

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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S.D. OF FL. - MIAMI

Magistrate Judge: O'Sullivan

MARIE JEANNE JEAN, in her)
individual capacity, and as parent)
and legal Guardian for minors,)
VLADIMY PIERRE and)
MICHELDA PIERRE, and)
LEXIUSTE CAJUSTE,)
)
Plaintiffs,)
vs..)
)
CARL DORELIEN,)
and Lump Sum Capital, LLC)
a Maryland Limited Liability)
Company,)
Defendants)
_____)

CASE NO: 03-20161-CIV-KING

**ANSWER, AFFIRMATIVE DEFENSES, 12(b) DEFENSES
AND COUNTERCLAIMS**

COMES NOW the Defendant, CARL DORELIEN, by and through his undersigned counsel,
pursuant to FRCP 12, files this his Answer, Affirmative Defenses and Defenses under FRCP
12(b) and states:

1. Defendant, CARL DORELIEN, denies the allegations or is without sufficient
knowledge to admit or deny the allegations and denies the allegations contained in paragraphs
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51,
52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75,

56/8

CASE NO: 03-20161-CIV-KING

77, 78, 79, 79, 80, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94 and 95 of the Second Amended Complaint of the Plaintiffs.

2. Defendant, CARL DORELIEN, admits te allegations contained in paragraphs 76, 81 and 82 of the Second Amended Complaint of the Plaintiff.

DEFENSES UNDER RULE 12(B)

Failure to State a Cause of Action

3. The complaint fails to state a cause of action upon which relief can granted.

Lack of Jurisdiction Over the Subject matter

4. Plaintiffs have failed to meet the requirements of 18 USC 1350 prior to instituting this action.

5. There is a pending action in the Second Circuit Court in and for Leon County, Florida to determine the legality of transaction Plaintiffs allege is fraudulent, jurisdiction over said transaction lies therewith

Improper Venue

6. There are adequate remedies available in Haiti wherein the Defendant resides and of which the four Plaintiffs are citizens regarding any tort claims.

7. Venue regarding the allegations of fraudulent transfer lies in Leon County, Florida or the counties where said transfer allegedly occurred.

CASE NO: 03-20161-CIV-KING

Insufficiency of Process, Insufficiency of Service of Process

8. Defendant, CARL DORELIEN, was never properly or sufficiently personally served with a copy of any of the complaints or summons filed by the Plaintiffs herein.

Failure to Join a Party Under Rule 19

9. Plaintiffs have failed to join any of the parties who committed the acts complained of in their 1st through 5th claims for relief.

10. Plaintiff have failed to join the alleged insider or beneficiaries of the alleged fraudulent transfer in their 6th claim for relief. No just resolution of their claims can be accomplished without said parties.

Statute of Limitations

11. The cause of action of Plaintiff, LEXIUSTE CAJUSTE, arose more than ten (10) years prior to his commencement of his action herein.

Failure to Exhaust Remedies

12. The Plaintiff in counts I through V of the complaint have failed to exhaust adequate and available remedies in the place in which the conduct giving rise to their claims occurred, Haiti.

Lack of Standing

13. Neither Plaintiff, MARIE JEANNE JEAN, VLADIMY PIERRE nor MICHELDA PIERRE, have legal standing or capacity to bring this action in this court. The minors must have a

CASE NO: 03-20161-CIV-KING

legal guardian appointed to bring an action. MARIE JEANNE JEAN is not an heir nor legally appointed personal representative of MICHEL PIERRE a/k/a JAMEDODO.

Res Judicata, Estoppel by Judgment

14. These claims by the Plaintiffs herein were litigated in Haiti. The Plaintiff, MARIE JEANNE JEAN was a Plaintiff therein, and listed as a guardian of the two minor Plaintiffs herein. (See Affidavit of Mario Joseph filed by Plaintiffs and attached hereto). The Plaintiffs herein claim to have obtained a civil judgment against the Defendant in Haiti for the same conduct complained of herein. Plaintiffs cannot litigate the same issues more than once.

Failure to State a Cause of Action as to Fraudulent Transfer

15. The transfers alleged to be fraudulent were not done with any intent to hinder, delay or defraud any creditor and were arms length transactions for reasonable consideration.

COUNTERCLAIM

Counter-Plaintiff, CARL DORELIEN, dues the Defendants, MARIE JEANNE JEAN, VLADIMY PIERRE, MICHELDA PIERRE and LEXIUSTE CAJUSTE, and alleges:

16. This is a civil action for damages and equitable relief for tortious interference with business and marital relations.

17. The Counter-Defendants are Plaintiffs in this action.

18. The Counter-Defendants have obtained a temporary injunction preventing CARL

CASE NO: 03-20161-CIV-KING

DORELIEN from performing the terms and conditions of the lottery assignment agreement attached to their 2^d Amended Complaint as Exhibit "A", interfering with the legitimate business relationship of the Defendants.

19. Counter-Defendants request for the injunction contains deliberate material misrepresentations of facts.

20. Counter-Defendants alleged in paragraph 87 of their 2d Amended Complaint that Counter-Plaintiff, CARL DORELIEN, will not receive reasonably equivalent value in exchange for his assignment of the lottery proceeds.

21. Counter-Defendants knew or should have known, after reasonable inquiry under the circumstances, said allegation has no evidentiary support and made said allegation to harass, cause unnecessary delay and needlessly increase the costs of litigation.

22. Counter-Plaintiff, CARL DORELIEN, is married to MARIE DORELIEN, who has resided in Florida more than six months.

23. Pursuant to Florida Law, the proceeds from the lottery assignment agreement are marital property.

24. Counter-Defendants by enjoining the release of said proceeds via deliberate misrepresentations to this Court are interfering with the marital relationship of CARL DORELIEN and his wife.

CASE NO: 03-20161-CIV-KING

25. CARL DORELIEN has incurred attorney's fee, because of the false allegations of the Counter-Defendants herein.

WHEREFORE, the Counter-Plaintiff, CARL DORELIEN, prays this Court dismiss the complaint against him with prejudice and render a judgment for damages, attorney's fees and costs against the Plaintiffs.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed on this 30th day of March, 2004, to: See Attached List.

LAW OFFICES OF KURT R. KLAUS, JR.

Attorney for the Defendant
3191 Coral Way, Suite 402-A
Miami, Florida 33145
Tel: (305) 461-4447

BY: 

KURT R. KLAUS, JR.

Fla. Bar No: 299804

Service List

(Names and Addresses of Counsel)

Case No: 03-20161-CIV-KING

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Meadow, Olin & Perwin
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case No. 03-20161 CIV-KING

MARIE JEANNE JEAN, in her individual
capacity, and as parent and legal
guardian for minors VLADIMY PIERRE
and MICHELDA PIERRE, and LEXIUSTE
CAJUSTE,

Plaintiffs,

v.

Carl Dorélien,
and Lump Sum Capital, LLC,
a Maryland Limited Liability Company

Defendants.

_____ /

AFFIDAVIT OF MARIO JOSEPH

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

BEFORE ME this day personally appeared Mario Joseph who, after first being
duly sworn, deposes and says:

I am a human rights lawyer in Haiti. I have directed the Bureau des Avocats
Internationaux (BAI) in Port-au-Prince, Haiti since 1996. The BAI was established by
the Haitian government to help victims and to assist the judicial system in prosecuting
human rights cases, mostly from Haiti's 1991-1994 de facto military dictatorship. The
office represents human rights victims in court. It works closely with judges,
prosecutors, police and government officials, providing legal, technical and material
assistance, as well as policy advice. I was the lead attorney in the BAI's most prominent

case, representing victims of the 1994 "Raboteau Massacre" in their prosecution of military and paramilitary perpetrators of the massacre. The Raboteau case is considered the most successful complex prosecution in Haiti's history. Before joining the BAI, I worked on human rights cases for the Catholic Church's Justice and Peace Commission. I have also held a variety of teaching and administrative posts. I am a graduate of the Ecole Normale Supérieure, Haiti's leading teaching college, and the Gonaïves Law School. I frequently speak on human rights issues in Haiti, both on radio and television. I am also a member of the Law Reform Commission.

Under Haitian law the civil and criminal trials related to the same incident are conducted simultaneously. The trial of former military and paramilitary leaders for their responsibility for the Raboteau Massacre took place in the fall of 2000 and lasted for six weeks. I acted as the civil lawyer for the victims at trial. The verdicts were delivered on November 10 and 16, 2000. Attached as Exhibit "A" to my affidavit is a copy of the Verdict of November 16, 2000. Carl Dorélien, a former colonel in the high command of the *de facto* military dictatorship from 1991 to 1994 and the defendant in this case, was convicted *in absentia* for assassination and complicity in assassination. These crimes are roughly equivalent to the charges of murder and conspiracy to commit murder in the United States. Dorélien was sentenced to life in prison and ordered to pay, jointly and severally with his co-defendants, the amount of one billion Haitian Gourdes to the victims of the Raboteau Massacre.¹ Marie Jeanne Jean, a plaintiff in this case, is a named

¹ UN (1) MILLIARD DE GOURDES is equivalent to one (1) billion Gourdes. One (1) Million Gourdes is spelled UN (1) MILLION.

recipient of the civil judgment for the unlawful killing of her husband, Michel Pierre, and she is therefore entitled to receive compensation from Dorélien.²

The United States Immigration and Naturalization Service arrested Carl Dorélien in Florida in 2001 and deported him to Haiti on January 27, 2003.

Upon arrival in Haiti, Dorélien was taken into custody by Haitian authorities pursuant to Haitian Penal Code article 366, *et seq.* In pertinent part, article 366, *et seq.* state that a judgment entered *in absentia* is valid against an individual unless he exercises his right to request a new trial within 10 years of the original judgment. Failure to request a new trial signifies acceptance of the judgment. After the 10 year period expires, the defendant loses his right to ask for a new trial. Nonetheless, both the criminal and civil judgments are valid during the entire period.

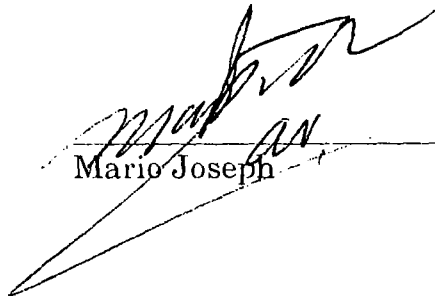
To date Dorélien has chosen not to request a new trial. He has filed petitions for *habeas corpus* relief claiming that he was being detained illegally. In response to the petitions, I presented to the court the judgment against Dorélien from the Raboteau trial, and his petitions were summarily denied. A number of his co-defendants were convicted in person at the Raboteau trial, and they currently have procedural appeals pending. However, Dorélien does not have a right to appeal. His legal recourse is to request a new trial. Since he has failed to do so, both the criminal and civil judgments against him remain in effect. Those people named as victims, including Marie Jeanne Jean as guardian of the minor plaintiffs Vladimyr Pierre and Michelda Pierre, may presently enforce their civil judgment against Dorélien.

² Although the judgment refers only to the "victims of the Raboteau Massacre," Marie Jeanne Jean's name is included in the Court's list of victims. Marie Jeanne Jean is listed as the guardian of the minor plaintiffs Vladimyr Pierre and Michelda Pierre.

In conclusion, Carl Dorélien was legally detained upon his arrival in Haiti under the authority of the court in Gonaïves, Haiti, which had previously found him guilty of murder and conspiracy to commit murder and ordered him to pay reparations to the victims of the Raboteau Massacre. Both the criminal and civil judgments remain legally binding. They remain in force despite Dorélien's recent illegal departure from the National Penitentiary in Port au Prince, Haiti.

I declare under penalty of perjury under the laws of the United States that the foregoing Affidavit is true and correct.

Dated this 22nd day of March 2004.



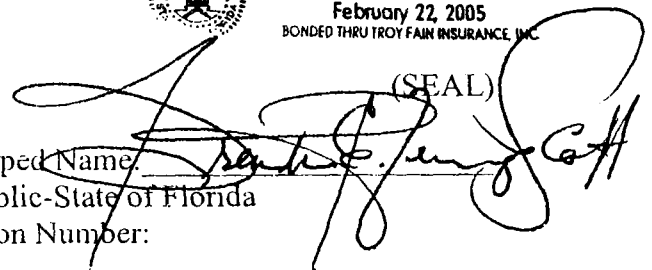
Mario Joseph

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 22nd day of March, 2004, by Mario Joseph, who produced his Florida Driver License No. J210-540-60-026-0, expiration date 01/26/08, as Identification.



Brenda E. Jennings-Scott
MY COMMISSION # DD003673 EXPIRES
February 22, 2005
BONDED THRU TROY FAIN INSURANCE, INC.


(SEAL)

Printed/Typed Name _____
Notary Public-State of Florida
Commission Number: _____

Liberté

Egalité
République d'Haiti

Fraternité

Extrait "Plumitif d'Audience Criminelle du jeudi 16 Novembre 2000.

AU NOM DE LA REPUBLIQUE

Le Tribunal de Première Instance des Gonaïves compétemment réuni au Palais de Justice de cette ville, a rendu en audience publique et en ses attributions criminelles, le jugement suivant:

Entre

Le Ministère Public représenté par le Commissaire du Gouvernement, Me Frénot Cajuste, assisté de ses substituts: Me Rocky Pierre et Me Louiselmé Joseph, suivant au Nom de la Vindictte publique de Contumace de: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Présumé, Douze ainsi connu, Raphael Camille, Achou ainsi connu et Jacob Jean-Paul.

Vu l'Ordonnance de Renvoi en date du 30 Août 1999.

Vu l'Ordonnance de Notification aux accusés en date du 4 Octobre 2000.

Vu les procès-verbaux devant constater l'affichage de l'Ordonnance de domicile aux différentes Justices de Paix notamment aux Gonaïves, Port-au-Prince, Port-de-Paix, Cabaret, Anse-à-Galet.

Oui: le Réquisitoire oral du Ministère Public, les conclusions de la partie civile.

Attendu que par Ordonnance en date du 30 Août 1999, ordonnance à laquelle est insérée la prise de corps des accusés, Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval et consorts;

Attendu que l'Ordonnance de prise de corps n'a pas été exécutée, vue que les recherches effectuées par la Police et la Justice sont infructueuses et introuvables;

Attendu que le Tribunal siégeant avec l'Assistance de Jury en date du 04 octobre 2000 a accordé un délai de 10 jours pour présenter au Tribunal, délai qui n'a pas été respecté.

Attendu que toutes les formalités légales ont été régulièrement remplies.

Attendu que: Une personne accusée d'une infraction quelconque qui a été en fuite ne peut retarder de suspendre de la loi pénale;

Attendu que les 37 accusés: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanor, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noe alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Présumé, Douze ainsi connu, Raphael

EXHIBIT

A

Camille, Achou ainsi connu et Jacob Jean-Paul sont en fuite.

Attendu que Raoul Cédras, Ex-Général et consorts sont accusés d'assassinats, de complicité d'assassinats;

Attendu que le crime d'assassinat est prévu et puni par les articles 241 et 247 du Code Pénal;

Attendu que l'article 241 du Code Pénal stipule "tout meurtre commis avec préméditation ou guet-apens est qualifié d'assassinat";

Attendu que l'auteur intellectuel, matériel et ou complice d'une infraction, une fois constante devra punir de la même peine;

Attendu que les CONTUMAX sont accusés du crime d'assassinat et de la complicité d'assassinat;

Attendu que le Coupable du crime d'assassinat parricide, infanticide sera condamné aux travaux forcés à perpétuité, Article 247 du Code Pénal;

Attendu que les Contumax ont commis des préjudices moraux contre les victimes du Massacre de Raboteau; Attendu que les articles 1168-1169 du Code Civil Haïtien stipulent: Art 1168 "Tout fait quelconque de l'homme qui cause à autrui un dommage oblige celui par la faute duquel il est arrivé à le réparer";

Attendu que les préjudices causés aux victimes de Raboteau sont des préjudices moraux et en fonction de ces préjudices, les victimes doivent bénéficier nécessairement réparation civile et proportionnelle aux préjudices subis.

Par ces motifs:

Le tribunal, au Réquisitoire conforme du Ministère Public

1o-Condamne: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Prémumé, Douze ainsi connu, Raphael Camille, Achou ainsi connu et Jacob Jean-Paul, de travaux forcés à perpétuité.

2o-Les condamne solidairement à UN (1) MILLIARD DE GOURDES en faveur des victimes de Massacre de Raboteau.

3o-Les condamne en outre aux Amendes et aux frais envers l'Etat.

4o-Dit que les biens des condamnés de Contumace seront à partir de l'Exécution du jugement considérés comme des biens d'absents et à partir de là ils seront séquestrés et le compte du séquestre sera rendu aux victimes et à l'Etat haïtien.

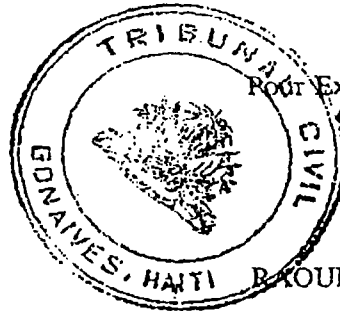
5o-Dit que le jugement sera exécuté à la diligence du Commissaire du Gouvernement.

Ainsi rendu par Nous, Me Napela Saintil, Doyen du Tribunal Criminel siégeant sans Assistance de Jury, en présence de Ministère Public, Me Frénot Cajuste, Me Rocky Pierre et Me Louiselmé Joseph, respectivement Commissaire et Substituts du Commissaire du Gouvernement de ce ressort,

de la partie civile représentée par Me Mario Joseph et Me Duclas Marcelin, et avec l'assistance du Citoyen RAOUL JACQUES, Greffier du siège.

Il est ordonné à tous huissiers sur ce requis de mettre le présent jugement à exécution aux Officiers du Ministère Public près les Tribunaux Civils d'y tenir la main à tous Commandants et autres Officiers de la force publique d'y prêter main forte lorsqu'ils en seront légalement requis.

En foi de quoi la minute du présent jugement est signée du Doyen et du Greffier sus-dits.

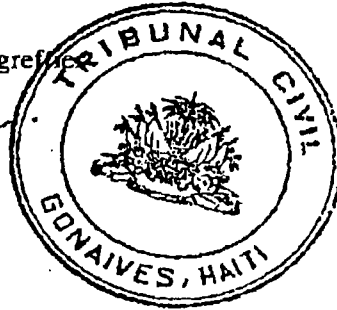


Pour Expédition Conforme
Collationnée

RAOUL JACQUES, GREFFIER EN CHEF

Vu pour la légalisation de la signature du greffier

Me Napela Saintil, Avocat
Doyen du Tribunal de Première Instance
Gonaïves



Vu pour la légalisation de la signature du Doyen du
Tribunal de Première Instance des Gonaïves

Me Lionel Sajous, Avocat
Directeur Général du Ministère de la Justice
et de la Sécurité Publique

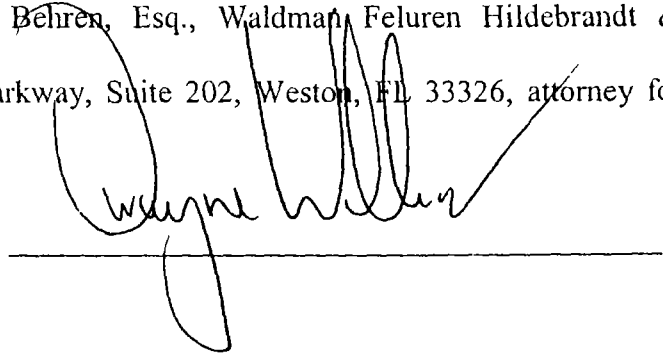
Vu Pour la Légalisation de la Signature de Me Hafela saintel
 Doyen du tribunal Civil de Coral Gables
 Apposée au Recto de la 3^{me} page Enregistrée
 Au Ministère de la justice le 19 Decembre 2000
 An 197 de L'indépendance au No. 4967
 Du Registre à ce Degré A
 Récépissé No. Coxone



Monel A. SAJOUS, av
 Directeur Général.-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Affidavit of Mario Joseph, was served by fax and U.S. Mail this 23rd day of March, 2004 to: Kurt Klaus, Esq., Law Offices of Kurt R. Klaus, Jr., 3191 Coral Way, Suite 402-A, Miami, FL 33145, attorney for Defendant Carl Dorélien; and Scott M. Behren, Esq., Waldman, Feluren Hildebrandt & Trigoboff, P.A., 2200 North Commerce Parkway, Suite 202, Weston, FL 33326, attorney for Defendant Lump Sum Capital, LLC

A handwritten signature in black ink, appearing to read "Scott M. Behren", is written over a horizontal line. The signature is stylized and somewhat cursive.

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