UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, et al.

has reviewed the relevant pleadings and supporting materials, and is fully informed.

BACKGROUND

The United Brotherhood of Carpenters and Joiners of America ("UBC") together with six subordinate bodies of the UBC and 19 individual UBC members (together "Plaintiffs") bring nine claims against the Building and Construction Trades Department ("BCTD") and three individuals: James Williams, president of a BCTD affiliate International union of Painters and Allied Trades ("IUPAT"), Ron Ault, president of the Metal Trades Department of the AFL-CIO ("MTD"), and David Molnaa, president of a local Hanford MTD council (together "Defendants"). These claims include four brought under the Racketeering Influenced and Corrupt Organizations Act ("RICO"), one under the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"), and four state law claims.

FACTS

The BCTD is a labor organization that oversees and unization that oversees and un7 p28

neither requested, wanted, nor necessary." Compl. ¶ 130. Plaintiffs allege that the BCTD and its affiliates, in response to what they perceived to be an unwanted incursion on the traditional jurisdiction of other building trade unions, have embarked on the "Push-Back Carpenters Campaign" to pressure the UBC to re-affiliate with the BCTD.

The Complaint alleges economic pressure by Defendants, including: promoting a 2008 AFL-CIO resolution authorizing the AFL-CIO to charter a union to compete with the UBC, the organization of a "Unity Rally" in St. Louis, repeated public criticism of the UBC on websites and in other publications, filing frivolous regulatory claims against the UBC, stealing confidential information, "forcing" UBC's Seattle legal counsel to terminate its relationship with the Plaintiffs, and orchestrating the June 2011 termination of an affiliation agreement ("Solidarity Agreement") between the UBC and MTD. The Complaint also alleges acts of vandalism and threats of force by "BCTD Defendants' agents," including: vandalism of UBC jobsites and property (sugar in gas tank, smashing sign, spray painting trucks), death threats against Terry Nelson (senior officer of St. Louis UBC), death threats against Ed Marston (a UBC representative), threats of violence at Pier 66 in Seattle, and the public dissemination of video footage of a violent attack on UBC members.

DISCUSSION

I. Motion to Dismiss

A. Standard of Review

To withstand a motion to dismiss pursuant to Rule 12(b)(6), a complaint must set forth factual allegations sufficient "to raise a right to relief above the

services' of workers. For in those situations, the employer's property has been misappropriated. But the literal language of the statute will not bear the Government's semantic argument that the Hobbs Act reaches the use of violence to achieve legitimate union objectives, such as higher wages in return for genuine services which the employer seeks. In that type of case, there has been no 'wrongful' taking of the employer's property; he has paid for the services he bargained for, and the workers receive the wages to which they are entitled 0 9(ve)(Cr)12(ty)17( )]TJ -19.48.24 he wornfor2(h t)9oprr serhes.

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bargaining" "in a deal which resulted in plaintiff receiving a benefit to which it was not otherwise entitled by law." *Id*.

More recently, the Seventh Circuit affirmed a 12(b)(6) dismissal of a RICO extortion claim in which defendant told plaintiff that he was terminating their joint venture agreement and he could take a very low price or "walk away with nothing." *Rennell v. Rowe*, 635 F.3d 1008, 1009 (7th Cir. 2011). The court found this demand was lawful in light of defendant's contractual right to terminate the joint venture without cause and defendant "was engaged in nothing more than unpleasant hard dealing." *Id*. at 1013-14.

Plaintiffs' Complaint generally alleges that Defendants "have no lawful claim or any other claim of right to any of the money or other property extortionately demanded from the Carpenters." Compl. ¶ 288. The "property" Defendants allegedly seek to obtain without lawful claim includes Plaintiffs' rights to: pursue members and recruits, collect monthly dues from members, recruit and train members and otherwise participate in union business free from interference, negotiate their own labor agreements, resolve jurisdictional disputes, determine which political candidates to support or oppose. ECF No. 90 at 18 (citing Compl. ¶ 2). Plaintiffs cite *United States v. Zemek*, 634 F.2d 1159, 1174 (9th Cir. 1980) for the proposition that "property" under the Hobbs Act is not limited to tangible things; rather, "[t]he right to make business decisions and to solicit business free

from wrongful coercion is a protected property right." The holding in *Zemek* is of dubious value given the Supreme Court's apparent holding that interference and disruption of health care centers and those who seek abortions does not constitute the "obtaining" of property under the Hobbs Act. *Scheidler v. Nat'l Org. for Women, Inc*., 537 U.S. at 400-411; *see also Scheidler*, 537 U.S. at 414 (Justice Stevens dissenting) (citing *United States v. Zemek* as an example of those cases the majority rejected by its holding).

Plaintiffs make the entirely conclusory argument, with no basis in case law, that if "Defendants had a lawful claim to [Plaintiffs'] property, then they could use lawful means (e.g. a lawsuit) to recover it." ECF No. 90 at 17. Plaintiffs also seek to distinguish the case law cited by Defendants (and outlined in detail above) as involving only claims arising from a pre-existing contract and extortion related to that contract. Thus, according to Plaintiffs, due to the lack of contractual relationship between Defendants and Plaintiffs there can be no "lawful claim" to Plaintiffs property to justify dismissal of their claims. *Westways World Travel v. AMR Corp*., 182 F.Supp. 2d 952, 956-57 (C.D. Cal. 2001) ("because plaintiffs allege that defendants had no contractual or other legal basis to collect money from them, plaintiffs have sufficiently alleged facts which constitute multiple acts of extortion"). The Court finds this argument unavailing. The application of this type of reasoning, when taken to its logical conclusion, is that there can never be a

viable "claim of right" defense to alleged extortionate behavior if the parties at issue are not in a contractual relationship. The reasoning applied in the line of cases cited by Defendants examines (1) whether a demand involved an exchange of valid consideration on both sides, and (2) whether the "victim" had a pre-existing entitlement to pursue his business interests free of the fear caused by economic pressure. *See Brokerage Concepts*, 140 F.3d at 525-26; *Viacom Int'l*, 747 F. Supp. at 213. While this pre-existing entitlement could certainly include a contractual relationship, the existence of said relationship does not foreclose an analysis of whether Defendants' use of economic pressure was "lawful."

Defendants argue that an affiliation agreement between individual labor unions like the UBC, and an association of labor unions like the BCTD that charge a fee in exchange for providing services and benefits, involves a lawful exchange of valuable consideration. ECF No. 58 at 13 (*citing Brokerage Concepts*, 140 F.3d at 523). As indicated in the Complaint, the UBC itself has "hundreds of affiliated Councils and local union," was once affiliated with the AFL-CIO, and alleges that the decision by the MTD to terminate its affiliation with the UBC has resulted in injuries to the UBC resulting in Plaintiff's demand for an injunction compelling reinstatement of that affiliation and restoration of Plaintiff's rights and privileges. Compl. ¶ 1, ¶¶ 232-245, ¶473. Thus, Defendants argue that they are engaged in lawful hard-bargaining involving an exchange of valuable consideration, not

unlawful extortion. ECF No. 58 at 14-15.

Plaintiffs respond that, as distinguished from the case law cited by Defendants, they do not "want" any transaction with the Defendants on any terms. ECF No. 90 at 20 (*citing* Compl. ¶ 4, 131, 136, 293). Plaintiffs argue that extortionists often claim their victims are receiving something of value but it is still extortion when the alleged "value" is "imposed, unwanted, superfluous, and fictitious." *See Brokerage Concepts*, 140 F.3d at 525 (*citing Viacom Int'l*, 747 F.Supp. at 213); *Enmons*, 410 U.S. at 400 (1973).

The Court agrees with Defendants that Plaintiffs' "mantra-like, pejorative allegation" that re-affiliation with Defendants is "unwanted" because the benefits of association with the BCTD are not worth the costs does not spontaneously defeat their argument. Compl. ¶ 5, 131, 193. In situations such as this case Plaintiffs would assuredly receive something of value in return for their payment (i.e. collective bargaining rights, etc.) regardless of whether it was "wanted," thus, the case law cited by both parties indicates that the salient question is whether Plaintiffs had some pre-existing entitlement "to be free of the fear [it] was quelling in order to give property to the defendant … [and thus] the 'something of value'

However, from the record before it, the Court is unable to identify any pre-existing entitlement by the Plaintiff to be free of any perceived fear that may be suppressed by giving certain property to the Defendants. Thus, the Court determines that in the context of this case, the Complaint fails to adequately plead the "wrongful use" of economic fear that would amount to extortion, as opposed to hard bargaining, when two unions are competing for members, such that one union s4(n)9. ( )Tj C(of)4(e)12o

unsiftable mix of criminal and civil RICO cases is of little help to the Court. Not every principle in the criminal law applies to a civil RICO case. The Supreme Court explained:

> [I]n *Beck v. Prupis*, 529 U.S. 494, 120 S.Ct. 1608, 146 L.Ed.2d 561 (2000) . . . [] we considered the scope of RICO's private right of action for violations of § 1962(d), which makes it "unlawful for any person to conspire to violate" RICO's criminal prohibitions. The question presented was "whether a person injured by an overt act in furtherance of a conspiracy may assert a civil RICO conspiracy claim under § 1964(c) for a violation of § 1962(d) even if the overt act does not constitute 'racketeering activity.' " *Id*., at 500, 120 S.Ct. 1608. Answering this question in the negative, we held that "injury caused by an overt act that is not an act of racketeering or otherwise wron Id.

With the exception of Eric Gustafson there is no allegation that any of the few individuals who allegedly committed acts of vandalism or threats of force actually entered into an agreement with any of the Defendants. As to Gustafson, the Complaint alleges that he "agreed to act, and was acting, on behalf of the BCTD Defendants." Compl. ¶ 110. This legal conclusion, with no additional facts to establish any actual contact between the Defendants and the individuals accused of vandalism and threats of force, much less actual agreement, does not plausibly plead a claim that the individuals accused of vandalism and threats of force were co-conspirators with the Defendants.

iii.

Hawaiian Paradise Park Corp. v. Friendly Broadcasting Co., 414 F.2d 750, 755 (9th Cir. 1969). In the context of union disputes, an international parent union can only be held liable for the actions of a local union if the local is acting as an "agent" under common law agency principles. *Laughon v. Int'l Alliance of Theatrical Stage Employees*, 248 F.3d 931, 935 (9th Cir. 2001); *see also BE&K Const. Co.*, 90 F.3d at 1326-27 (finding insufficient evidence to support an inference that one union was the "agent" of another union when there was no evidence of control and "cooperation in the spirit of labor solidarity does not transform one union into the agent of another.")

Defendants argue that the Complaint fails to identify any person, Defendant or non-Defendant, who committed acts of vandalism. The Complaint alleges that "unnamed individuals" vandalized work trucks, spray painted anti-Carpenter logos

do not center on an employee-employer relationship and thus do not qualify as a "labor dispute" invoking the NLGA. Last, Plaintiffs argue that the NLGA argument is "premature" because it is an evidentiary rule and does not apply at this stage of the proceedings, and even if the NLGA did apply Defendants lose NLGA protection because they participated by "knowing tolerance" in illegal actions. ECF No. 90 at 31.

The Court finds it unnecessary to reach this issue because the Complaint fails to adequately plead any agency relationship.

v. First Amendment

Defendants argue that it would be a violation of the First Amendment to hold Defendant Williams responsible for unnamed individuals' alleged vandalism and threats of violence based on "rhetorical phrases" in his speech at a union rally including "line in the sand" and "no going back." ECF No. 58 at 21 (citing Compl. ¶ 173). In *NAACP v. Claiborne Hardware*, the Supreme Court held that "emotionally charged rhetoric" in a public speech that included the statement that "any 'uncle toms' who broke the boycott would 'have their necks broken' by their own people" did not cross the line from protected speech into unprotected incitement of lawless conduct. 458 U.S. 886, 900 (1982) (incidents of violence allegedly imputed to the speaker also occurred weeks or months after the speech). Thus, Defendants argue that Williams' much tamer statements are similarly

wanted that to be done." *United States v. Thordarson*, 646 F.2d 1323, 1333 (9th Cir. 1981) (*citing United States v. Silverman*, 430 F.2d 106, 126-27 (2nd Cir. 1981)). Fraudulent intent and conversion to defendant's own use or the use of another are elements of § 501(c), however, "lack of authorization or lack of good faith belief in union benefit" are not essential elements of this claim. *Id*. at 1334-35.

The chain of facts alleged by Plaintiffs is as follows: Defendant and MTD President Ault circulated a memorandum indicating that proposed plans to revoke the Solidarity Agreement between the UBC and MTD might not be in "anyone's best interests" (Compl. ¶ 25-26, Ex. E); Ault "comes around" after "BCTD Defendants made [him] an offer he could not refuse" (Compl. ¶ 27); at the behest of the BCTD, Ault (and Williams as a member of the MTDs Executive Council) voted to revoke the Solidarity Agreement with UBC; this action benefited Ault and Williams "financially and personally." (Compl. ¶ 376-388). Thus, Plaintiffs' Complaint alleges that Defendants Ault and Williams "wrongfully misused the MTD's money, funds, property, or other assets by expending and using their money, resources, staff time, and attorney time formulating, implementing, managing and operating the Push-Back-Carpenters Campaign extortionate schemes and conspiracy." Compl. ¶ 381. Further, Plaintiffs' allege that Defendants Ault and Williams "knew their actions were unlawful and had a bad and evil purpose"

because Defendants ignored Ault's memo, attempted to conceal the "true reasons" for actions taken against Plaintiffs, and BCTD agreed to indemnify the MTD for loss of income and legal costs resulting from this lawsuit. Compl. ¶ 388.

Defendants argue that they could not have acted with the requisite "fraudulent intent" because they were acting with the full knowledge and approval of the Executive Council of the MTD, and the Council made this decision after receiving full disclosure of potential disadvantages of this course of action from Ault. ECF No. 58 at 28 (citing Compl. ¶ 232- 237). Moreover, Defendants argue that this action by the MTD Executive Council establishes that the union did want Defendants' work in terminating the Solidarity agreement to be accomplished. *Thordarson*, 646 F.2d at 1333.

The Court finds there can be no fraudulent intent to convert property of the MTD by its officers if the actions taken were with the full (arsT-8(F)-4(.gf)12(ic)4(e)4(r) -0.0

3. Pattern of Racketeering Activity

In order to establish the RICO pattern element, (1) the RICO defendant must have engaged in at least two related acts of racketeering activity (18 U.S.C. § 1961), and (2) those predicate acts must satisfy the "continuity requirement." *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 237-242 (1989). Defendants argue that Plaintiffs' Complaint fails to satisfy the RICO pattern element. In light of the Court's ruling that Plaintiffs have failed to adequately plead both the injury and racketeering activity (predicate acts) elements, the Court finds it unnecessary to address this element.

C. Eighth Claim for Relief - LMRDA Title I

The LMRDA provides that no member of a labor organization may be suspended or expelled, except for non-payment of dues, unless such member has been "(A) served with written specific charges; (B) given a reasonable time to prepare his defense, and (C) afforded a full and fair hearing. 29 U.S.C. § 411(a)(5). Plaintiffs claim that Defendants Ault, Williams and Molnaa are officers of the MTD and violated the LMRDA rights of both the UBC and the individual Plaintiffs when it revoked the Solidarity Agreement without providing due process rights under § 411(a)(5). Compl. ¶ 471.

Defendants argue that this claim is built on the misguided premise that a labor organization, such as the UBC, that has an affiliation agreement with a

federation of labor organization, such as the MTD, is a "member" of that federation who is entitled to due process rights under the LMRDA. ECF No. 58 at 44. Defendants rely on a Ninth Circuit case in which the UBC prevailed in arguing that the LMRDA guarantees the right of free speech (§ 411(a)(2)) only to individual union members, and not to entities such as local unions as a whole. *See United Bhd. of Carpenters Local 42-L v. United Bhd. of Carpenters*, 73 F.3d 958, 964 (9th Cir. 1996) ("Local 42-