

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 08-80804-CIV-MARRA/JOHNSON

**JANE DOE, a/k/a,
JANE DOE NO. 1,**

Plaintiff,

vs.

**JEFFREY EPSTEIN, HALEY
ROBSON, and SARAH KELLEN,**

Defendants.

/

PLAINTIFF'S REPLY TO OPPOSITION TO REMAND

Plaintiff Jane Doe, a Florida citizen, properly sued Haley Robson, also a Florida citizen, in this action. Contrary to Defendants' contention, Defendant Robson was not fraudulently joined because, when viewing the factual allegations in the light most favorable to Plaintiff and resolving issues of Florida substantive law in favor of Plaintiff, it is clear that Plaintiff has cognizable causes of action against Defendant Robson for civil conspiracy, intentional infliction of emotional distress, and civil RICO. Accordingly, the Court should remand this action to Florida state court.

A. Plaintiff is a Florida citizen

Plaintiff alleged in her complaint and testified in deposition that she is a Florida resident. (Amended Complaint ¶ 1, DE 1, pp. 301; Deposition of Jane Doe, DE 1, pp. 31-32, 5:14-18, 6:6-10). In their notice of removal, Defendants cite a newspaper article (from the same newspaper that Defendants chide Plaintiff for citing with regard to Defendant Robson describing herself as the Hollywood madam Heidi Fleiss) in which it

is reported that Plaintiff had moved to another state in order to intimate that Plaintiff made fraudulent allegations regarding her residency. (DE 1, p. 7 n.6). Defendants then chide Plaintiff in their opposition to her motion for remand for not taking the bait and responding to this baseless allegation. (DE 21, p. 1). The only evidence in this case, as well as Plaintiff's allegations, demonstrate that Plaintiff is a Florida citizen. As Defendants have failed to present sufficient evidence to demonstrate otherwise, there is no need for Plaintiff to present additional evidence establishing her status as a Florida citizen.

B. Plaintiff has alleged cognizable causes of action against Defendant Robson

The allegations in Plaintiff's complaint demonstrate that Plaintiff was the victim in a despicable scheme orchestrated by Defendant Epstein to find and obtain underage girls, lure them to his home, and subject them to sexual abuse or otherwise induce them to engage in lewd behavior. As much as Defendants attempt to downplay the role of Defendant Robson by describing her as nothing but a college student with no assets, Plaintiff's complaint demonstrates that Robson was a key player in Epstein's scheme. Defendant Robson was the person that actually trolled for underage girls and induced them with promises of money in exchange for massages in order to deliver the girls to Epstein's home and get them into his bedroom. (Amended Complaint ¶¶ 11-15, DE 1, pp. 302-04). Without Defendant Robson's role in this scheme, the underage girls, including Plaintiff, would not have been subjected to Defendant Epstein's depravity and abuse.

1. Civil Conspiracy

Defendants repeatedly assert that Plaintiff cannot have a cause of action for civil conspiracy grounded on the tort of sexual assault because Chapter 800 of the Florida Statutes does not create a private cause of action. As authority for this legal proposition, Defendants cite Florida case law that states “not every statutory violation carries a civil remedy.” (DE 21, p. 6) (citing *Am. Home Assurance Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 374 (Fla. 2005)). Defendants do not cite case law that states, however, that Chapter 800 of the Florida Statutes does not create a private cause of action, nor can they because this appears to be a matter of first impression in Florida.

In order to determine whether a private cause of action may be based upon a statutory breach, Florida courts look to the intent of the legislature. *Baumstein v. Sunrise Community, Inc.*, 738 So. 2d 420, 421 (Fla. 3d DCA 1999). Because Florida courts have not examined whether the legislature intended for violations of Chapter 800 to provide for private causes of action, the Court should view this uncertainty regarding Florida state law in favor of Plaintiff. See *Crowe v. Coleman*, 113 F.3d 1536, 1538 (11th Cir. 1989) (citation omitted).

Furthermore, the failure of a statute to provide a private cause of action does not “preclude the right to bring a common law . . . claim based upon the same allegations.” *Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 852 (Fla. 2003). In her action for sexual assault, Plaintiff alleges that Defendant Epstein tortiously assaulted her sexually. (DE 1, p. 104). Under Florida law, sexual assault is an intentional tort. See *Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 917 (11th Cir. 2004) (“Florida law equates sexual battery with an intentional tort.”). Thus, even if Plaintiff’s civil conspiracy claim

cannot properly be grounded upon a violation of Chapter 800, it is properly grounded upon common law tortious assault. Plaintiff's cause of action for civil conspiracy is, therefore, cognizable against Defendant Robson under Florida law.

2. Intentional Infliction of Emotional Distress

Defendants next assert that Plaintiff has failed to assert a cognizable cause of action for intentional infliction of emotional distress against Defendant Robson because her allegations are not so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency. (DE 21, p. 7). They attempt to characterize Plaintiff as the wrongdoer because she agreed to give a massage in exchange for monetary compensation when she was "unlicensed, untrained, and unqualified to perform this professional service." (DE 21, p. 8).

Defendants seem to forget that Plaintiff was just a 14-year old girl when she was approached by Defendant Robson and induced to agree to provide a massage to a wealthy man in exchange for money. What Plaintiff certainly did not agree to do was to be subjected to Defendant Epstein's perverse scheme to satisfy his depraved sexual desires. When read fairly, Plaintiff's complaint tells the tale of a girl, barely a teenager, who was lied to and manipulated by the college-aged Defendant Robson who, for compensation, tempted Plaintiff with the promise of money in exchange for easy and harmless work and then knowingly delivered Plaintiff into the depraved hands of Defendant Epstein. Defendant Epstein then subjected this young girl to the despicable lewd and lascivious acts detailed in Plaintiff's complaint. It is hard to imagine any conduct that is more "outrageous in character and so extreme in degree as to go beyond all possible bounds of

decency.” Plaintiff’s cause of action for intentional infliction of emotional distress must, therefore, be recognized as cognizable under Florida law.

3. Civil RICO

Finally, Defendants argue that Plaintiff has failed to assert a cognizable cause of action for civil RICO against Defendant Robson because Plaintiff was injured only by the sexual assault, which is not a predicate act under Florida’s RICO statute. In her complaint, Plaintiff alleges that Defendants engaged in a pattern of criminal activity in which Defendant Robson found and delivered underage girls to Defendant Epstein in order for Epstein to “solicit, induce, coerce, entice, compel or force such girls to engage in acts of prostitution and/or lewdness.” (Amended Complaint ¶ 32, DE 1, p. 307). She also alleges that she was a victim of Defendants’ scheme because she was one of the underage girls found and delivered to Defendant Epstein by Defendant Robson and that she endured Epstein’s actions as he tried to get her to engage in, and forced upon her, acts of prostitution and lewdness. (Amended Complaint ¶ 33, DE 1, pp. 307-308). It is for harm suffered as a result of these predicate acts that Plaintiff seeks damages for in Count IV of her complaint. *Cf. Palmas Y Bambu, S.A. v. E.I. Dupont De Nemours & Co., Inc.*, 881 So. 2d 565, 570 (Fla. 3d DCA 2004) (holding plaintiff has standing to sue for civil RICO when her injuries flow directly from commission of the predicate acts, which means “when the alleged predicate act is mail or wire fraud, the plaintiff must have been a target of the scheme to defraud and must have relied to his detriment on misrepresentations made in furtherance of that scheme”). Because Plaintiff was a target of Defendants’ scheme and was harmed by their actions in carrying out the scheme, Plaintiff has a cognizable cause of action for civil RICO against Defendant Robson.

C. Conclusion

Plaintiff, a Florida citizen, has alleged cognizable causes of action against Defendant Robson, also a Florida citizen, for civil conspiracy, intentional infliction of emotional distress, and civil RICO. When viewing Plaintiff's factual allegations in the light most favorable to her and resolving issues of Florida substantive law in her favor, it is clear that Plaintiff has not fraudulently joined Defendant Robson in this action. Accordingly, the Court should remand this action to Florida state court for lack of jurisdiction.

Certificate of Services

I hereby certify that on September 15, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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