

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

FILED BY _____ D.C.

2004 APR 27 PM 12:36

Case No. 03-20161 CIV-KING

CLARENCE HADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA - MIA

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

Plaintiffs/Appellants,

v.

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

Defendants/Appellees.

NOTICE OF APPEAL

Notice is hereby given that Marie Jeanne Jean, in her individual capacity, and as parent and legal guardian for minors Vladimy Pierre and Michelda Pierre, and Lexiuste Cajuste, plaintiffs in the above-named case, hereby appeal to the United States Court of Appeals for the Eleventh Circuit from the following orders of the district court:

1. The order granting defendant Carl Dorélien's motion for judgment on the pleadings rendered April 6, 2004.

2. The Final Judgment rendered April 6, 2004.
3. The order granting plaintiffs' motion for reconsideration rendered April 9, 2004.
4. The order granting defendant Carl Dorélien's motion to dismiss, dismissing the complaint, denying all pending motions as moot, and setting aside and dissolving a temporary injunction rendered April 21, 2004.

Copies of these orders are attached.


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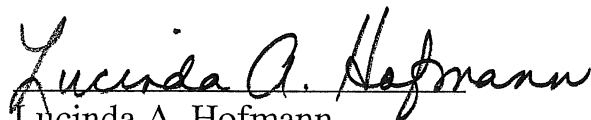
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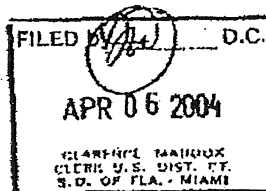
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 27, 2004, a true and correct copy of the foregoing Notice of Appeal was faxed and served by U.S. Mail on Kurt R. Klaus, Jr., Esq., Law Offices of Kurt R. Klaus, Jr., 3191 Coral Way, Suite 402-A, Miami, FL 33145, *attorney for Defendant/Appellee Carl Dorélien*; and on Scott M. Behren, Esq., Waldman Feluren Hildebrandt & Trigoboff, P.A., 2200 North Commerce Parkway, Suite 202, Weston, FL 33326, *attorney for Defendant/Appellee Lump Sum Capital, LLC*.


Lucinda A. Hofmann

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MARIE JEANNE JEAN, in her individual capacity, and as parent and legal guardian for minors, VLADIMIR PIERRE and MICHELLEDA PIERRE,

CASE NO. 03-20161-CIV-KING

Plaintiffs,

v.

CARL DORELIEN,

Defendant.

Since the initiation of this Court's FAXBACK program, the parties are no longer required to submit envelopes with their motions & proposed orders. Orders should include a full service list, with fax numbers.

ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADING

THIS CAUSE comes before the Court upon Defendant's Motion for Judgment on the Pleading: Statute of Limitation, filed March 15, 2004. On March 29, 2004, Plaintiffs filed their Response.

On October 23, 2003, Plaintiffs filed their Complaint alleging claims under the Torture Victim Protection Act ("TVPA")¹ and the Alien Tort Claims Act ("ATCA").² In his current Motion, Defendant argues that Plaintiffs' claims are barred by the applicable ten year statute of limitations. In their Response, Plaintiffs argue that the statute of limitations should be equitably tolled.³

A motion to dismiss will be granted only where it is clear that no set of facts consistent with

¹Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350).

²28 U.S.C. § 1350 (1948).

³Plaintiffs do not dispute that under both the TVPA and the ATCA, the statute of limitations is ten years. See 28 U.S.C. § 1350 and Estate of Cabello v. Fernandez-Larios, 157 F. Supp. 2d 1345, 1363 (S.D. Fla. 2001) (noting that "under the ATCA, the Court must apply the limitations period under the TVPA").

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the allegations could provide a basis for relief. Fed.R.Civ.P. 12(b)(6). "It is well established that a complaint should not be dismissed for failure to state a claim pursuant to Fed.R.Civ.Pro. 12(b)(6) 'unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.'" Bradberry v. Pinellas County, 789 F.2d 1513, 1515 (11th Cir. 1986) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). For purposes of a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and accept as true all facts alleged by the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The issue is not whether the plaintiff will ultimately prevail, but "whether the claimant is entitled to offer evidence to support the claims." Little v. City of North Miami, 805 F.2d 962, 965 (11th Cir. 1986) (citation omitted).

In the instant case, Plaintiffs' claims arose between April 23, 1993 and June 1, 1993.⁴ However, Plaintiffs did not file their Complaint until October 23, 2003, approximately ten years and five months after their claims arose.⁵ Therefore, Plaintiffs' claims are barred by the ten year statute of limitations, and the Court concludes that equitable tolling should not be applied in this case.

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

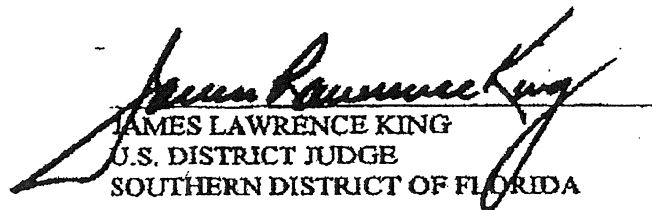
ORDERED and ADJUDGED that Defendant's Motion for Judgment on the Pleading: Statute of Limitation be, and the same is hereby, **GRANTED**. Plaintiff's Complaint is **DISMISSED** with prejudice in its entirety. All pending Motions are hereby **DENIED** as moot. It is further

ORDERED and ADJUDGED that the Court's March 10, 2004 Temporary Injunction be, and the same is hereby, **SET ASIDE**. This case is **CLOSED**.

⁴Pls.' Resp. at 2.

⁵Id.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 6th day of April, 2004.


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

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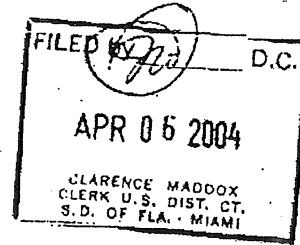
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION



4/6

MARIE JEANNE JEAN, in her individual,
capacity, and as parent and legal guardian
for minors, VLADIMIR PIERRE and
MICHELLEDA PIERRE,

CASE NO. 03-20161-CIV-KING
Magistrate Judge O'Sullivan

Plaintiffs,

v.

CARL DORELIEN,

Defendant.

Since the initiation of this Court's
FAXBACK program, the parties are no
longer required to submit envelopes
with their motions & proposed orders.
Orders should include a full
service list, with fax numbers.

FINAL JUDGMENT

Pursuant to Fed.R.Civ.P. 58, and the Court's April 6, 2004 Order Granting Defendant's
Motion for Judgment on the Pleading, it is

ORDERED and ADJUDGED that judgment is entered in favor of Defendant and against
Plaintiffs. This case is DISMISSED with prejudice. It is further

ORDERED and ADJUDGED that any pending motions are DENIED as moot. The Court
retains jurisdiction of the above-styled action to determine fees, costs, and expenses, if any, incurred
by Defendant in defending this action.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and
United States Courthouse, Miami, Florida, this 6th day of April, 2004.

[Signature]
JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

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WC

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FILED by *[Signature]* D.C.
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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
 MIAMI DIVISION**

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

CASE NO. 03-20161-CIV-KING

Plaintiffs,

v.

CARL DORELIEN,

Defendant.

ORDER GRANTING PLAINTIFFS' MOTION FOR RECONSIDERATION

THIS CAUSE comes before the Court upon Plaintiffs' Motion for Reconsideration, filed April 8, 2004.

In their current Motion, Plaintiffs argue that the Court's April 6, 2004 Order should be amended to reflect that only Plaintiff Lexiuste Cajuste's claims have been dismissed with prejudice, and the temporary restraining order should remain in effect. Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Plaintiffs' Motion for Reconsideration be, and the same is hereby, GRANTED. The following portion of the Court's April 6, 2004 Order is hereby SET ASIDE:

it is ORDERED and ADJUDGED that Defendant's Motion for Judgment on the Pleading: Statute of Limitation be, and the same is hereby, GRANTED. Plaintiff's Complaint is DISMISSED with prejudice in its entirety. All pending Motions are hereby DENIED as moot. It is further

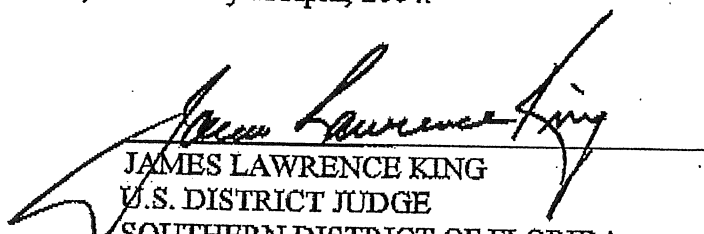
ORDERED and ADJUDGED that the Court's March 10,

2004 Temporary Injunction be, and the same is hereby, SET ASIDE.
This case is CLOSED.

It is further

ORDERED and ADJUDGED that Defendant's Motion for Judgment on the Pleading: Statute of Limitation be, and the same is hereby, GRANTED. Plaintiffs' Complaint is DISMISSED with prejudice in its entirety as to Plaintiff Lexiuste Cajuste.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 8th day of April, 2004.



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

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FILED *[Signature]* D.C.
APR 21 2004
CLARENCE MADDOX
CLERK U.S. DIST. CT.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

CASE NO. 03-20161-CIV-KING

Plaintiffs,

v.

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

Defendants.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE comes before the Court upon Defendant Carl Dorelien's Motion to Dismiss:
Improper Venue, filed March 26, 2004. On April 14, 2004, Plaintiffs filed their Response.

BACKGROUND

Plaintiffs are citizens and residents of Haiti. (Pls.' Am. Compl. at 3.) Defendant Dorelien ("Defendant") is also a citizen and resident of Haiti.¹ In November of 2000, Defendant was convicted *in absentia* by the Haitian Bureau des Avocats Internationaux ("BAI")² for his role in the Raboteau massacre of 1994 and was ordered to pay restitution to the victims. (Pls.' Aff. of Mario Joseph at

¹Plaintiffs' allege that Defendant Dorelien resides in the United States. (Pls.' Am. Compl. at 2.) However, on January 27, 2003, Defendant Dorelien was deported to Haiti from the United States and cannot legally re-enter the United States. (Letter Motion by Carl Dorelien, DE # 15, 5/14/03, at 1. See also Pls.' Aff. of Mario Joseph at 3.)

²The BAI was established by the Haitian government to assist victims of human rights abuses that occurred during the *de facto* military dictatorship of 1991-1994. (Pls.' Aff. of Mario Joseph at 1.)

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2.) Plaintiff Marie Jeanne Jean ("Plaintiff") was a named plaintiff in the BAI's prosecution of Defendant, and the court's civil judgment against Defendant names Plaintiff³ as a victim-recipient for the unlawful killing of her husband. (Pls.' Aff. of Mario Joseph at 2-3.)

Subsequently, on January 24, 2003, Plaintiffs filed their Complaint in this Court under 28 U.S.C. § 1350. (Pls.' Compl. at 2.) On March 10, 2004, Plaintiffs amended their Complaint to add Defendant Lump Sum Capital, LLC.⁴ (Pls.' Second Am. Compl. at 3.) Plaintiffs' Second Amended Complaint seeks compensatory and punitive damages for the killing of Plaintiff's husband by Haitian military and paramilitary forces during the Raboteau Massacre of 1994. (Id. at 1-2.) Plaintiffs allege that the Haitian military forces who killed Plaintiff's husband were under the control and direction of Defendant, who was a Colonel in Haiti's Armed Forces and a member of Haiti's High Command at the time of the massacre. (Id.)

In his current Motion, Defendant argues that Plaintiffs' claims must be dismissed because the conduct that gave rise to their claims occurred in Haiti, and Plaintiffs have failed to exhaust their remedies in Haiti as required under 28 U.S.C. § 1350. In their Response, Plaintiffs argue that they no longer have adequate remedies in Haiti because some of the participants in the Raboteau Massacre are now in power in Haiti and thus, Plaintiffs will not be able to enforce the Haitian civil judgment against Defendant.⁵

³The Haitian court's civil judgment lists Plaintiff as the guardian of minor Plaintiffs Vladimyr Pierre and Michelda Pierre. (Pls.' Aff. of Mario Joseph at 3, n.2.)

⁴Lump Sum Capital, LLC was never served and is not a party to this case. Lump Sum has no interest in the claim between Plaintiffs and Defendant Dorelien.

⁵Plaintiffs also argue that Defendant's current Motion is barred by Fed. R. Civ. P. 12(g) because it was the second of three motions to dismiss filed by Defendant. However, the official date and time stamped on Defendant's current Motion shows that it was, in fact, the first motion

LEGAL STANDARD

A motion to dismiss will be granted only where it is clear that no set of facts consistent with the allegations could provide a basis for relief. Fed. R. Civ. P. 12(b)(6). "It is well established that a complaint should not be dismissed for failure to state a claim pursuant to Fed.R.Civ.Pro. 12(b)(6) 'unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.'" Bradberry v. Pinellas County, 789 F.2d 1513, 1515 (11th Cir. 1986) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). For purposes of a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and accept as true all facts alleged by the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The issue is not whether the plaintiff will ultimately prevail, but "whether the claimant is entitled to offer evidence to support the claims." Little v. City of North Miami, 805 F.2d 962, 965 (11th Cir. 1986) (citation omitted).

DISCUSSION

Under § 1350, "[a] court shall decline to hear a claim 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, Sec. 2(b).

In the instant case, it is undisputed that the alleged acts giving rise to Plaintiffs' claims all occurred in Haiti. (Pls.' Am. Compl. at 1, 4-8.) Moreover, Plaintiffs have submitted the Affidavit of Mario Joseph, the Director of the BAI since 1996 and the lead attorney representing the victims, including Plaintiffs, in the BAI's prosecution of military and paramilitary perpetrators of the Raboteau Massacre. (Pls.' Aff. of Mario Joseph at 1-2.) In his affidavit, Mr. Joseph states that as of March 22, 2004, "both the criminal and civil judgments [against Defendant] remain legally binding," and

to dismiss filed.

"[t]hose 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 [Defendant] Dorelien." (Pls.' Aff. of Mario Joseph at 3.) Thus, Plaintiffs' own evidence demonstrates that the Haitian civil judgment they currently hold against Defendant is still legally binding and may be enforced by a Haitian court. Finally, it is undisputed that Plaintiffs have made no attempt to enforce their civil judgment against Defendant in Haiti since it was obtained four years ago. (See Pl.s' Am. Compl. at 6.) Therefore, the Court finds that adequate and available remedies exist in Haiti, which Plaintiffs must attempt to exhaust before alleging claims against Defendant in a United States District Court pursuant to 28 U.S.C. § 1350.⁶

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

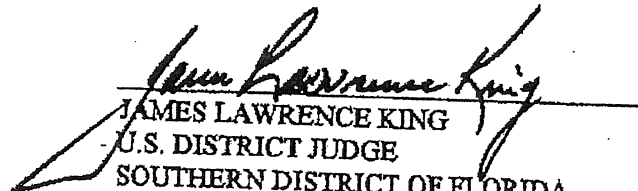
ORDERED and ADJUDGED that Defendant's Motion to Dismiss: Improper Venue be, and the same is hereby, GRANTED. Plaintiffs' Complaint is DISMISSED in its entirety against Defendant Dorelien with leave to Plaintiffs to proceed to collect their civil judgment in Haiti. All pending Motions are hereby DENIED as moot. It is further

ORDERED and ADJUDGED that the Court's March 10, 2004 Temporary Injunction be, and the same is hereby, SET ASIDE and DISSOLVED. This case is CLOSED. The Clerk of Court is hereby ORDERED to close out the case.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and

⁶While neither party has raised the issue, the Court further notes that Plaintiffs' claims may be barred by *res judicata*. As discussed above, Plaintiffs have already obtained a final judgment on the merits against Defendant Dorelien four years ago based on the same claims Plaintiffs allege here.

United States Courthouse, Miami, Florida, this 21st day of April, 2004.


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

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