

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.

FILED BY \_\_\_\_\_  
04 JUN 15 AM 10:32  
CLERK OF DISTRICT  
COURT  
S.D. OF FL - MIAMI

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**PLAINTIFFS' MOTION FOR ENTRY OF FINAL JUDGMENT  
AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to Federal Rule Civil Procedure 58(d), Plaintiffs Marie Jeanne Jean, in her individual capacity and as parent and legal guardian of minor plaintiffs Vladimyr Pierre and Michelda Pierre, and Lexiuste Cajuste (collectively, "Plaintiffs") hereby move this Court for entry of final judgment on a separate document.

Rule 58, Federal Rule of Civil Procedure, provides that every judgment (with exceptions not relevant here) must be set forth on a separate document. See Fed. R. Civ. P. 58(a)(1). The purpose of this rule is to ensure that the time for appeal does not linger indefinitely. See Fed. R. Civ. P. 58, Advisory Committee Notes for the 2002 Amendments.

Rule 58(d), Federal Rule of Civil Procedure, permits a party to move the Court for a judgment set forth on a separate document as required by Rule 58(a)(1). Rule 58(d) was added by the 2002 Amendments to "protect all needs for prompt commencement of the periods for motions, appeals, and execution or other enforcement." See Fed. R. Civ. P. 58, Advisory Committee Notes for the 2002 Amendments.

The need for a final judgment on a separate document is apparent from the orders entered in this case, especially the order of the Eleventh Circuit Court of Appeals dismissing Plaintiffs' appeal for lack of jurisdiction.

On April 27, 2004, Plaintiffs appealed the Court's order of dismissal dated April 21, 2004 (the "April 21 Order"). Plaintiffs believed that the April 21 Order dismissed the entire case. However, on May 6, 2004, the Eleventh Circuit dismissed Plaintiffs' appeal for lack of jurisdiction, finding, in part, that:

The district court's April 6, 2004, order granting the appellee Carl Dorelien's motion for judgment on the pleadings; April 7, 2004, final judgment; April 8, 2004, order granting appellant Marie Jeanne Jean's motion for reconsideration; and April 21, 2004, order granting Dorelien's motion to dismiss the complaint and dismissing the case are not final and appealable. ...

The district court has neither resolved the appellants' claims as to defendant Lump Sum Capital, LLC or Dorelien's counterclaim against the appellants for tortious interference with business and marital relations. Moreover, to the extent the district court's April 21, 2004, order dissolved the March 10, 2004, temporary injunction, that order is not final or immediately appealable.

(See Eleventh Circuit Order (D.E. #85), attached hereto as Exhibit A.)

On May 7, 2004, the day after Plaintiffs' appeal was dismissed by the Eleventh Circuit, *but before this Court received the Eleventh Circuit's order dismissing the appeal*<sup>2</sup>; this Court

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<sup>2</sup> The Eleventh Circuit's Order dismissing the Plaintiffs' appeal was entered as document number 85 on the district court's docket on May 13, 2004, after the Court's Order of May 7, 2004.

entered an order denying Plaintiff Cajuste's Motion to amend the judgment entered on April 6, 2004, or, alternatively for a Federal Rule of Civil Procedure 54(b) certification. Significantly, the Court expressly stated that pursuant to the April 21 Order, this case had been dismissed "in its entirety," so that the Plaintiffs' motion for a Rule 54(b) certification was moot. (See May 7, 2004 Order (D.E. #84), attached hereto as Exhibit B.)

In view of the Eleventh Circuit's Order dismissing their appeal, Plaintiffs require a separate final judgment dismissing all claims asserted in this case, so that they may appeal this Court's orders dismissing their claims.

WHEREFORE, Plaintiffs respectfully request that the Court enter a separate Final Judgment in conformance with the Eleventh Circuit's order dated May 6, 2004.

Respectfully submitted,



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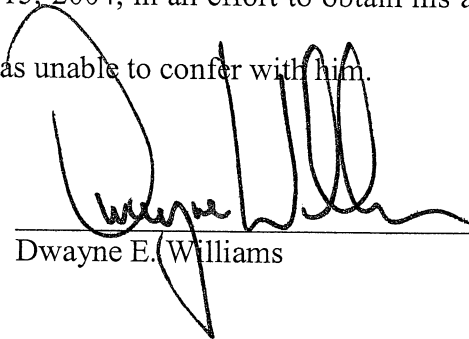
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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1, A, 3**

I HEREBY CERTIFY that prior to filing Plaintiffs' Motion for Entry of Final Judgment, I conferred by telephone and in writing with Kurt Klaus, Esq., attorney for Defendant Carl Dorélien, in an effort to obtain his agreement to the entry of a final judgment in this case; however, Mr. Klaus refused to agree to the entry of final judgment. I FURTHER CERTIFY that on June 14 and 15, 2004, I contacted Scott M. Behren, Esq., attorney for Defendant Lump Sum Capital, LLC, by telephone, and by email on June 15, 2004, in an effort to obtain his agreement to the entry of a final judgment in this case; but I was unable to confer with him.

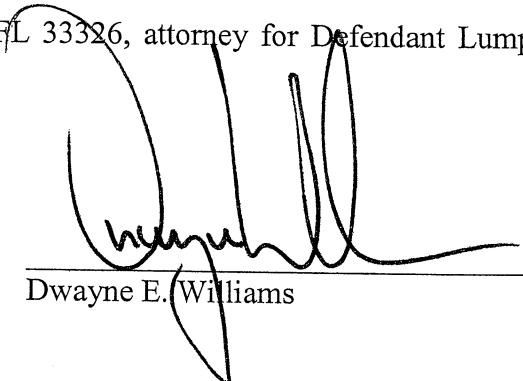


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Dwayne E. Williams

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served by fax and by U.S. Mail this 16th day of June, 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, Hildebrandt, Feluren & Trigoboff, P.A., 2200 North Commerce Parkway, Suite 202, Weston, FL 33326, attorney for Defendant Lump Sum Capital, LLC.



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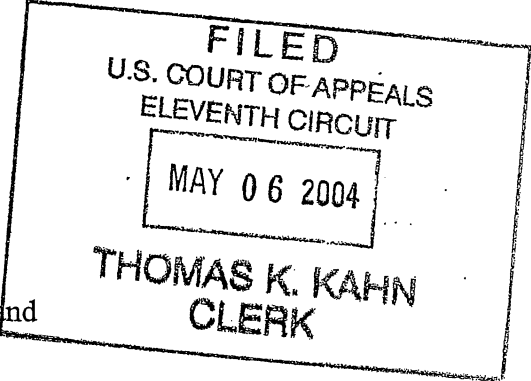
Dwayne E. Williams

# 2017342\_v1

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
04-12069-II  
\_\_\_\_\_



MARIE JEANNE JEAN, in her individual capacity, and as parent and  
legal guardian for minors Vladimir Pierre and Michelleda Pierre,

Plaintiff-Counter  
Defendant-Appellant,

LEXIUSTE CAJUSTE,

Plaintiff-Appellant.

versus

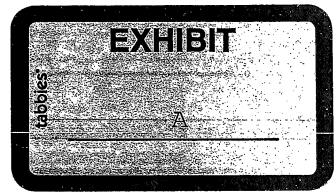
CARL DORELIEN,

Defendant-Counter  
Claimant-Appellee,

LUMP SUM CAPITAL, LLC, a Maryland limited liability company,

Defendant-Appellee.

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On Appeal from the United States District Court for the  
Southern District of Florida  
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BEFORE: TJOFLAT, BIRCH, and CARNES, Circuit Judges.

BY THE COURT:

This appeal is dismissed, sua sponte, for lack of jurisdiction. The district court's April 6,  
2004, order granting the appellee Carl Dorelien's motion for judgment on the pleadings; April 7,

2004, final judgment; April 8, 2004, order granting appellant Marie Jeanne Jean's motion for reconsideration; and April 21, 2004, order granting Dorelien's motion to dismiss the complaint and dismissing the case are not final and appealable. See 28 U.S.C. § 1291; Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984); In re Yarn Processing Patent Validity Litig., 680 F.2d 1338, 1340 (11th Cir. 1982). The district court has neither resolved the appellants' claims as to defendant Lump Sum Capital, LLC or Dorelien's counterclaim against the appellants for tortious interference with business and marital relations. Moreover, to the extent the district court's April 21, 2004, order dissolved the March 10, 2004, temporary injunction, that order is not final or immediately appealable. See Fernandez-Roque v. Smith, 671 F.2d 426, 429 (11th Cir. 1982). The motion for attorneys' fees is also dismissed for lack of jurisdiction. See Shannon v. Jack Eckerd Corp., 55 F.3d 561 (11th Cir. 1995).



**United States Court of Appeals**

Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

*file*

Thomas K. Kahn  
Clerk

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

May 06, 2004

Clarence Maddox  
Clerk, U.S. District Court  
301 N. Miami Avenue  
Miami FL 33128

**Appeal Number: 04-12069-II**  
Case Style: Marie Jeanne Jean v. Carl Dorelien  
District Court Number: 03-20161 CV-JLK

The enclosed certified copy of this Court's order dismissing the appeal for lack of jurisdiction is issued in lieu of the mandate of this court.

The district court clerk is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

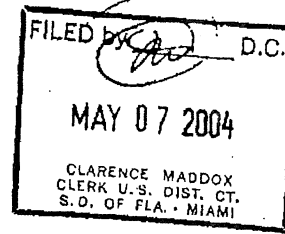
Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Tonya Dumas (404) 335-6178

Encl.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 03-20161-CIV-KING

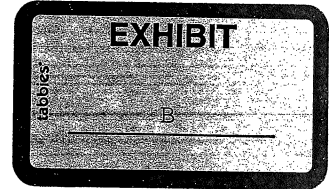
MARIE JEANNE JEAN, in her individual capacity, and as parent and legal guardian for minors, VLADIMY PIERRE and MICHELDA PIERRE, and LEXIUSTE CAJUSTE,

Plaintiffs,

v.

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

Defendants.



**ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT OR, ALTERNATIVELY, FOR A RULE 54(b) CERTIFICATION**

THIS CAUSE comes before the Court upon Plaintiff Lexiuste Cajuste's ("Plaintiff") Motion to Alter or Amend Judgment or, Alternatively, for a Rule 54(b) Certification, filed April 20, 2004. Defendants have not filed a Response.

On April 21, 2004, the Court entered its Order dismissing the above-styled action in its entirety and ordering the Clerk of Court to close-out the case. Thus, to the extent Plaintiff's current Motion seeks a Rule 54(b) certification to appeal the Court's Order dismissing his claims, his Motion is now moot. Moreover, to the extent Plaintiff's Motion seeks reconsideration of the Court's April 6, 2004 Order dismissing his claims, Plaintiff's Motion is denied.

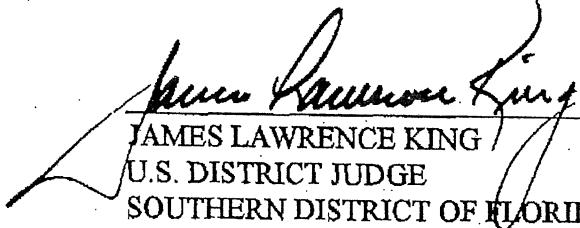
Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Plaintiff's Motion to Alter or Amend Judgment or,

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Alternatively, for a Rule 54(b) Certification to, and the same is hereby, DENIED. This case remains  
CLOSED.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building  
and United States Courthouse, Miami, Florida, this 7th day of May, 2004.

  
JAMES LAWRENCE KING  
U.S. DISTRICT JUDGE  
SOUTHERN DISTRICT OF FLORIDA

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