IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BOB J. SETTLE,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
v.	)	
	)	**No. 04-2129-CM**
WAYNE NORTH, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM AND ORDER

Pending before the court is plaintiff Bob J. Settle's Motion of Plaintiff to Have Defendant Laurel Hill Escrow Services Comply, Produce and Return all of Plaintiffs [sic] Property as Set Forth by the Court in its Order Entered on June 28, 2005 and for an Order Allowing Him to Amend His Petition (Doc. 55) and Motion of Defendants Beye and Laurel Hill Escrow Service [sic], Inc. to Strike Plaintiff's Motion for Compliance or in the Alternative for an Order Denying Plaintiff's Motion (Doc. 60).

I. Background

Plaintiff Bob J. Settle, proceeding pro se, filed this action on March 30, 2004, against defendants Wayne North, Amcostal Inc., Robert Tringham, Woodham Asset Management Corporation, Maxine Beye, Laurel Hill Escrow Services, Inc. ("Laurel Hill"), Wayne Warr, Lois Kjeldgaard, Diamond K L.L.C., and David Rawlings. Plaintiff's complaint asserts a federal claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§1961 *et seq*., and state law claims alleging breach of contract, conspiracy to defraud, tortious interference with a business expectancy, prima facie tort, slander, defamation, malicious conduct, and emotional distress. At issue is plaintiff's contention that he is

the legal owner of between 2,096 and 2,137 Historical German Bonds, circa 1924, that he deposited in an escrow account with Laurel Hill.

On September 10, 2004, Magistrate Judge David J. Waxse held a status conference. Plaintiff appeared in person pro se. Defendants Wayne North and Amcostal, Inc. appeared through counsel, Deron Anliker and Jason Leiker. Defendants Laurel Hill and Maxine Beye appeared through counsel, Dennis Horner. Defendant Lois Kjeldgaard appeared in person pro se. Defendant Diamond K L.L.C. appeared through its representative, Lois Kjeldgaard. Defendants Robert Tringham, Woodland Management Corporation, Wayne Warr, and David Rawlings did not appear at the status conference.

Each of the parties who appeared at the conference stipulated to the court granting plaintiff's Motion for Return of Plaintiff's Property Being Held in Escrow by Laurel Hill Escrow Services, Inc. (Doc. 39). Plaintiff then orally moved to dismiss with prejudice the claims against those defendants appearing at the conference. Defendants Laurel Hill and Maxine Beye objected to plaintiff's oral motion to dismiss unless plaintiff was willing to pay reasonable costs incurred by defendants in this matter. Plaintiff indicated that he was willing to pay such costs. As a result of these stipulations, Judge Waxse issued a Report and Recommendation that recommended, inter alia, that plaintiff's Motion for Return of Plaintiff's Property Being Held in Escrow by Laurel Hill Escrow Services, Inc. (Doc. 39) be granted, and plaintiff's oral motion to dismiss with prejudice be granted subject to plaintiff paying the reasonable costs incurred by the objecting parties.

None of the parties filed objections to Judge Waxse's Report and Recommendation. Accordingly, on November 1, 2004, Judge VanBebber adopted most of Judge Waxse's recommendations (Doc. 44), specifically granting plaintiff's Motion for Return of Plaintiff's Property Being Held in Escrow by Laurel Hill

Escrow Services, Inc. (Doc. 39) and ordering that, pursuant to plaintiff's oral motion to dismiss, all claims against defendants Wayne North, Amcostal, Inc., Lois Kjeldgaard and Diamond K L.L.C. be dismissed with prejudice. In addition, Judge VanBebber ordered that plaintiff's oral motion to dismiss with prejudice all claims against defendants Laurel Hill and Maxine Beye be subject to the condition that plaintiff pay the reasonable costs incurred by these defendants. In the same Order, Judge VanBebber also denied plaintiff's motion for default judgment against defendants Robert Tringham, Woodland Management Corporation, Wayne Warr, and David Rawlings.

On April 12, 2005, Judge VanBebber dismissed defendants Robert Tringham, Woodland Management Corporation, Wayne Warr, and David Rawlings without prejudice after plaintiff moved to dismiss them because of his failure to serve them within the time provided under Fed. R. Civ. P. 4(m). Therefore, the only remaining defendants are Laurel Hill and Maxine Beye.

On June 29, 2005, the undersigned judge[1] entered an Order (Doc. 53) granting defendants Laurel Hill Escrow Services, Inc. and Maxine Beye's motion for costs (Doc. 45), and denying plaintiff's motion to strike defendants' motion for costs (Doc. 47).

Plaintiff's instant motion alleges that, on the morning of July 5, 2005, plaintiff traveled to Laurel Hill Escrow Services, Inc., located in San Diego, California, to retrieve his property. Defendants were not notified that plaintiff was coming on that particular day. Plaintiff arrived at Laurel Hill accompanied by Officer Bill Albrektson of the San Diego Police Department. Donald Merkin, counsel for Ms. Beye, stated in a Declaration that officer Albrektson offered this court's June 29, 2005 Order granting costs to

[1] The case was transferred to the undersigned judge after the death of the Honorable G. Thomas VanBebber.

defendants and denying plaintiff's motion to strike as evidence of his authority to accompany plaintiff. (Doc. 61, at 13). Regarding this incident, defendant Beye stated:

> Sgt. Albrektson ordered me to give Mr. Settle the bonds.
>
> I told Sgt. Albrektson that I was represented by a lawyer, Mr. Merkin, and I [unintelligible] to speak to him before releasing the bonds. . . . Mr. Settle told me that he didn't have to wait for any attorney and Sgt. Albrektson concurred. I was very intimidated by the police officer and shocked that the San Diego Police Department would be enforcing what I thought was a Kansas Judgment, giving me no time to get my lawyer to see what I should do. I finally gave in and gave the bonds to Mr. Settle, who signed for them without counting them.

(Doc. 61, at 35).

Defendant Beye produced four boxes of plaintiff's property, stating that the four boxes contained the entirety of plaintiff's property. Without counting the bonds, plaintiff signed the top of the undersigned judge's June 29, 2005 Order and hand-wrote:"Received all docs 4 boxes 7-5-05." Plaintiff alleges that he and defendant Beye agreed that plaintiff would count the bonds upon returning to Kansas City. (Doc. 61, at 54).

After returning to his home in Kansas City, Kansas on July 6, 2005, plaintiff alleges that he conducted an inventory of the four boxes, which contained 1,883 bonds. Plaintiff alleges that he entrusted Laurel Hill with 2,137[2] bonds, leaving 254 bonds unaccounted for.

---

[2] Plaintiff's instant motion states: "PLAINTIFF PLACED IN ESCROW A TOTAL OF 2137 GERMAN BONDS [sic] THIS NUMBER OF 2137 BONDS HAS NEVER BEEN DISPUTED BY ANY OF THE DEFENDANTS." (Doc. 56, at 9). Plaintiff previously contended, however, that he left 2,096 bonds with Laurel Hill. For example, Plaintiff's Motion for Return of Plaintiff's Property Being Held in Escrow by Laural [sic] Hill Escrow Services Inc. (Doc. 39), states: "Defendants . . . have made a claim as to the ownership of Plaintiffs [sic] property, namely 2096 German 7% Gold Backed Bonds, Cira 1924 in escrow with Laural [sic] Hill Escrow Services, Inc." (Doc. 39, at 1).

Plaintiff attached several exhibits to his motion. Two of these documents are almost entirely illegible, plaintiff did not make any attempt to explain them or authenticate them, and the court has no idea what relevance they serve. *See* Doc. 56, ex. 2 & 3. Four of these exhibits appear to the court to be inventories of plaintiff's bonds. *See* Doc. 56, ex. 4, 5, 6 & 8. However, plaintiff failed to sufficiently explain where they came from, who wrote them, what each of the notations mean, etc. Finally, one of plaintiff's exhibits is a draft of a letter from defendant Beye to an unknown person dated December 31, 2003. The letter is addressed to "Sir/Madam" and states:

> We write to acknowledge receipt of wire number (TBA) for credit to our account at Comercia of $20,000, (Twenty Thousand Dollars) and confirm that 100 (One Hundred) German Historic External Bonds (Dews) 1924 7% Gold Bonds, have now been placed in to an escrow account number 5500-100D in your name and are being held in this Escrow to your order.
>
> The aforesaid Historic German Bonds will continue to be held to your order until further instructions are received from you.
>
> Please treat this letter as our official confirmation of the above.

(Doc. 56, at 20). Defendant Beye's signature is below the body of the letter, and her title as "President and Principal Escrow Officer, Laurel Hill Escrow Services" follows her signature. In her Declaration, defendant Beye addressed the issue of whether plaintiff's bonds left defendant Laurel Hill's control by stating:

> Ms. Kjelgaard handled drying out the boxes [of plaintiff's bonds] and went through the boxes making various calculations, but I never allowed any bonds out of my offices except when some were sent to Los Angeles for "authentication" and were promptly returned. I know of other sales of other bonds and I know of a sale for $20,000, but none of the bonds that were entrusted to Laurel Hill Escrow by Mr. Settle were ever sent, sold, transferred or conveyed to anyone.

(Doc. 61, at 33).

II. Analysis

Plaintiff's motion to compel seeks several things: (1) $20,000 to compensate plaintiff for defendants' alleged sale of 100 of plaintiff's bonds held in escrow by defendants; (2) permission to amend his complaint; (3) permission to continue with discovery and depose defendants Laurel Hill and defendant Beye, and former defendants Lois Kjeldgaard and Diamond K L.L.C.;[3] and (4) that defendant Beye, Laurel Hill, Lois Kjeldgaard, and Diamond K L.L.C. not be dismissed as defendants until a hearing is held.[4]

In response to plaintiff's motion to compel, defendants Laurel Hill and defendant Beye request that this court strike plaintiff's motion, or, in the alternative, deny plaintiff's motion. Defendants argue that plaintiff's motion contains inflammatory, derogatory and scandalous statements that have no factual or legal basis. Defendants note that plaintiff did not prepare an inventory while at Laurel Hill, nor did he request that defendants prepare or sign an inventory. Moreover, plaintiff did not provide the court with an inventory of the 1,883 bonds he alleges he received on July 5, 2005. Defendants also note that plaintiff signed an acknowledgment that he "received all docs." Defendants argue that the requirements of the court's June 28, 2005 Order have been fully complied with, and this matter should be considered resolved

[3] Pursuant to the court's November 11, 2004 Order (Doc. 44), Lois Kjeldgaard, and Diamond K L.L.C. are no longer defendants.

[4] Because Lois Kjeldgaard and Diamond K L.L.C. are no longer defendants in this case, the court assumes plaintiff is requesting that the court reconsider its November 1, 2004 Order dismissing these defendants.

and dismissed. Defendants also state that there remains a pending matter before the Superior Court of California for the County of San Diego regarding a contempt citation for plaintiff's failure to pay the costs assessed in the California proceeding. Defendant contends that at no time were any of plaintiff's bonds ever sent, sold, transferred, or conveyed. Finally, defendants allege that plaintiff's motion is vague, confusing, and in violation of Federal Rules of Civil Procedure 8(a) and (e).

Before addressing the substantive issues in this case, the court deems it necessary to point out several deficiencies in the presentation of evidence for the instant motions. Each side submitted many illegible, unlabeled, unauthenticated and unexplained exhibits. Defendants briefly mention a California state case involving the same parties, but did not provide the court with any further information except to include several illegible, and sometimes incomplete, exhibits which seem to be orders from the Superior Court of the State of California, San Diego County. It is the parties' obligation to properly submit exhibits and not the court's role to sort through the parties' exhibits to ascertain their purpose or authenticity.

Furthermore, except for defendants' allegation that plaintiff's motion violates several portions of the Federal Rules of Civil Procedure, neither side cited to a single case or statute as legal authority for their positions. Despite labeling his motion as a "motion to compel," plaintiff provided no argument or authority that a motion to compel is the appropriate manner in which to approach this case. Defendants, on the other hand, made many arguments regarding the court's lack of jurisdiction to resolve this case further, but similarly failed to make any legal arguments to support this end. Defendants argue that plaintiff's motion should be stricken by the court, but fail to substantiate why. Finally, defendants' counsel, Donald Merkin, included his own Declaration in the exhibits in what seems to be an attempt to recite what counsel deems to

be the facts of the case. However, the court concludes that the brunt of these statements are improper hearsay, and will put very little, if any, weight on them.

Notwithstanding these defects, the court will analyze the instant motions as briefed.

The first issue before the court is whether the court has jurisdiction to decide this issue in the first place. Defendants argue that the court's June 28, 2005 Order clearly states that, after plaintiff paid the costs assessed to him and defendants returned plaintiff's documents, this matter is considered resolved and dismissed. Plaintiff argues that Laurel Hill did not return all of plaintiff's bonds, but instead stole, sold, destroyed, or lost either 253 or 210 of them.

The court finds that Rule 70 of the Federal Rules of Civil Procedure, which gives guidance on enforcement of judgments for specific acts, is instructive on these facts. Rule 70 reads in relevant part:

> If a judgment directs a party to . . . deliver . . . documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt.

Because the court's November 1, 2004 Order directed defendants to return plaintiff's bonds, the court finds that the judgment directed a party to perform a specific act and Rule 70 is applicable in this case. Therefore, the sole issue before the court is whether defendants complied with that Order.

After a careful review of the record, the court is simply unable to ascertain enough relevant, authenticated facts to make a decision regarding whether defendants fully complied with the court's order to return plaintiff's bonds. The court finds it significant that defendants responded to plaintiff's motion to

compel by arguing that the court should strike plaintiff's instant motion because it contained inflammatory, derogatory and scandalous statements, and that plaintiff's instant motion violates Federal Rules of Civil Procedure 8(a), 8(e) and 11. However, defendants' own response is not without problems. For instance, defendants state that "all of the documents have been delivered to plaintiff," (Doc. 61, at 3), but did not explain how many documents they first received from plaintiff, how many documents were sent to be authenticated and why, or when the bonds sent for authentication were returned. Moreover, both parties allude to damaged bonds, but defendants failed to discuss how many bonds were not counted because they were damaged, mutilated or otherwise destroyed, how plaintiff's bonds became damaged, or whether plaintiff was contacted regarding his damaged property.

Moreover, defendants' response mentions that "there remains a pending matter before the Superior Court of California for the County of San Diego and Judge Prager has retained jurisdiction to hear any matters relevant to the assessment of costs and the return of documents," (Doc. 61, at 3), but defendants did not discuss whether this case involves the same defendants and facts as the instant case, the relevance of the California case to the instant motion, or whether defendants believe that this court has proper jurisdiction to hear the instant motion in light of the California case.

Defendants' response and attached exhibits also contain several contradictions. Defendants' response states: "The original escrow agreement references two boxes of documents and suggestion that pursuant to plaintiff, there are 1900 bonds. Neither plaintiff nor these defendants counted the contents." (Doc. 61, at 4). Defendant Beye's Declaration states that when plaintiff was turning over two boxes of bonds to escrow with Laurel Hill, defendant Beye told plaintiff that she would not count the bonds or be responsible for how many bonds were in the two boxes. (Doc. 61, at 31-32). However, defendant Beye's

Declaration also states that former defendant Lois Kjelgaard, whose relationship with Laurel Hill is unknown to the court, "went through the boxes making various calculations," by which the court presumes that Kjelgaard took an inventory of the boxes. (Doc. 61, at 33). Moreover, attached to plaintiff's instant motion are four documents which, although unauthenticated, appear to the court to be defendants' inventory of the contents of four boxes of 1924 German bonds.

Additionally, defendants' response states that "No bonds were ever sent, sold, transferred or conveyed to anyone," and cites to defendant Beye's Declaration as its source. However, defendant Beye's Declaration also states: "I never allowed any bonds out of my offices *except when some were sent to Los Angeles for 'authentication' and were promptly returned*." (Doc. 61, at 32, emphasis added). At the very least, defendants take defendant Beye's statements out of context.

Most puzzling to the court is defendants' contradiction regarding a sale of 100 German 1924 7% gold bonds. One of plaintiff's exhibits is a draft letter dated December 31, 2003 and signed by defendant Beye. The letter, which does not identify a recipient by name, was written to acknowledge receipt of $20,000 into defendants' account and confirm that 100 "German Historic External Bonds (Dews) 1924 7% Gold Bonds" were placed into an escrow account in the recipient's name. (Doc. 56, at 20). Unfortunately, plaintiff did not indicate where the letter came from, but the fact that he somehow received it, and defendants did not contest its existence or authentication, errs in favor of its authenticity. Defendants' response mentions the letter once: "The documents referenced in the December 31, 2003-letter [sic] (Plaintiff's [sic] Attachment 7) were never sent or transferred and were contained in the boxes of documents were [sic] received by plaintiff on the 5th day of July 2005." (Doc. 61, at 2-3). Defendant Beye stated in her Declaration: "I know of a sale for $20,000, but none of the bonds that were entrusted to Laurel Hill Escrow

by [plaintiff] were ever sent, sold, transferred or conveyed to anyone." (Doc. 61, at 33). Another of plaintiff's exhibits, which appears to be defendants' inventory of plaintiff's bonds, subtracts 100 bonds from the total with a notation that the bonds were sent to Robert Tringham, a former defendant in this case, on December 21, 2003. The court is unsure how plaintiff's exhibits and these two statements can be reconciled. Significantly, although the bonds mentioned in the letter are strikingly similar to the bonds that plaintiff had entrusted defendants to keep in escrow on December 12, 2003, just nineteen days earlier, defendants did not explain why this letter was written, who it was written to, how the bonds referenced in the letter are different from plaintiff's bonds, or how plaintiff came into possession of this letter. Moreover, defendants did not explain why 100 of plaintiff's bonds were sent to Robert Tringham. In sum, defendants' response strikes the court as evasive.

The court readily acknowledges that plaintiff failed to authenticate his exhibits or provide the court with a detailed inventory of the bonds he received from defendants. While the court does not condone these oversights, the court holds plaintiff to a less stringent standard because he proceeds pro se. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

In light of the aforementioned omissions, inconsistencies and deficiencies, particularly on defendants' part, the court is unable to clearly determine whether defendants have fully complied with the court's November 1, 2004 Order to return plaintiff's property. At the same time, the court respects the parties' settlement agreement, and would prefer that the parties reach an agreement that complies with the settlement agreement and the court's November 1, 2004 Order. Accordingly, the court will give defendants one opportunity to remedy their response. Defendants shall respond within twenty days of the filing of this Order explaining, in detail, each of the above-mentioned issues.

Specifically, defendants shall respond to the following:

(1) Why the court lacks of jurisdiction to resolve this matter, using legal authority to support any arguments;

(2) Whether or not defendants took an inventory of plaintiff's bonds; and defendants' basic inventory methods, including an explanation of exhibits 4, 5, 6, and 8 attached to Document 56;

(2) How many of plaintiff's bonds were first received by defendants; how many bonds were received by defendants at later dates; how many total bonds defendants held for plaintiff; how many bonds were sent to be authenticated and why; and when the bonds sent for authentication were returned;

(3) Whether plaintiff's bonds were not counted because they were damaged, mutilated or otherwise destroyed, and, if so, how many of plaintiff's bonds were not counted for this reason; an explanation of how plaintiff's bonds became damaged; and whether plaintiff was contacted regarding his damaged property;

(4) Whether the case before the Superior Court of California for the County of San Diego involves the same defendants and facts as the instant case; the relevance of the California case to the instant motion; and whether defendants believe that this court has proper jurisdiction to hear the instant motion in light of the California case;

(5) A thorough explanation of the alleged sale of 100 German 1924 7% gold bonds for $20,000 referenced in defendant Beye's letter, including why defendant Beye's letter was written; with whom was the sale transacted; who the letter was addressed and sent to; whether 100 of plaintiff's bonds were allegedly sent to Robert Tringham on December 21, 2003; how the bonds referenced in the letter are different, if at all, from plaintiff's bonds; and how plaintiff came into possession of this letter.

Defendants' failure to appropriately or thoroughly respond will result in the court construing the facts in plaintiff's favor and likely granting plaintiff's motion to compel.

IT IS THEREFORE ORDERED that Bob J. Settle's Motion of Plaintiff to Have Defendant Laurel Hill Escrow Services Comply, Product and Return all of Plaintiffs [sic] Property as Set Forth by the Court in its Order Entered on June 28, 2005 and for an Order Allowing Him to Amend His Petition (Doc. 55) and Motion of Defendants Beye and Laurel Hill Escrow Service [sic], Inc. to Strike Plaintiff's Motion for Compliance or in the Alternative for an Order Denying Plaintiff's Motion (Doc. 60) are both taken under advisement.

IT IS FURTHER ORDERED that defendants Maxine Beye and Laurel Hill Escrow Services, Inc. shall respond to the court's Order within twenty days. Failure to respond will likely result in the court granting plaintiff's motion to compel and denying defendants' motion to strike.

IT IS FURTHER ORDERED that, if defendants choose to respond to this Order, plaintiff shall have twenty days to reply to defendants' response but is not required to do so. Plaintiff's reply shall include a detailed inventory of the bonds he received from defendants on July 5, 2005.

SO ORDERED.

Dated this 4th day of January 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge