

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO: 04-15666-D

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

Appellants,

vs.

CARL DORELIEN, and LUMP SUM CAPITAL,
LLC, a Maryland limited liability Company,

Appellees.

On Appeal From
The United States District Court
for the Southern District of Florida
Miami Division

BRIEF OF APPELLEE

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**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to the Eleventh Circuit Rule 26.1-1, undersigned counsel for Appellee certifies that the following persons do or may have an interest in the outcome of this case:

Scott M. Behren, Esq., counsel for Appellee, Lump Sum Capital, LLC

Thomas E. Bishop, Esq., counsel for Appellants

Lexiuste Cajuste, Appellant

The Center of Justice & Accountability, counsel for Appellants

Laurie Webb Daniel, Esq., counsel for Appellants

Carl Dorelien, Appellee

Matthew Eisenbrandt, Esq., counsel for Appellants

The Honorable Janet E. Ferris, Circuit Court Judge for the Second Judicial

Circuit, Leon County, Florida.

Cynthia L. Hain, Esq., counsel for Appellants

Lucinda A. Hofman, Esq., counsel for Appellants

Holland & Knight LLP, counsel for Appellants

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

(continued)

Marie Jeanne Jean , personally and on behalf of Vladimyr and

Michelda Pierre, Appellants

The Honorable James Lawrence King, District Court Judge

Kurt R. Klaus, Jr., counsel for Appellee, Carl Dorelien

Lump Sum Capital, LLC, Appellee

Andrew A. Ostrow, Esq., counsel for Christian N. Scholin, Esq.

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Stuart F. Williams, Esq., counsel for Appellants

STATEMENT REGARDING ORAL ARGUMENT

No oral argument is necessary nor would it benefit anyone.

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STATE STATUTES:

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STATEMENT OF JURISDICTION

Plaintiffs timely appeal the final judgment dismissing their federal claims against Dorelien, which were brought pursuant to the law of nations, the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note), and the Alien Tort Claims Act, 28 U.S.C. § 1350. The district court had jurisdiction over these claims pursuant to 28 U.S.C. §§ 1350 and 1331.

Plaintiffs further timely appeal the final judgment dismissing their state law claims against Appellees for violations of Florida's Uniform Fraudulent Transfer Act, § 726.101 et seq., Florida Statutes, brought pursuant to the district court's supplemental jurisdiction, 28 U.S.C. § 1367.

This Court therefore has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the district court erred in granting Dorelien's Motion for Judgment on the Pleadings, Statute of Limitations.
2. Whether the district court erred in granting Dorelien's Motion to Dismiss, Improper Venue.
3. Whether the district court erred in dismissing Plaintiffs' Florida's Uniform Fraudulent Transfer Act claims against Dorelien.
4. Whether the district court erred by dismissing Plaintiffs' Florida's Uniform Fraudulent Transfer Act claims against Lump Sum Capital, LLC.

STATEMENT OF THE CASE

Plaintiff's are appealing the dismissal of their civil action against Carl Dorelien for damages pursuant 28 U.S.C. § 1350 and their claim against Carl Dorelien and Lump Sum Capital LLC pursuant to Florida Statutes 726.01 et.seq.

Appellee adopts Appellant's description of the course of proceedings and dispositions in the trial court and refers this court to Appellant's record excerpt D, the lower court's docket sheet.

STANDARD OF REVIEW

Appellee agrees with and adopts Appellant's notion of the standard of review.

STATEMENT OF THE FACTS

Appellant, Marie Jeanne Jean, claims she is legal guardian and mother of Vladimyr Pierre and Michelda Pierre and that Vladimyr Pierre and Michelda Pierre are the son and daughter of Michel Pierre and Marie Jeanne Jean. Appellant, Marie Jeanne Jean, claims she and Vladimyr Pierre and Michelda Pierre are residents of Haiti.

Appellant, Marie Jeanne Jean claims that she was married to Michel Pierre.

Appellant, Marie Jeanne Jean, claims Michel Pierre was a victim of an extrajudicial killing during a riot, revolt, civil disturbance known as the Raboteau Massacre while trying to flee Raboteau, Haiti by boat.

Appellant, Marie Jeanne Jean claims Carl Dorelien, Appellee is legally responsible for the death of Michel Pierre and that Appellant, Marie Jeanne Jean is entitled to recover damages on behalf of herself, Vladimyr Pierre and Michelda Pierre.

Appellant, Lexiuste Cajuste, is a citizen of Haiti and claims to be a resident of the United States. Appellant, Lexiuste Cajuste, claims to be a victim of torture and

other torts in April, 1993 in Haiti for which Appellee, Carol Dorelien should be held liable.

Appellee, Carl Dorelien, was a colonel in the Haitian Army until said army was disbanded by President Jean Bertrand-Aristide in the fall of 1994. Appellee, Carl Dorelien, was exiled by the Aristide government ended up in Florida where in June of 1997 he won the Florida Lottery. Carl Dorelien denies any knowledge of or liability to the Appellants. The United States Immigration Services arrested him in June of 2002 and he was deported to Haiti on January 27, 2003.

Appellant, Marie Jeanne Jean, filed her complaint in January of 2003, Lexiuste Cajuste did not file his complaint or join the action until October 23, 2003.

Appellants filed a claim for fraudulent transfer against Appellee, Carl Dorelien and Lump Sum Capital, LLC, claiming the sale of the Periodic lottery winnings's pay-outs by Carl Dorelien to Lump Sum Capital, LLC was a fraudulent transfer.

The trial court rendered a final order of dismissal on September 28, 2004 as to all claims of the Appellants.

SUMMARY OF THE ARGUMENT

Marie Jeanne Jean is a citizen of and resides in Haiti. Her claims are unsubstantiated and unprovable. Lexiuste Cajuste is a citizen of Haiti and claims to reside in the United States. His claims are unsubstantiated and unprovable.

Mr. Cajuste waited too long to file his claims and in no way was he prevented from timely filing his claims by circumstances beyond his control.

All events regarding this cause arose in Haiti. All parties reside in Haiti, nothing was pled regarding the exhaustion of remedies available in Haiti nor that said remedies are inadequate.

The prospective application of the Florida Uniform Fraudulent Transfer Act depends on the existence of creditors, with no claims herein, no action under the act can be maintained.

The trial court made no mistakes.

ARGUMENT AND CITATIONS OF AUTHORITY

I. Did this district court err in granting Appellee's Motion for Judgment on the Pleadings, Statute of Limitations?

The Torture Victim Protection Act (TVPA) 28 U.S.C. § 1350 Section 2 (c) provides;

“Statute of Limitations. No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.”

Appellant, Lexiuste Cajuste, first filed his action in October 23, 2003, this cause of action arose April 23, 1993, more than ten years prior.

The Statute is clear on its face.

Limitation periods are “customarily subject to equitable tolling, unless tolling would be inconsistent with the text of the relevant statute.” Young v. United States, 535 U.S. 43 at p. 49 (2002).

Again, Lexiuste Cajuste, did not plead any equitable circumstances that prevented him from filing his claims within the ten year period. Ellis v. General Motors Acceptance Corp., 160 F. 3d 703, 706 (11th Cir. 1998).

The legislative history cited by Appellants which led to the adoption of the

ten year limitation reinforces Appellee's position. Even after discussing equitable tolling etc. Congress adopted the ten year limitation.

Clearly no error.

II. Did the district court err in dismissing the action for improper venue?

All parties herein are citizens of Haiti. Marie Jeanne Jean and Carl Dorelien reside in Haiti. Carl Dorelien was never personally served with the complaint herein. Carl Dorelien was deported to Haiti on or about January 27, 2003, he cannot legally return to the United States.

A Court may dismiss a complaint at the pleadings stage “only if it is clear that no relief could be granted under any set of facts that prove consistent with the allegations.” Hishon v. King & Spaulding, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232 (1984).

“A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.” 28 U.S.C. §1350 Section(2) (b).

Appellants would have this Court accept argument out of both sides of their mouths. On the one hand they plead that they hold a valid judgment in the place where the conduct giving rise to the claim occurred, Haiti, and on the other hand, they should be permitted to use our courts to sue again for the same acts in a different venue.

Appellants never pled that remedies were not available in Haiti, or, that remedies in Haiti were inadequate, or that they had exhausted the remedies therein.

The trial court did not err.

III. Did the District Court Err in Dismissing the Fraudulent Transfer Claims against the Appellee?

After dismissing the claims of the Appellants there was no basis to use federal court resources to maintain a fraudulent transfer claim against the Appellee.

Appellants had interplead in the State cause regarding the sale of the periodic lottery payments by the Appellee. The cause was better served therein.

The Appellants wanted to litigate the same issues at the same time in two forums.

The District Court exercised its discretion in dismissing Appellants' FUTA claims without error.

IV. Did the District Court Err in Dismissing the FUTA claims against Lump Sum Capital, LLC?

(See above)

CONCLUSION

Appellant, Lexiuste Cajuste, is precluded from making a claim in the U.S.A. against Appellee more than ten years after the cause of action arose.

Appellant, Marie Jeanne Jean, must pursue her claim in Haiti.

Appellants cannot litigate the same claims under the same statute involving the same parties in two different forums at the same time.

Appellee, Carl Dorelien, prays this Court deny Appellant's appeal.

Dated this 14th day of January, 2005.

Respectfully Submitted:

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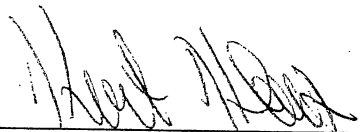
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KURT R. KLAUS, JR.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE
REQUIREMENTS**

The brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 2,222 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect 10 and Times New Roman 14.



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Dated: _____

1/14/2005

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This is to certify that on this 14th day of January, 2005, a copy of the foregoing has been served by U.S. Mail on:

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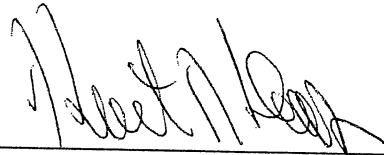
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