

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.

2004 APR 9 AM 9:04
NOTICE FILED
APR 9 2004
CLERK OF COURT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

**PLAINTIFFS' EMERGENCY MOTION FOR CORRECTION OF AND RELIEF FROM
THE COURT'S ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON
THE PLEADING STATUTE OF LIMITATION AND FINAL JUDGMENT DISMISSING
PLAINTIFFS' ENTIRE ACTION WITH PREJUDICE**

Plaintiff Marie Jeanne Jean, in her individual capacity, and as legal guardian for minor
Plaintiffs Vladimyr Pierre and Michelda Pierre (collectively, "Plaintiffs"), by and through
undersigned counsel, and pursuant to Federal Rule of Civil Procedure 60 and Local Rule 7.1.E,
hereby file their Emergency Motion for Clarification and Relief From Order Granting
Defendant's Motion for Judgment on the Pleading Statute of Limitation and the resulting Final
Judgment dismissing their action in its entirety with prejudice. In support of their Motion,
Plaintiffs state:

59/2

INTRODUCTION

Plaintiffs hereby move this Court for an order pursuant to Rules 60(a) and (b), Federal Rules of Civil Procedure, to correct errors in its April 6, 2004 Order Granting Defendant's Motion for Judgment on the Pleading (D.E. 61) (the "Order"), and the ensuing Final Judgment (D.E. 62) (the "Judgment"). The Order and Judgment are erroneous insofar as they purport to dismiss the entire action with prejudice on the grounds that Plaintiffs' claims are barred by the applicable ten (10) year statute of limitations. *The claims asserted by Plaintiff Marie Jeanne Jean ("Jean"), on behalf of herself and her minor children Vladimy Pierre and Michelda Pierre are timely. Indeed, Defendant Carl Dorélien ("Dorélien") never requested that the claims asserted by Jean be dismissed; Dorélien moved for judgment on the pleadings only against Plaintiff Lexiuste Cajuste.* Accordingly, the Order and the Judgment should be amended to clarify that the claims asserted by Plaintiff Jean are timely and are not dismissed. Moreover, because the claims asserted by Jean are not dismissed, the Court should correct the Order to clarify that all other motions pending on April 6, 2004 remain pending, and that the TRO remains in effect.

Plaintiffs also move the Court for an order pursuant to Rule 60(a) and (b), Federal Rules of Civil Procedure, reinstating their claim for relief from fraudulent transfers as that claim is not moot, and is not barred by any statute of limitations.

Pursuant to Local Rule 7.1.E, Plaintiffs request that the Court set an immediate hearing on this Emergency Motion.

MEMORANDUM OF LAW

- A. The Order and the Judgment should be amended to clarify that the claims asserted by Marie Jeanne Jean are not dismissed; and to reinstate all pending motions and the TRO.**

In her original complaint, filed on January 24, 2003, Plaintiff Marie Jeanne Jean asserted claims against Carl Dorélien arising from the murder of Michel Pierre (her late husband and the father of her children, minor Plaintiffs Vladimy Pierre and Michelda Pierre) during the "Raboteau Massacre," which occurred on April 22, 1994. (See Complaint (D.E. 1), at p. 4, ¶¶ 10-12.) Thus, Jean timely filed her complaint eight (8) years and nine (9) months years after her claims arose, well within the applicable ten year statute of limitations.¹

On March 15, 2004, Defendant Dorélien filed his motion for judgment on the pleadings based on the ten (10) year limitations period. Significantly, Dorélien sought to dismiss *only* the claims asserted by Lexiuste Cajuste. Dorélien did *not* ask the Court to dismiss the claims asserted by Jean because those claims are timely. Indeed, the first sentence of Dorélien's motion makes it clear that he was seeking to dismiss *only* the claims asserted by Cajuste:

COMES NOW the Defendant, CARL DORELIEN, by and through his undersigned counsel, pursuant to FRCP 12, moves this Court to dismiss the claims of the Plaintiff, LEXIUSTE CAJUSTE ...

(See Motion for Judgment on the Pleading Statute of Limitation (D.E. 29), at p. 1.)

In view of this record, the Court's Order Granting Defendant's Motion for Judgment on the Pleading contains errors. In particular, the Order states in pertinent part:

In his current Motion, Defendant argues that Plaintiffs' claims are barred by the applicable ten year statute of limitations.

¹ Jean continues to assert the same claims. (See Second Amended Complaint (D.E. 37), at pp. 5-6, ¶¶ 15-17.)

In the instant case, Plaintiffs' claims arose between April 23, 1993 and June 1993. However, Plaintiffs did not file their Complaint until October 23, 2003, approximately ten years and five months after their claims arose.

(See Order (D.E. 91), at pp. 1-2 – footnotes omitted.) These findings are erroneous because, as explained above: (1) Dorélien did not argue that all of the Plaintiffs' claims were barred; he only challenged the claims asserted by Cajuste; (2) Jean's claims arose from a single event on April 22, 1994, the murder of Michel Pierre (not between April 23, 1993 and June 1993), and she filed her complaint on January 23, 2003 less than ten years later (not on October 23, 2003); and (3) the Raboteau Massacre is a well documented historical event – there is no dispute that it happened on April 22, 1994 – less than ten years before Jean filed her complaint. The dates referenced in the Court's Order refer to the time that Plaintiffs Cajuste's claims arose (April 23 and June 1, 1993) and the date of the First Amended Complaint in which Cajuste was added as a Plaintiff and first asserted his claims (October 23, 2003) – they do not pertain to the claims asserted by Marie Jeanne Jean.

Accordingly, the Order and the ensuing Judgment are incorrect and should be amended to clarify that, while the human rights claims asserted by Plaintiff Cajuste may be dismissed, the claims asserted by Marie Jeanne Jean are timely filed and are *not* dismissed. Moreover, because the claims asserted by Marie Jeanne Jean survive Dorélien's motion for judgment on the pleadings, the Order and Judgment should be amended to clarify that any other motions pending on April 6, 2004 *remain pending* and are not moot, and to clarify that the TRO remains in effect.

Rule 60(a), Federal Rules of Civil Procedure, allows the Court to make these corrections to the Order and the Judgment. In particular, Rule 60(a) provides:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. ..."

See Fed. R. Civ. Proc. 60(a). Further, Rule 60(b)(1) and (6), Federal Rules of Civil Procedure provides:

On motion, and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ... or (6) any other reason justifying relief from the operation of the judgment.

See Fed. R. Civ. P. 60(b)(1), (6).

B. Neither Defendant Dorélien nor Defendant Lump Sum Capital has requested the dismissal of Plaintiffs' fraudulent transfer claim.

Plaintiffs assert a fraudulent transfer claim against Defendant Dorélien and Defendant Lump Sum Capital ("LSC"). (See Second Amended Complaint (D.E. 37) at ¶¶ 73-95.) Defendant LSC was served with the Complaint on March 31, 2004, and has not filed a motion to dismiss in this case. Further, Defendant Dorélien only sought dismissal of the human rights claims brought by Plaintiff Lexiuste Cajuste. *He did not request dismissal of Plaintiffs' fraudulent transfer claim* because Plaintiffs' cause of action under the Uniform Fraudulent Transfer Act arose in November 2003, is continuing, and was timely asserted by the Second Amended Complaint accepted by the Court on March 10, 2004. Thus, no statute of limitations issue was raised as to Plaintiffs' fraudulent transfer count, and that count should not have been dismissed.

Plaintiffs therefore request that the Order and Judgment be corrected to clarify that Plaintiffs' claim for relief from fraudulent transfers against Defendants Dorélien and LSC is not dismissed, and remains pending. Moreover, the Order and Judgment should be corrected to provide that the motions relating to Plaintiffs' fraudulent transfer claim remain pending, and that the TRO, which relates to Plaintiffs' fraudulent transfer count, remains in place.

C. **This is an emergency motion.**

Local Rule 7.1.E provides:

The Court may, upon written motion and good cause shown, waive the time requirements of this rule and grant an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

S.D. Fla. L.R. 7.1.E.

This Motion should be treated as an emergency motion because as long as the current Order and Judgment remain in place, and the March 10, 2004 TRO remains set aside, Defendant Dorélien will be free to complete his fraudulent scheme to convert the thirteen remaining payments he is due to receive from the Florida Lottery into a \$1.3 million lump sum which he will then transfer to his son Karl Steven Dorélien.

On April 7, 2004, at this Court's command and just prior to receiving notice of the Order and Judgment, Plaintiffs served Defendants with their Supplemental Memorandum of Law in Support of Their Emergency Motion to Prevent Fraudulent Transfer (the "Supplemental Memo"). Plaintiffs then filed their Supplemental Memo on April 7, 2004, in compliance with the briefing schedule set forth in the Court's Order Granting Leave to File Second Amended Complaint and Temporary Restraining Order (D.E. 32.)

In their Supplemental Memorandum, Plaintiffs set forth evidence – in detail – including the smoking gun instructions for LSC to transfer over \$1 million of Carl Dorélien's money *into the personal bank account of Karl-Steven Dorélien*, and evidence proving that the transaction is to hinder Carl Dorélien's creditors. Further, the memorandum chronicles the fraud and perjury by Carl Dorélien, Karl-Steven Dorélien, and other members of the Dorélien family that Plaintiffs uncovered during the course of discovery. (See Supplemental Memo., Part II.B, at pp. 8-19.) The evidence, summarized below, proves that Carl Dorélien is engaged in a fraudulent scheme to

protect his assets from his creditors:

- (1) Karl-Steven Dorélien sought out and retained Christian Scholin, Esq. as his father's attorney because Scholin specializes in "asset protection."
- (2) Karl-Steven Dorélien met with attorney Scholin at Scholin's office on three or four occasions between November 2003 and February or March, 2004. During this period, Karl-Steven Dorélien and attorney Scholin also spoke on the phone about twenty-four (24) times.
- (3) On November 25, 2003 – at Scholin's office – Karl-Steven Dorélien signed various papers that were required to effect the assignment of the Lottery Payments to LSC, including the Assignment Agreement and the Affidavit of Carl Dorélien. The Assignment Agreement and the Affidavit contain false statements, including statements that there are no pending judgments or claims against Carl Dorélien. Karl-Steven Dorélien made these misrepresentations to fraudulently induce the Florida Department of the Lottery and the Leon County Circuit Court to approve the assignment of the Lottery Payments to LSC.
- (4) Before entering into the Assignment Agreement with LSC, Karl-Steven Dorélien told LSC and attorney Christian Scholin that Plaintiffs were suing his father for money damages.
- (5) On March 3, 2004, Karl-Steven Dorélien testified at the hearing of Plaintiffs' Emergency Motion for Relief from Fraudulent Transfers. Karl-Steven Dorélien testified – *falsely* – that he did *not* have an attorney helping him with the assignment transaction, and that he did not know whether attorney Scholin ever represented his father. *Indeed, even though Karl-Steven Dorélien had previously retained Scholin as his father's attorney, had spoken with Scholin on the telephone about 24 times, and had met with Scholin between 3 and 5 times, he testified that he could not remember ever hearing of or meeting with Scholin.*
- (6) According to Karl-Steven Dorélien's instructions to attorney Scholin, and a "smoking gun" letter giving instructions for the wire transfer, Carl Dorélien plans to transfer the bulk of the \$1.3 million proceeds from the assignment to Karl-Steven Dorélien's personal bank account at SunTrust Bank. At his deposition, Karl-Steven Dorelien testified – *falsely* – that no plans had been made regarding where the proceeds from the lottery assignment would be deposited, despite the fact that that he had given orders for over \$1 million to be deposited into his personal account.
- (7) The lottery assignment transaction is a vehicle through which Carl Dorélien will convert the Lottery Payment into a lump sum and then transfer the proceeds to his son, Karl-Steven Dorélien, who is immune to his father's creditors, and who may then move the money offshore.

- (8) Carl Dorélien's wife and some or all of Carl Dorélien's sons may be deported from the United States just as Carl Dorelien was, so they have every incentive to abscond with whatever lottery proceeds they can, through whatever means they can.

Based on this evidence, and the law, Plaintiffs requested this Court to issue a preliminary injunction preventing Lump Sum Capital from paying any monies to Carl Dorélien pending the trial of Plaintiffs' claims on the merits, the appointment of a receiver, and/or other relief. (See Supplemental Memo., at p. 20.)

Time is of the essence. Plaintiffs Marie Jeanne Jean, Vladimyr Pierre and Michelda Pierre have timely filed claims against Carl Dorélien for his part in the murder of their husband and father. Dorélien and his family are perpetrating a fraudulent transfer in order to deprive Plaintiffs of any relief. Justice requires that Plaintiffs be given the opportunity to appear before the Court and argue this Motion – before Carl Dorélien's fraud is completed and it is too late.

WHEREFORE, Plaintiffs request that the Court enter an order correcting the Order and Judgment to clarify that (1) all claims asserted by Plaintiffs Marie Jeanne Jean, Vladimyr Pierre and Michelda Pierre, are timely and are not dismissed; (2) all other motions pending on April 6, 2004 remain pending and are not moot; (3) the TRO remains in full force and effect; and (4) Plaintiffs' fraudulent transfer claim against Defendant Dorélien and Defendant Lump Sum Capital is not dismissed.

Respectfully submitted,



HOLLAND & KNIGHT, LLP
Dwayne E. Williams, Esq.
Fla. Bar. No. 0125199
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
Tel.: (305) 374-8500
Fax.: (305) 789-7799
Email: dwwillia@hklaw.com

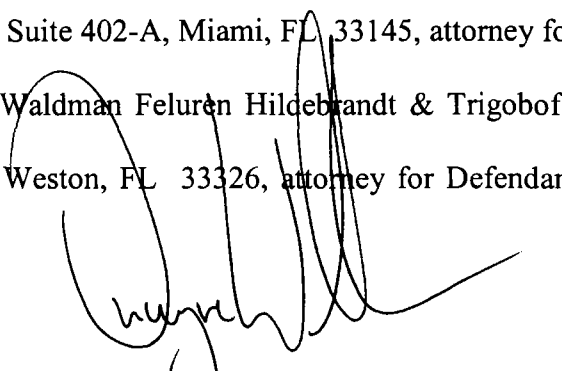
Thomas E. Bishop, Esq.
Fla. Bar. No. 956236
50 N. Laura Street, Suite 3900
Jacksonville, Florida 32202
Tel: (904) 353-2000
Fax: (904) 358-1872
Email: tbishop@hklaw.com

MATTHEW EISENBRANDT
(Admitted *Pro Hac Vice*)
The Center for Justice & Accountability
870 Market Street, Suite 684
San Francisco, CA 94102
Tel: (415) 544-0444
Fax: (415) 544-0456
Email: meisenbrandt@cja.org

JOHN ANDRES THORNTON
(Florida Bar No. 0004820)
9 Island Avenue #2005
Miami Beach, FL 33139
Tel.: (305) 532-6851
Fax: (305) 532-6851
Email: johnandresthornton@hotmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Motion for Clarification and Relief From Order Granting Defendant's Motion for Judgment on the Pleading was served by fax and U.S. Mail this 8th day of April, 2004 to: Kurt R. Klaus, Esq., Law Offices of Kurt R. Klaus, Jr., 3191 Coral Way, Suite 402-A, Miami, FL 33145, attorney for Defendant Carl Dorélien; 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.



Dwayne E. Williams