a "*scheme to deprive of the intangible right of honest services*".

8. Defendant's use of the U.S. Mail and interstate capable communications equipment to execute such scheme provides the "*predicate acts*" of "*racketeering activity*" constituting the outlawed "*pattern of racketeering activity*" as defined under RICO.

THE PATTERN OF RACKETEERING ACTIVITY

9. Ever after April 1, 2004 Defendants came together to use a DEAD case in the 294th District Court of Van Zandt County. FINAL JUDGMENT had issued way back on July 30, 2002. (Exhibit B)

10. **Chapman** knew that his April 1, 2004 pronouncement of \$125,770 sanctions against Birnbaum was not proper -- as indicated by his NOT then following through with an Order.
11. **Chapman** hiding this original wrong for over TWO years constitutes another wrong.
12. **Chapman** on October 24, 2006 actually issuing \$125,770 Order is the latest wrong.
13. **Banner** willingly participated against Birnbaum as a WITNESS, fully knowing that the case was DEAD, he himself having issued FINAL JUDGMENT way back on July 30, 2002.
14. **Banner**, having personally observed Chapman pronounce unlawful \$125,770 punishment on Birnbaum, did NOTHING to protect Birnbaum from the wrong Chapman was doing.
15. **Banner** for over TWO YEARS did NOTHING to report the wrong he had witnessed on April 1, 2004.

16. The acts of "*racketeering activity*" shown above constitute a "*pattern of racketeering activity*" within the meaning of 18 U.S.C. § 1961(5). The acts complained of are not isolated events, but relate to each other by virtue of a common participant, a common method of commission, and the common purpose and common result of defrauding of honest service these defendants owed to the state of Texas by their oaths of office and positions as public servants.
17. Defendants' use of the U.S. Mail and interstate capable communications equipment to execute such scheme provides the "*predicate acts*" of "*racketeering activity*" constituting the outlawed "*pattern of racketeering activity*" as defined under RICO.
18. Plaintiff's injury to his property was "*by reason of*" Defendant's violation of RICO.

THE VIOLATION OF RICO

18 U.S.C. § 1962(c)

"to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity"

- 19. The 294th District Court of Van Zandt County, Texas is an "enterprise" under RICO.
- 20. This "enterprise" has some effect upon interstate commerce
- 21. Defendants were associated with the enterprise.
- 22. Defendants played some part in directing the affairs of the enterprise
- 23. Defendants engaged in the pattern of racketeering activity as outlined above
- 24. Defendants' association with the enterprise facilitated the commission of the acts
- 24. The commission of these predicate acts did indeed have some effect on the "enterprise"

INJURY

"by reason of the RICO violation"

- 25. Injury of \$125,770 is as indicated and detailed in Exhibit "A", *Order on Motion for Sanctions* (signed Oct. 24, 2006).
- 26. The injury flowed from both the pattern of racketeering activity and from the acts of racketeering activity.

PRAYER FOR RELIEF

Wherefore, Plaintiff Birnbaum seeks judgment against Defendants jointly and severally. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregards for the rights of Birnbaum. Birnbaum is therefore entitled to an award of punitive damages. Birnbaum seeks judgment as follows:

- (a) \$377,310 as treble damages as proscribed by RICO
- (b) For the costs of suit, including reasonable attorney's fees, if any
- (c) Pre-judgment interest at the maximum rate allowed by law
- (d) Post-judgment interest at the maximum rate allowed by law
- (e) Punitive damages in an amount as the jury may award at its discretion
- (f) A permanent injunction prohibiting Defendants from sitting as "visiting judges" in the 294th District Court of Van Zandt County.
- (g) Such other relief, legal and equitable, special or general, as the Court deems proper and just

Defendants' conduct is a menace to society that extends into the indefinite future.

BIRNBAUM HEREBY DEMANDS A TRIAL BEFORE A JURY

Respectfully submitted,

Udo Birnbaum, *Pro Se*
540 VZ CR 2916
Eustace, Texas 75124
(903) 479-3929

**Exh. "A", *Order on Motion for Sanctions -- \$125,770 (Oct. 24, 2006)*
(On a FOUR year old DEAD case!)**

**Exh. "B", *Final Judgment -- signed by Defendant Banner himself (July 30, 2002)*
(The DEAD case, page 1 and 7 only)**