IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

ETHAN HOGGATT, ET AL. **PLAINTIFFS**

V. **NO: 1:19CV14-MPM-DAS**

ALLSTATE INSURANCE, ET AL. **DEFENDANTS**

ORDER

This cause comes before the court on Defendant Allstate's motion to dismiss [30] and Defendants Andy Dyson's and Suzanne Hand's motion to dismiss [32]. The court, having considered the memoranda and submissions of the parties, and relevant authority, is now prepared to rule.

Factual Background

In March 2018, Plaintiff Ethan Hoggatt totaled his Toyota Yaris "through no fault of his own when a 17 year old girl pulled out and hit him near cross-town in Tupelo." Compl. at 8. Ethan maintained an insurance policy with Allstate through Defendant Andy Dyson's agency. *Id.*

Plaintiffs allege that Ethan called the agency after his car was totaled and was told by Defendant Suzanne Hand "that he should keep Defendant Allstate's insurance policy, as if he cancelled his policy and bought another car, he couldn't obtain Allstate insurance for six months." Compl. at 8.[1] The Complaint alleges that "Mrs. Hand . . . stated that Ethan . . . would have insurance coverage, at a reduced price" and that "Ethan . . . agreed" to purchase the policy. *Id.* at 9. The new

[1] The Complaint states that "[w]hether . . . Mrs. Hand's statement is true or only premeditated fraud . . . is unknown." Compl. at 9. Plaintiffs further assert that another Allstate employee, Alicia Alvarez, told Ethan that Defendant Hand's statement "was wrong" and "'they shouldn't have told him that.'" *Id.* at 23, 29.

policy he obtained was considered a comprehensive policy, which did not cover damage caused by collision. Ex. A [5-1] at 2.

According to the Complaint, Plaintiffs claim that Allstate sold Ethan "dummy insurance coverage" because they knew he "owned no vehicle whatsoever" and subsequently "drafted each automatic insurance payment by wire from [his checking account]." Compl. at 9. Plaintiffs further state that Ethan "reasonably believed that this less expensive 'insurance coverage' that he carried, meant he was insured if he drove someone else's vehicle, and stated so to his parents." *Id.* at 9.[2] Stated differently, Ethan alleges he "reasonably believed that this insurance policy follow[ed] the individual." *Id.*

On September 15, 2018, Ethan was involved in a second car accident. This accident occurred while he was driving his parent's Toyota Corolla. Compl. at 10. Plaintiffs allege that Ethan filed a claim the same day and spoke with Allstate personnel regarding his policy and the policy held by his parents. *Id.* at 11.[3] Allstate ultimately refused to cover the accident under Ethan's comprehensive policy. *Id.* at 11, 23.

Plaintiffs further claim that Dr. Hoggatt "reasonably believed" Ethan's representations that he had his own Allstate policy, it was valid, and would cover the accident that involved the Corolla. Compl. at 10, 25.[4]

Ethan and Dr. Hoggatt filed the instant suit in December 2018, alleging fraud under Mississippi state law and violation of the Racketeer Influenced and Corrupt Organizations

[2] Dr. Eric Hoggatt, who is also a named plaintiff, is Ethan's father. Compl. at 2.

[3] At the time of the accident, it appears the Corolla was insured under a separate policy held by Ethan's parents. Compl. at 11.

[4] The Complaint also contains facts regarding the Hoggatt's dispute with the towing company (Homans Garage) used following Ethan's accident in the Corolla. The Homan Defendants were dismissed from this suit by joint stipulation. *See* [35]. Thus, for the sake of brevity, this court will not discuss facts related to such dispute.

("RICO") Act, along with vague references to "attempted extortion by use of the United States Mails, reprehensively and willfully committed with [b]ad [f]aith," gross negligence, and "[w]antonness causing [i]ntentional, wholly unnecessary, and [e]gregious [i]nfliction of [m]ental [d]istress." Compl. at 2.

Briefly, this court notes that the claims against Allstate, agent Dyson, and employee Hand appear to be based on employee Hand's statement to Ethan that he "could not obtain Defendant Allstate [i]nsurance for six months if he cancelled his insurance policy" and its refusal to cover the accident in the Corolla. Compl. at 23-26. They argue primarily that Ethan was sold insurance coverage that insured "nothing" and that both Plaintiffs relied on Ethan's mistaken belief that his comprehensive coverage followed the driver, not the vehicle, when Dr. Hoggatt decided to allow Ethan to drive the Corolla. *Id.* at 25. Accordingly, they state that Allstate owes Dr. Hoggatt a replacement vehicle because, if not for what they deem to be a "dummy policy," Dr. Hoggatt would still have a vehicle. *Id.* at 26. Plaintiffs also seek injunctive relief and damages. *Id.* at 30, 34.

Standard

Before the court can grant a motion to dismiss, a defendant must show that the plaintiff has not met the relevant pleading standard to state a claim. Specifically, a defendant must show that the plaintiff's complaint fails to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged" *Id.* In making this determination, the court must view all facts and inferences in the light most favorable to the nonmoving party. *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018).

Discussion

Defendant Allstate and Defendants Dyson and Hand have filed separate motions to dismiss, but in the interest of judicial economy, this Order will address both motions together. The court will begin with the allegations of fraud.[5]

a. Plaintiffs' fraud claim fails.

Plaintiffs herein have asserted a fraud claim against Defendants. To establish a fraud claim in Mississippi, a plaintiff must prove: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that is should be acted on by the hearer and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on the truth; (8) his right to rely thereon; and (9) his consequent and proximate injury. *Koury v. Ready*, 911 So. 2d 441, 445 (Miss. 2005).

Assuming the facts in the Complaint are true and construing them in the light most favorable to Plaintiffs, this court finds Plaintiffs have not sufficiently pled a fraud claim.

To begin, counsel for Defendants argue that Plaintiffs have failed to adequately plead a materially false representation. According to the Complaint, Plaintiffs allege that Allstate employee Hand told Ethan that "if he canceled his policy and bought another car, he couldn't obtain Allstate insurance for six months," but as Defendants posit in their brief, the Complaint states that is it is "unknown" whether this statement "is true or only premeditated fraud." Compl. at 8-9.[6] Rather, the Complaint states, in more conclusory fashion that representations made to "Ethan and Mrs. Hoggatt by Defendants Allstate were false." *Id.* at 25. The court takes note of this

[5] Though counsel for the defense offers multiple arguments concerning the deficiencies in Plaintiffs' pleadings, this court limits its discussion to those mentioned herein, as they are clearly dispositive of Plaintiffs' claims.

[6] This court notes that Plaintiffs' response [40] to the motions to dismiss pleads that employee Hand's statement was false. Resp. at 3.

discrepancy, but will not grant the motion solely on this basis.

This court does agree, however, with Defendants' argument concerning the reliance prongs. Even if the court were to construe the Complaint to include an allegation of a materially false statement, it is clear that Plaintiffs have not pled facts to justify reliance on the alleged false statement. Indeed, "an essential element of any claim of fraud or misrepresentation is reasonable reliance." *Ballard v. Commercial Bank of Dekalb*, 991 So. 2d 1201, 1207 (Miss. 2008). The Complaint alleges that both Ethan and Dr. Hoggatt "reasonably believed" that Ethan's insurance policy would cover him if he drove his parents' vehicle, but such reliance is not reasonable. Indeed, Defendant Hand is alleged to have told Ethan that he could not obtain Allstate insurance for six months if he canceled his policy. Plaintiffs do not allege that Defendant Hand made any representation that his new policy would cover collision damage to a non-owned vehicle.

Further, Mississippi law is clear that "reliance on representations by an insurance agent that contradict the policy language is unreasonable." *Leonard. Nationwide Mut. Ins. Co.*, 499 F.3d 419, 438 (5th Cir. 2007). As Defendant Allstate's briefing notes, Ethan agreed to purchase a comprehensive policy from Allstate following his accident in the Yaris and that policy unambiguously indicated that it did not cover vehicle collisions. Mem. at 10. Further, the policy clearly excluded from coverage any non-owned vehicles available for regular use by the policy holder. *Id.* at 10-11. "As a matter of law, one may not reasonably rely on oral representations, whether negligently or fraudulently made . . . which contradict the plain language of the documents." *Ballard*, 991 So. 29 at 1207. Thus, even if Defendant Hand had made representations concerning coverage that related to a non-owned vehicle, Plaintiffs herein have pled no facts to suggest, for example, that the underlying contract Ethan agreed to purchase was altered by Defendant Hand's statement or that Ethan was denied access to a copy of the policy.

Given the above, this court finds that Plaintiffs have not pled facts sufficient to establish reasonable reliance upon Defendant Hand's statement. Indeed, no fact even vaguely suggests that Defendant Hand made any statement to Ethan (or Dr. Hoggatt) that would cause either Plaintiff to believe that a comprehensive policy would cover the collision costs of a non-owned vehicle. The policy Ethan agreed to purchase also made no such representations. Rather, it appears to this court that the facts suggest only that Ethan had a mistaken belief concerning the coverage afforded by his new policy. Plaintiffs' fraud claim cannot survive Defendants' 12(b)(6) motion and will thus be dismissed.

b. Plaintiffs' RICO claim fails.

Plaintiffs have also asserted a civil RICO claim. RICO "makes it illegal for an individual to use the proceeds of racketeering activity in a business that engages in interstate commerce." *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 523-24 (5th Cir. 2016) (citing 18 U.S.C. § 1962)). "To establish a civil-RICO claim, a plaintiff must establish three common elements: (1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise." *Id.* (internal citations omitted).

Even if this court were to assume that Plaintiffs' allegations of fraud (whether by mail or wire) constituted a pattern of racketeering activity, Plaintiffs herein have failed to plead a RICO enterprise and "the existence of an enterprise is an essential element of a RICO claim." *Bonner v. Henderson*, 147 F.3d 457, 459 (5th Cir. 1998). Notably, "officers or employees of a corporation, in the course of their employment, associate[ing] to commit predicate acts does not establish an association-in-fact enterprise distinct from the corporation." *Whelan v. Winchester Production Co.*, 319 F.3d 225, 229 (5th Cir. 2003). "[A]lleged predicate acts committed . . . in the ordinary course of business d[o] not, as a matter of law, demonstrate the existence of a separate enterprise

for the purposes of § 1962(c)." *Warnock v. State Farm Mut. Auto. Ins. Co.*, 833 F. Supp. 2d 604, 611 (S.D. Miss. June 15, 2001) (internal quotations omitted).

Plaintiffs' Complaint alleges that predicate acts (mail and wire fraud) were committed through Allstate, Dyson, and Hand. Compl. at 24-25. Thus, they plead that Allstate, an Allstate agent, and an employee, are the persons comprising the RICO enterprise. The law is clear, however, in stating that Plaintiffs cannot establish a RICO claim with allegations that Allstate associated with its own insurance agents and employees to commit the underlying acts giving rise to such claim. *See, e.g.*, *Whelan*, 319 F.3d at 229. Indeed, Plaintiffs allege that "Mrs. Hand . . . did not think up the 'keep the insurance policy' arrangement herself, to sell to Defendant Allstate customers, but the reasonable inference is that she had been so instructed, and such deceptive sales of dummy 'insurance coverage' may be routine by the Defendant Allstate Agencies elsewhere." Compl. at 25. But the Complaint makes no mention of any involved person other than Allstate, its agents, and employees.

Furthermore, a RICO enterprise must be separate and distinct from the pattern of activity alleged to underlie the RICO claim. *Whelan*, 319 F.3d at 229. Plaintiffs herein have alleged mail and wire fraud via contracting for an insurance policy. Compl. at 25. They plead no facts to suggest Allstate and its employees were engaged in any activity apart from the selling of insurance. Accordingly, Plaintiffs have failed to sufficiently plead the existence of a RICO enterprise, and their RICO claim will be dismissed.

c. Plaintiffs' remaining claims fail.

Finally, Plaintiffs' Complaint vaguely references the following causes of action: "attempted extortion by use of the United States Mails, reprehensively and willfully committed with [b]ad [f]aith," "gross negligence," and "[w]antonness causing [i]ntentional, wholly

unnecessary, and [e]gregious [i]nfliction of mental distress." *See* Compl. at 2, 26.

Accepting Plaintiffs' allegations as true, the court finds that the Complaint lacks sufficient facts to support such claims against Defendants. Indeed, this court is not aware of a cognizable civil cause of action for extortion under Mississippi law, and it does not appear that Plaintiffs have referenced any such law.[7] To the extent Plaintiffs base an intentional infliction of emotional distress, gross negligence, or bad faith claim on their interactions with Allstate, Dyson, and Hand, Plaintiffs' assertions to that effect appear conclusory and are not supported by the facts in the complaint. Thus, to the extent Plaintiffs intend to assert these claims against Defendants, these claims are dismissed.

Finally, this court notes that Plaintiffs were given two opportunities to respond to Defendants' motions to dismiss.[8] *See* [40], [78].[9] In their second response, Plaintiffs reference case law suggesting that if "a more carefully crafted complaint might cure any deficiencies, the district court must first give the plaintiff an opportunity to amend his complaint." [78] at 4 (internal quotations omitted). However, the response offers no persuasive explanation concerning how they intend to cure any of the deficiencies outlined herein. This court thus finds that no further amendment is warranted. Indeed, Plaintiffs filed a motion to amend their Complaint earlier in this action, which was denied. *See* [59]. This court has reviewed that request and finds such motion and proposed amended complaint did not seem to cure the problems presented in the original pleadings discussed herein. Accordingly, any further amendment would be futile.

[7] To the extent extortion is being alleged as part of Plaintiffs' RICO allegations, this claim similarly fails for the reasons discussed herein.

[8] Plaintiffs' response [61] was withdrawn. *See* [77].

[9] It should be noted that Plaintiffs spent ample time in their responses accusing defense counsel of filing their motions to dismiss for purposes of "delay, retaliation, and obstruction." *See* [78] at 2.

Conclusion

No claims made by Plaintiffs are viable as a matter of law. Based on the foregoing, this court finds that Plaintiffs have failed to plead sufficient facts to raise the claims alleged herein. Defendants' motions to dismiss [30] and [32] are **GRANTED** and Plaintiffs' claims are dismissed with prejudice. As such, this case is CLOSED.

SO ORDERED, this the 23rd of July, 2020.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF MISSISSIPPI