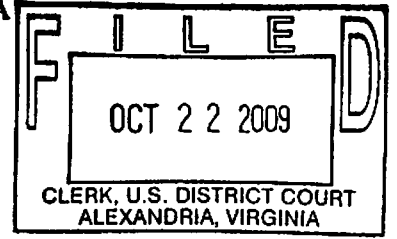


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



ESTATE OF SA'ADI ALI ABBAS)
HUSEIN, et al.,)
)
Plaintiffs,)
)
v.)
)
ERIK PRINCE,)
)
Defendant.)

Case No. 1:09cv1048

ORDER

The matter is before the Court on defendant's motions to consolidate (Docket No. 9) and to dismiss the complaint (Docket No. 6).

On October 15, 2009, defendant filed a motion to consolidate this case with the five related cases previously consolidated for purposes of discovery and pretrial motions. *See In re: Blackwater Alien Tort Claims Act Litigation*, Nos. 1:09cv615, 1:09cv616, 1:09cv617, 1:09cv618, 1:09cv645 (E.D. Va. July 17, 2009) (Orders consolidating cases).¹ Defendant, by counsel, represents that plaintiffs do not object to his motion. Indeed, as defendant notes, this case involves similar factual and legal issues to the consolidated cases. Accordingly, pursuant to Rule 42(a), Fed. R. Civ. P., and for purposes of judicial economy, this case is appropriately consolidated into the pending consolidated proceedings for purposes of discovery and pretrial motions.

¹ The consolidated proceeding was subsequently renamed *In re: Xe Services Alien Tort Litigation*. *See In re: Xe Services Alien Tort Litigation*, Nos. 1:09cv615, 1:09cv616, 1:09cv617, 1:09cv618, 1:09cv645 (E.D. Va. Sept. 8, 2009) (Order).

Moreover, defendant on October 15, 2009 filed a motion to dismiss the complaint in this case, stating substantially the same grounds for dismissal as in the consolidated cases. On October 21, 2009, a Memorandum Opinion issued in the consolidated cases addressing these arguments. *See In re: Xe Services Alien Tort Litigation*, Nos. 1:09cv615, 1:09cv616, 1:09cv617, 1:09cv618, 1:09cv645 (E.D. Va. Oct. 21, 2009) (Memorandum Opinion). Thus, additional briefing and argument would not aid the decisional process. Accordingly, defendant's motion is now ripe for decision.

The complaint in this case does not properly state a war crimes claim pursuant to the Alien Tort Statute, 28 U.S.C. § 1350. Specifically, while the factual allegations contained in the complaint create plausible inferences that defendant (i) intentionally (ii) killed or inflicted serious bodily injury (iii) on innocent civilians, plaintiffs do not allege facts creating plausible inferences that the conduct was committed (iv) during an armed conflict and (v) in context of and in association with that armed conflict. Indeed, the mere assertion that the alleged acts "took place during a period of armed conflict and were associated with the armed conflict" amounts to nothing more than "[t]hreadbare recital[] of the elements of a cause of action, supported by mere conclusory statements." Compl. ¶ 56; *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). To survive the threshold motion stage, plaintiffs must plead specific facts that give rise to plausible inferences that these elements are met. Accordingly, the war crimes claim is appropriately dismissed with leave to amend.

Moreover, plaintiffs' claim that defendant violated the Racketeer Influenced and Corrupt Organizations Act ("RICO") must be dismissed. First, for reasons stated in the Memorandum

Opinion, the factual allegations contained in the complaint are inconsistent with the elements required to plead and prove a violation of 18 U.S.C. § 1962(b). *See In re: Xe Services Alien Tort Litigation*, Nos. 1:09cv615, 1:09cv616, 1:09cv617, 1:09cv618, 1:09cv645, slip op. at 44–45 (E.D. Va. Oct. 21, 2009) (Memorandum Opinion) (concluding that plaintiffs cannot plead and prove an “acquisition injury” as required by § 1962(b)). Accordingly, the RICO claim must be dismissed with prejudice insofar as it relies on a violation of § 1962(b). Moreover, plaintiffs have not alleged facts sufficient to create a plausible inference that defendant caused plaintiffs’ property damage by committing murder chargeable under the law of a U.S. state, as required for them to prevail on a claim alleging violations of § 1962(c). Plaintiffs merely assert, without elaboration, that defendant’s conduct constitutes murder chargeable under state law, but they do not specify which acts, if any, occurred within the territorial criminal jurisdiction of a U.S. state. Plaintiffs must allege specific conduct constituting murder chargeable under state law and proximately causing plaintiffs’ property damage if their RICO claim is to state a claim for relief pursuant to Rule 12(b)(6), Fed. R. Civ. P. Thus, the RICO claim, too, should be dismissed with leave to amend.

Finally, plaintiffs have not properly stated the existence of diversity jurisdiction over the nonfederal claims pursuant to 28 U.S.C. § 1332. Specifically, plaintiffs have failed to plead defendant’s citizenship; instead, they only allege that Prince is a “resident” of North Carolina. For the reasons set forth in the Memorandum Opinion, this is plainly insufficient. *See Axel Johnson, Inc. v. Carroll Carolina Oil Co.*, 145 F.3d 660, 663 (4th Cir. 1998) (“[S]tate citizenship for purposes of diversity jurisdiction depends not on residence, but on national citizenship and

domicile.”). Accordingly, while supplemental jurisdiction exists over the nonfederal claims pursuant to 28 U.S.C. § 1367, plaintiffs may, if they wish, re-plead the statement of jurisdiction pursuant to § 1332 to state properly defendant’s citizenship in order to create an additional basis for federal subject-matter jurisdiction over these claims.

Accordingly, and for good cause,

It is hereby **ORDERED** that defendant’s motion to consolidate (Docket No. 9) is **GRANTED**. Accordingly, this matter is **CONSOLIDATED** with Nos. 1:09cv615, 1:09cv616, 1:09cv617, 1:09cv618, 1:09cv645, and 1:09cv1017 for all pretrial purposes, including discovery and dispositive motions.

It is further **ORDERED** that defendant’s motion to dismiss is **GRANTED IN PART, DENIED IN PART, and DEFERRED IN PART**. Accordingly, Count 1 of the complaint in this case is **DISMISSED WITH PREJUDICE** insofar as it alleges violations of 18 U.S.C. § 1962(b). Count 1 is **DISMISSED WITH LEAVE TO AMEND** to remedy, if appropriate pursuant to Rule 11, Fed. R. Civ. P., the factual allegations as required to state a cognizable claim alleging violations of 18 U.S.C. § 1962(c). Moreover, Count 2 is **DISMISSED WITH LEAVE TO AMEND** to remedy, if appropriate pursuant to Rule 11, Fed. R. Civ. P., the factual allegations as required to state a cognizable claim under 28 U.S.C. § 1350.

It is further **ORDERED** that plaintiffs are **DIRECTED** to file any amended complaint conforming to this Order and the accompanying Memorandum Opinion by 5:00 p.m., Wednesday, October 28, 2009.

It is further **ORDERED** that defendants are **DIRECTED** to file any motion to dismiss


the amended complaint pursuant to Rule 12, Fed. R. Civ. P., by 5:00 p.m., Friday, November 6, 2009.

It is further **ORDERED** that a ruling on defendants' motion to dismiss Counts 3, 4, 5, and 6 on grounds of the applicable nonfederal law is **DEFERRED** pursuant to a further Order.

It is further **ORDERED** that defendant's motion in the alternative to strike certain allegations (Docket No. 6) is **DENIED AS MOOT**.

The Clerk is directed to send a copy of this Order to all counsel of record.

Alexandria, Virginia
October 22, 2009



T. S. Ellis, III
United States District Judge