

**COURT OF APPEALS OF KENTUCKY**

**NO. 1999-CA-000944**

**JUDY TAYLOR**

**APPELLANT**

**v.**

**JAMES RYAN, et al**

**APPELLEES**


\*\*\*\*\*

**RESPONSE OF APPELLANT, JUDY TAYLOR**  
**TO BRIEF OF APPELLEES,**  
**JAMES RYAN, JASON RYAN, AND RYAN HORSE COMPANY**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed to the Honorable John M. Bush, Suite 201, 9000 Wessex Place, Louisville, Kentucky 40222, Counsel for James and Jason Ryan; Honorable Eric G. Farris, Honorable Jack E. Ruck, Honorable Walter Sholar, P. O. Box 460, Shepherdsville, Kentucky 40165, Counsel for Eugene Jackson; Honorable Denise M. Helline, Suite A, 6008 Brownsboro Park Blvd., Louisville, Kentucky 40207, Counsel for Kenny Randolph; Honorable Armer H. Mahan, Jr., 500 Meidinger Tower, Louisville, Kentucky 40202, Counsel for Ryan Horse Company; to Judge Ken Corey, Judge Earl O'Bannon, Judge Judy McDonald, Eleventh Division, Jefferson Circuit Court, 700 W. Jefferson, Louisville, Kentucky 40202 and the Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601, on this the 4th day of January, 2000 and I hereby certify that the Record on Appeal was not withdrawn by the undersigned.

  
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**APPELLANT'S RESPONSE TO BRIEF OF APPELLEES,  
JAMES RYAN, JASON RYAN, AND RYAN HORSE COMPANY**

**INTRODUCTION**

Appellant, Judy Taylor, files herein her reply to the Appellants, James Ryan, Jason Ryan and Ryan Horse Company (hereafter, "Ryans' ) Brief. Appellant appealed from a pre-trial Order of dismissal of her complaints which claimed most notably, violations by Ryans' of the Racketeering Influenced Corrupt Practices Act (hereafter, "RICO"), 18 USC §1961 *et. seq.*, as well as, various state law tort claims. (R.A. 677-685.)

**REPLY TO RYANS' COUNTER-STATEMENT OF THE CASE**

Appellant brought suit on August 23, 1995 (R.A. 1-6) alleging claims against 4 Defendants and 4 John Doe's who were unknown to her at the time of filing, but were believed to "*reside in Kentucky and Indiana and transact business in both states*". After significant effort on the Ryans' part (when they were only witnesses) to preclude Appellant from obtaining discovery<sup>1</sup> (R.A. 113-115, 116, 137-138, 139-200). Appellant was finally able to conclude the Ryans' depositions in January, 1998.<sup>2</sup> On June 8, 1998, Appellant sought leave and was granted the right to file her First Amended Complaint which named Ryans' as Defendants (R.A. 476-478).

Finally on page 2, paragraph 2 of Ryans' Brief, they make the erroneous statement that "...*no alleged activities on the part of Appellees Ryan took place in Jefferson County...*". For brevity sake, Appellant refers the Court to page 5 of her Brief, which outlines the fraud and deceptive business practice and act perpetrated by James Ryan, President and CEO of Ryan Horse Company, while he was

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<sup>1</sup>See Appellant's Motion to Compel Discovery (R.A. 99-111) and Ryans' Motion for Protective Orders (R.A. 113-115, 116, 137-138, 139-200) for an example of the tactics used to prevent Appellant from obtaining discovery in 1997, as well as, their co-conspirator, Eugene Jackson's similar tactics in 1995, which also led to considerable delay in determining the exact nature of the Ryans' participation in the scheme. (R.A. 40-45, 46-48, 68, 69-72). This clearly refutes Ryans' inference that there was some sinister or dilatory tactic in not filing the complaint against the Ryans' for "3 full years" (Appellees' Brief, p. 1; and see Trial Court Order 7/14/97 attached as Exhibit A).

<sup>2</sup>Appellees claim depositions were concluded in December, 1997, which is incorrect. (Appellees' Brief, p. 1.)

physically located in Jefferson County, Kentucky.

**APPELLEES' RELIANCE ON THE COPASS STANDARD  
IGNORES THE FACTUAL DISSIMILARITY**

Appellees' continue to rely on *Copass v. Monroe County Med. . Fd., Inc.*, Ky. App. 900 S.W.2d 617 (1995).<sup>3</sup> Unlike the plaintiff in *Copass*, who was allegedly injured by one physician in Jefferson County during a medical procedure and subsequently injured when he relocated to another county, in a different manner by a second defendant, Appellant was only injured in Jefferson County. Appellant was fraudulently deceived in Jefferson County by Defendants Lisa and Jeff Burgess; Appellant's property (horses) were tortiously converted in Jefferson County, Kentucky when they were removed from her care and Appellant suffered emotional distress while residing only in Jefferson County. Also important is the uncontroverted fact that James Ryan lied under oath while he was physically located in Jefferson County, Kentucky denying the whereabouts of the missing horses at a time when the horses were within his possession and control.<sup>4</sup> Ryans' claim they "*had no contacts with Appellant...in Jefferson County....*" (Brief p. 6), but ignore the fact that James Ryan was questioned by Appellant's counsel in Jefferson County, which certainly constitutes contact with Appellant. Thus, the injury occurred only in Jefferson County. Ryans' also fail to point to any injury perpetrated by them against Appellant which occurred in any other county.

Next, Appellees' attempt to negate the fact that James Ryan perpetrated a fraud against Appellant in Jefferson County when he was deposed by claiming "[t]his questioning took place in Jefferson County because Appellant's attorney subpoenaed Appellee James Ryan to come there to give a

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<sup>3</sup>See Appellant's discussion of this case in her Brief, p. 11.

<sup>4</sup>The occasion for Appellee Ryan to be under oath involved a similar horse theft case wherein as part of his regular business practice, he purchased a stolen horse in Jefferson County. (R.A. 600-601, 479-483.) He thus, has 'done business' in Jefferson County, albeit an illegal business. This same case is also the basis for the satisfaction of the 'predicate act' requirement under 18 USC §1961(5); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S.479 496 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985).

*deposition, not because Mr. Ryan voluntarily chose Jefferson County for the forum.*" (Ryans' Brief, p. 6, para. 2.) In fact, Ryan appeared in Jefferson County as a party-defendant pursuant to Notice of Deposition to inquire of him regarding his purchase of a different stolen horse in Jefferson County - a county wherein he voluntarily chose to do business at that time and where he continues to do business. (R.A. 704-705.)

Ryans' contend that because Burgess' defrauded Appellant in Jefferson County, Appellant must sue them in Jefferson County, but sue Appellee Jackson in Bullitt County and Appellees Ryan separately in Hardin County, even though her injury - occurred in Jefferson County. The immunity this 'theory' provides to joint tort feasons and their agents and co-conspirators is mind boggling. Quite simply, Jackson, Ryans, and Randolph were all co-conspirators in furtherance of the conspiracy with Defendants Burgess and each act done by any is construed to be an act of all. Each may be found responsible for the acts of another co-conspirator. (For a complete discussion of the legal basis for holding<sup>5</sup> co-conspirators liable in the jurisdiction wherein their other co-conspirator(s) acted, see Appellant's Reply Brief to Appellee Randolph's Brief, pp. 4-5.)

### **APPELLEES' ANALYSIS OF RICO VENUE IS INCORRECT**

Appellees Ryan incorrectly argue that their purchase of the horses in Bullitt County from Appellee Jackson, somehow exempts them from the venue of Jefferson County. They are incorrect because they ignore the actual language of the RICO Act, which requires only that a conspiracy to violate RICO occur even if no substantive RICO violation occur. In other words, RICO does not require some "overt act" or "specific act" *Salinas v. United States*, 118 S.Ct. 469, 476 (1997).<sup>6</sup> The Supreme Court found

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<sup>5</sup>Buck Ryan testifies that the Ryan Horse Company operations are conducted in Kentucky, Indiana, Ohio, Tennessee, Illinois and Alabama.

<sup>6</sup>This interpretation by the Supreme Court is a great departure from 18 USC §371, the general conspiracy provision applicable to federal crimes, which requires that at least one of the conspirators have committed an *act to effect the object of the conspiracy*" as §371 literally states. *The RICO conspiracy provision, then*" the *Salinas* court noted, "is even more comprehensive than the general conspiracy offense in §371." *Salinas*, 118 S.Ct. at 476.

that in its "conventional" usage, a conspiracy may exist "even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense." Id. at 477. Moreover, under traditional conspiracy principals, the partners in the criminal plan must agree to pursue the same criminal objective and may allocate the work among themselves, "yet each is responsible for the acts of each other." Id. If conspirators have a plan that calls for some conspirators to perpetrate the crime and others to provide support, "the supporters are as guilty as the perpetrators". Id. According to the Salinas decision, a conspirator need only "intend to further an endeavor which if completed, would satisfy all of the elements of a substantive criminal offense." Id. Appellee Ryan in lying under oath in his deposition in Jefferson County, Kentucky (while appearing in his official capacity as President of Ryan Horse Company) clearly intended to further the endeavor the other conspirators were involved in and thus, comes well within the RICO law.<sup>7</sup>

Having established that the Ryans' actions clearly come within the purview of RICO either substantively by conspiracy, or both, Appellant will now refute their claim that although Ryans may be subject to federal RICO venue in Jefferson County, they are somehow exempt in state court in that same county. (See Ryans' Brief, pp. 8-9.)

First, it is not questioned even by Ryans, that state courts have concurrent jurisdiction over civil RICO claims with federal courts. Tafflin v. Levitt, 493 U.S. 455, 110 S.Ct. 793 107 L.Ed.2d 887 (1990). The "RICO drafter...sought to provide vigorous incentives for plaintiffs to pursue RICO claims that would advance society's fight against organized crime" Shearson/American Express v. McMahon, 482 U.S. 220, 1078 S.Ct. 2332, 96 L.Ed.2d 185, 55 U.S.L.W. 4757 (1987) (citations omitted). "RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach, see U.S. v. Turkette, 452 U.S. 576, 586-587 (1981), but also of its express

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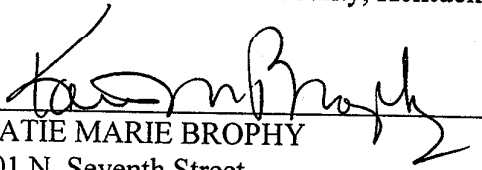
<sup>7</sup>In considering the conspiracy in Salinas, the court found "even if Salinas did not accept or agree to accept two bribes, there was ample evidence that he conspired to violate subsection (c)" because that evidence revealed that "Marmolejo committed at least two predicate acts of racketeering activity when he accepted numerous bribes" and that Salinas knew about and agreed to facilitate the scheme. Id.

admonition that RICO is to be liberally construed, to effectuate its remedial purposes, Pub. L. 91-452, 904(a), 84 Stat. 947. The statute's 'remedial purposes' are nowhere more evident than in the provision of a private action for those injured by racketeering activity." Sedima v. Imnax Corp., 473 U.S. 479 105 S.Ct. 3275, 87 L.Ed.2d 246 33 U.S.L.W. 3914 and 5034 (1985).

The expansive reach of RICO has been interpreted to grant jurisdiction and thus, venue in a variety of settings where defendants have claimed they cannot be held accountable. For example, in Republic of Panama v. BCCI Holdings (Luxembourg), 119 F.3d. 935 (11<sup>th</sup> Cir. 1997) the court found no hesitancy in finding the defendants subject to jurisdiction and venue in the southern district of Florida even though "...they may not have had significant contacts with Florida..." since this factor alone was "insufficient to render Florida an unreasonably inconvenient forum" because the "First American defendants have failed to present a 'compelling case' that litigating this action in the chosen forum will put them at a 'severe disadvantage.'" Id. at 948. And see Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478, 105 S.Ct. 2174, 2185, 85 L.Ed.2d 528 (1985). And see Red Carpet Corp. Of Panama Beach v. So. East Barkley Corp., 580 So.2d 780 (Fla. 1991) (court must consider interests of justice, judicial economy and convenience.)

### CONCLUSION

Wherefore, Appellant respectfully requests the initial Trial Court's ruling entered dismissing Appellant's Amended Complaint (R.A. 476-478, 1006) against the Ryans and denying Appellant's Motion to file a Second Amended Complaint (R.A. 677-685) be vacated and held for naught and that Judy Taylor be permitted to proceed with the trial of this matter in Jefferson County, Kentucky.

  
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**APPENDIX**

JEFFERSON CIRCUIT COURT

DIVISION ELEVEN

JUDGE KEN G. COREY

JUL 15 1997

NO. 95 CI 04726

JUDY TAYLOR

PLAINTIFF

V.

ORDER

LISA BURGESS ET AL

DEFENDANTS

\* \* \* \* \*

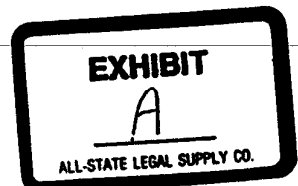
This matter is before the Court on the plaintiff's motion to require a witness, Jim Ryan, to answer various questions and to furnish various documents.

Counsel for the parties are to confer and to obtain an agreed time and location for the further deposition of Ryan.

Although argued, it is not clear as to whether or not Attorney Preston represents Jim Ryan. There is no question in regard to Ryan's Fifth Amendment rights against self-incrimination. Unless such assertion is made, depositions are generally allowed to inquire into matters which might lead to admissible evidence at trial.

Based upon the nature of the allegations set out in the Hardin County protective order,



IT IS ORDERED that a court stenographer be present as well as a videotape operator at any further deposition of Jim Ryan.



The stenographer may operate the video equipment if appropriate. However, it will be necessary to have a written record in anticipation of further arguments regarding the testimony of this witness. Ryan is directed to comply fully with the subpoena duces tecum previously issued.


The issue of sanctions is remanded pending completion of the action. In view of the elapsed time, the deposition may begin anew. The only basis for failure to answer questions in depositions is that of privilege. Failure to otherwise answer may result in extreme sanctions including a default judgment.

In regard to trade secrets and confidential research development or commercial information raised by Ryan, counsel for all parties is directed to retain confidentiality of such issues pending further order from court. In the event further problems arise, the Court will consider appointing a Master to oversee depositions in this action. The cost of the Master will be allocated to counsel for the parties.

  
\_\_\_\_\_  
KEN G. COREY, JUDGE  
  
\_\_\_\_\_  
DATE

cc: Katie Marie Brophy, Attorney  
Walter Sholar, Attorney  
Timothy Denison, Attorney  
Dwight Preston, Attorney

ENTERED IN COURT

JUL 14 1997  
TOMMY MILLER, CLERK  
BY   
Deputy Clerk

