IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS]

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SHAWN CREMEEN, MIKE MANGE, and DONNA J. ATCHLEY, Plaintiffs, v. MICHAEL P. SCHAEFER, et al.,

CIVIL ACTION No. 04-2519-CM

Defendants.

MEMORANDUM AND ORDER

Plaintiffs bring this action claiming that defendants engaged in securities fraud and racketeering when they contrived and carried out a Ponzi scheme. Plaintiffs seek recovery for securities fraud under Section 10(b) of the Securities Act of 1934, 15 U.S.C. § 78j(b); SEC Rule 10(b)-5; Kan.Stat.Ann. § 17-1268(a)-(b); and the Racketeer Influence and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962.

The matter is now before the Court on defendant Linda Schaeffer's Motion to Dismiss (Doc. 78).

Defendant Linda Schaeffer claims that service of process was improper and that the Court lacks jurisdiction over the person of defendant. The Court finds that the Court has jurisdiction over the person of defendant Linda Schaeffer, by virtue of her appearance which was effected by the entry of appearance filed by her prior attorney, Mark Sachse. (Doc. 57).

Defendant Schaeffer contends that Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted, and that plaintiffs' allegations of fraud do not meet the requirements of Fed.R.Civ.P. 9(b). Plaintiffs are required to allege the fraud claims with specificity and must include allegations of time, place, content of false representations, the identity of the person making the representation, and what was obtained or given thereby.

The court makes the rulings for the reasons stated orally at the June 26, 2007 hearing. The court finds that with respect to all fraud claims, plaintiffs have failed to allege the time, location, or particulars required by Fed.R.Civ.P. 9(b). Defendant Linda Schaeffer's motion should be sustained as to all securities fraud claims under Section 10(b) of the Securities Act of 1934, 15 U.S.C. § 78j(b); S.E.C. Rule 10b-5; and Kan.Stat.Ann. § 17-1268(a)-(b). However, the Court finds that plaintiffs have alleged predicate acts of extortion and money laundering under RICO which are not subject to Rule 9 pleading. Defendant's motion to dismiss is DENIED as to the money laundering and extortion RICO claims.

IT IS, THEREFORE, ORDERED that defendant Linda K. Schaeffer's Motion to Dismiss (Doc. 78) is GRANTED as to all fraud claims and DENIED as to the RICO claims alleging predicate acts of extortion and money laundering.

Dated this 13th day of August, 2007, at Kansas City, Kansas.

<u>s/ Carlos Murguia</u> HONORABLE CARLOS MURGUIA UNITED STATES DISTRICT COURT JUDGE

Submitted By:

VASOS LAW OFFICES <u>s/ Donald W. Vasos</u> DONALD W. VASOS DAVID A. HOFFMAN KS 13470

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