APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

WILLIAM H. VIEHWEG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 3:23-cv-3047-MFK
	)	
INSURANCE PROGRAMS	)	
MANAGEMENT GROUP, LLC	)	
et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

Appendix 2

Plaintiff William Herman Viehweg has sued twenty-four defendants[1] for violations of the Racketeer Influenced Corrupt Organizations Act (RICO). All of the defendants have filed or joined in one of three motions to dismiss Viehweg's amended complaint, contending, among other things, that Viehweg fails to state a RICO claim under 18 U.S.C. § 1962(c) and a RICO conspiracy claim under 18 U.S.C. § 1962(d). For the reasons below, the Court grants the defendants' motions.

Background

The pending motions to dismiss concern Viehweg's amended compliant. The crux of Viehweg's claims is that the defendants engaged in a conspiracy to illegally assert control over his garage, retaliate against him for challenging their conduct, and conceal their own misconduct. See PL.'s Am. Comp. ¶¶70-74. Viehweg alleges that the conspiracy involves various Mount Olive, Illinois (Mt. Olive) public officials; the City's insurance company Illinois

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[1] The defendants are Henry Meisenheimer & Gende, Inc. and its president Bradley G. Hummert (HMG defendants); Brown & James, P.C. and attorneys John P. Cunningham and Daniel G. Hasenstab (BJPC defendants); Illinois Program Managers Group and its president, Gregg Peterson (IPMG defendants); O'Halloran, Kosoff, Geitner & Cook, an attorney at the firm, Joseph Bracey and former attorney Karen McNaught (OKBC defendants); City of Mount Olive Mayor John Sketich; City Clerk Melinda Zippay; Alderman Marcia Schultz; city council members Howard Hall, Richard Webb, Ernie Parish, Steve Rimer, Leah Wheatley, John Goldacker and Chuck Cox; police chief Molly Margaritis; former police chief Joe Berry; streets department supervisor Ronald Bone; and city attorney Dan O'Brien (Mount Olive defendants).

Program Managers Group (IPMG); O'Halloran, Kosoff, Geithner & Cook (OKGC), the law firm IPMG hired to defend the City in a previous lawsuit brought by Viehweg; the engineering firm Henry, Meisenheimer & Gende, Inc. (HMG); and the law firm that represented HMG in the prior suit, Brown and James, P.C. (BJPC). For the purposes of the motions to dismiss, the Court takes the amended complaint's well-pleaded factual allegations as true. See, *e.g., Tamayo v. Blagojevich,* 526 F.3d 1074, 1081 (7th Cir. 2008).

Viehweg has resided in Mt. Olive's second ward for over thirty years. He has a garage on his property. Mt. Olive alderman Schultz, Viehweg's neighbor, considers the garage an "eyesore." PL.'s Am. Compl. ¶ 47. In 2012, Mt. Olive officials served a notice on Viehweg informing him that the city had deemed his garage an "unsafe building." *Id.* ¶50. Mt. Olive served Viehweg with additional unsafe building notices on September 4, 2013 and April 1, 2014. The 2013 and 2014 notices included a letter from City Building Inspector Hummert stating that he had conducted a "visual exterior inspection" on Viehweg's garage which confirmed that the building was "dangerous and unsafe." *Id.* ¶¶55-57. Mayor Sketch brought a petition to demolish Viehweg's garage in the Macoupin County Circuit court, and the trial court ruled in the City's favor. The Appellate Court of Illinois, Fourth District, reversed the decision, ruling that under Mt. Olive's unsafe building ordinance, the Mayor lacked the authority to bring suit seeking the

demolition of Viehweg's garage without the approval of City Council.

On March 3, 2021, Viehweg received another unsafe building notice. The notice stated that if the building was not "put into safe condition or demolished" within ninety days, Mt. Olive would seek an order from the Circuit Court authorizing such action. PL.'s Am. Compl., Ex. 1. The Mt. Olive City Council reviewed the notice at the May 3, 2021 meeting. A few days later, Mt. Olive Street Department supervisor Bone authorized the placement of city barricades and caution tape on Viehweg's property. Mt. Olive police chief Margaritas continues to enforce the unsafe building notice.

On June 3, 2021, Viehweg filed suit in the federal district court for the Central District of Illinois. In his complaint he alleged that Mt. Olive officials and HMG had violated his constitutional rights through the repeated issuances of unsafe building notices for his garage. IPMG hired OKGC to defend Mt. Olive and various officials against the lawsuit. BJPC represented HMG and Hummert. The defendants filed motions to dismiss Viehweg's complaint for failure to state a claim.

On December 9, 2021, City Clerk Zippy left a message on Viehweg's voicemail stating that she had a question about his trash service given that he is "not living in town." PL.'s Am. Compl. ¶90. Viehweg objected to Zippey's suggestion that he longer resided in Mt. Olive. McNaught, in her capacity as an attorney for

Mt. Olive, asserted in an email to Viehweg that she knew of no rules that prohibited Zippay's communications, and she expressed her opinion that Viehweg was "mistaken" in his belief that the call consisted of "nefarious conduct. PL.'s Am. Compl., Ex. 2.

Viehweg filed a motion for leave to amend his complaint to add a RICO claim and include additional defendants. Bracey, Cunningham and Hasenstab elected to appear as their own attorneys in the suit. Hummert, HMG, Hasenstab, Cunningham and BJPC opposed the motion, stating in their brief "[t]his Court can review [Viehweg's] proposed Third Amended Complaint itself and immediately recognize that it is pure gibberish." PL.'s Am. Compl. ¶108. On June 16, 2022, a magistrate judge denied Viehweg's motion for leave to file an amended complaint. On April 21, 2023, the district court granted the defendants' motions to dismiss Viehweg's lawsuit.

On February 2, 2023, Viehweg filed the present suit, alleging multiple RICO violations. The defendants filed motions to dismiss. Viehweg then elected to file an amended complaint (as was his right) rather than responding to the motions to dismiss. The defendants then filed the present motions to dismiss.[2]

Discussion

A. Failure to state a RICO claim.

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[2] The BJPC defendants [dkt. no 39], the HMG defendants [dkt. no. 41] and the OKGC, IPMG and Mount Olive defendants [dkt. no. 45] have filed separate motions to dismiss. This opinion addresses all three motions.

To survive a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." *Rodriguez v. Plymouth Ambulance Service.*, 577 F.3d 816, 821 (7th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Bissessur v. Ind. University. Bd. of Trs.*, 581 F.3d 599, 602 (7th Cir. 2009) (quoting Ashcroft, 556 U.S. at 678). The Court "accepts[s] all factual allegations in the complaint and draw[s] all reasonable inferences from those facts in favor of the plaintiff," but it is "not required to ignore facts alleged in the complaint that undermine the plaintiff's claim." *Slaney v. The Int'l Amateur Athletic Fed'n*, 244 F. 3d 580, 597 (7th Cir. 2001). Furthermore, the Court may reject "sheer speculation, bald assertions, and unsupported conclusory statements" T*aha v. Int'l Bhd. Of Teamsters, Loc.* 781, 947 F.3d 464, 469 (7th Cir. 2020). Finally, for RICO claims, "a fuller set of factual allegations may be necessary to show that relief is plausible." *Tamayo*, 526 F.3d at 1083.

Viehweg alleges violations of 18 U.S.C. §§ 1962(c) and 1962(d), which state:

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such

enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. § 1962(c), (d).

1. 18 U.S.C. § 1962(c)

A RICO claim under section 1962(c) comprises the following four elements: (1) conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity.[3] See *Menzies v. Seyfarth Shaw LLP*, 943 F.3d 328, 336 (7th Cir. 2019). A plaintiff must plausibly allege all four elements to state a viable RICO claim. *Id.* The defendants argue that Viehweg has failed to adequately allege predicate acts of racketeering activity.

a. Racketeering activity

Racketeering activity is limited to the specific criminal acts, also known as predicate acts, set forth in 18 U.S.C. § 1961(a). In pleading predicate acts, "conclusory allegations that various statutory provisions have been breached are of no consequence if

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[3] To state a civil RICO claim the plaintiff also must allege "an injury to [his] business or property result[ed] from the underlying acts of racketeering." *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 728 (7th Cir. 2014) (quotation omitted) (alterations in original). Because this Court concludes that Viehweg has failed to adequately plead racketeering activity, it need not address whether he has also plausibly alleged any injury to business or property.

unsupported by proper factual allegations." *Jennings v. Emry*, 910 F.2d 1434, 1438 (7th Cir. 1990). Viehweg alleges that the defendants engaged in three types of predicate acts: extortion, bribery and obstruction of justice.

I. Extortion

Viehweg alleges that fifteen defendants "entered into a conspiracy to knowingly obtain or exert unauthorized control" over his garage in violation of 720 Ill. Comp. Stat. 5/16-1(a)(1). PL.'s Am. Compl. § 79. Illinois's criminal code recognizes extortion as a form of theft. *Guzell v. Hiller*, 223 F.3d 518, 521 (7th Cir. 2000). The relevant Illinois statute provides, in relevant part, that "[a] person commits theft when he or she knowingly ...[o]btains or exerts unauthorized control over property of the owner." 720 ILCS 5/16-1(a)(1).

Viehweg alleges that Sketch, Berry and Zippy committed extortion by serving and enforcing an unauthorized unsafe building notice on his garage. He further alleges that the remaining twelve defendants had "personal knowledge" of their actions and "acted to coverup the fact that said notice was authorized." PL.'s Am. Compl. §81. Viehweg contends that the notice was "unauthorized" because it "was not authorized by the corporate authorities as required by 65 ILCS 5/11-31-1." *Id.* § 80. Viehweg supports his argument by pointing to his previous litigation with Mt. Olive, in which an Illinois appellate court ruled that the Mayor had violated 65 Ill. Comp. Stat. 5/11-31-1 by failing to obtain City Council

approval prior to filing a petition regarding Viehweg's garage. *City Of Mount Olive v. Viehweg*, 2017 IL. App (4th) 160370-U, § 26. In that case, however, the court held that the mayor "lacked authority to bring suit seeking repair or demolition under Section 11-31-1" without the City Council's approval, not that the mayor lacked authority to serve the unsafe building notice. *Id. § 24.*

Even if the defendants failed to secure the proper authorization before serving the unsafe building notice, Viehweg has not alleged that the defendants exercised the "control" over his property required to constitute an offense under Illinois law. The definition of "obtaining or exerting control over property" includes "taking, carrying away or the sale, conveyance, or transfer of title to, or interest in, or possession of property." 720 Ill. Comp. Stat. 5/15-8. The notice that the City served affirmed that Viehweg's garage had been deemed "[d]angerous and/or unsafe," and it stated that if the property was not "put into safe condition or demolished" within ninety days the city would apply for a petition to authorize such action. PL.'s Am. Comp., Ex. 1. Viehweg notes that the defendants "caused to be served," "signed and served" and "applied the City seal" to the unsafe building notice. "PL.'s Resp. to Mt. Olive, IPMG & OKGC Defs.' Mot. to Dismiss at 6. But aside from the conclusory (and thus insufficient) allegation that the notice "detail[s] the city officials' unauthorized control over the plaintiffs [sic] property' Viehweg does not allege that the officials took possession of or otherwise exerted control over his garage.

Id. at 5. The service of the notice, without more, is insufficient to constitute the obtaining or exertion of control over Viehweg's garage.

The only action that Viehweg alleges Mt. Olive officials took was to notify him that his garage had been deemed dangerous and/or unsafe and put him on notice of possible circuit court action in the future. That simply is not "obtaining or exerting control," as required to constitute extortion. In short, Viehweg has not alleged commission of the offense of extortion under Illinois law. For this reason, the court need not address whether a violation of 720 ILCS 5/16-1(a)(1) qualifies as a predicate act under 18 U.S.C. § 1961(1).

ii. **Bribery**

Viehweg's bribery allegations are likewise legally deficient. He alleges that City Clerk Zippay's recorded message inquiring about trash service was "intended to require that [Viehweg] state, under oath or affirmation, that he did not reside at his property." PL.s Am. Compl. ¶ 91. Viehweg's complaint cites both federal and Illinois bribery statutes.

Under the portion of the federal bribery statute that Viehweg cites, 18 U.S.C. §201(c)(2), bribery consists of "directly or indirectly, giv[ing], offer[ing], or promis[ing] anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court." Viewing his allegations as expansively as possible, Viehweg appears to argue

that Zippay asserted that Viehweg was "not living in town" to encourage him to state that he had vacated his property, which would then advance the City's alleged efforts to demolish his garage. But Zippey's call cannot constitute bribery under section 201 because the statute only "prohibits bribery of public officials and witnesses." *United States v. Robbins*, 197 F.3d 829, 849 (7th Cir. 1999). Viehweg is not a public official, and there is no basis for a contention that he was a current or prospective witness in a federal judicial proceeding at the time of the telephone call.

Furthermore, Viehweg's description of the contents of the message makes it clear that Zippey's statements do not amount to bribery or attempted bribery. Zippay stated that she had an inquiry regarding Viehweg's trash service, expressed confusion about whether or not he was receiving trash service given that he was "not living in town," and asked Viehweg to return her call. PL.'s Am. Comp. ¶ 91. Zippy was not communicating with Viehweg in the context of a "judicial proceeding," so there is no basis to contend that any statements Viehweg provided in response her voicemail message could be considered "testimony under oath or affirmation". That aside, even assuming that Viehweg is correct about the intent of the call, he does not allege that Zippy gave, offered, or promised anything of value to Viehweg. Thus his allegations do not give rise to a RICO predicate act under the federal bribery statute.

Under the Illinois bribery statute, an individual commits bribery when, "[w]ith intent to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he promises or tenders to that person any property or personal advantage which he is not authorized by law to accept[.]" 720 Ill. Comp. Stat. 5/33-1(a). This statute does not apply to Viehweg; he has not alleged that he was "a public officer, public employee, juror or witness" at the time he received Zippay's message. *Id.* Moreover, Zippey's call did not contain any offer or promise of property or personal advantage. See PL.s Am. Comp. ¶ 91. In short, Viehweg's allegations regarding Zippey's conduct do not amount to bribery under Illinois law.

Viehweg further contends that when he shared his suspicions regarding Zippay's message, attorney McNaught "conducted a fraudulent investigation, produced a fraudulent report, and fraudulently stated in an email to [Viehweg] that she knew of no law that would prohibit the above said communication." *Id.* ¶¶ 94, 105. Giving a false statement alone does not constitute a predicate act under RICO. *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1021 (7th Cir. 1992). And Viehweg's allegation that McNaught provided legal services to Zippay is insufficient to support a RICO claim against McNaught. See *Goren v. New Vision Int'l, Inc.*, 156 F.3d 721, 728 (7th Cir. 1998) ("[S]imply performing services for an enterprise, even with

knowledge of the enterprises's illicit nature, is not enough to subject an individual to RICO liability under § 1962(c).").

In sum, Viehweg has failed to adequately allege a RICO bribery offense.

iii. **Obstruction of justice**

Viehweg alleges that during the 2021 litigation, the HMG and BJPC defendants filed an objection to his motion for leave to amend his complaint that contained a "demonstratively false" statement that the contents of his amended complaint were "pure gibberish." Pl.'s Am. Comp. ¶¶ 106-109. Viehweg argues that his false statement amounted to obstruction of justice under 18 U.S.C. § 1503, but this argument is unpersuasive. Obstruction of justice encompasses attempts to "corruptly or by threats or force, or by any threatening letter or communication, influence[], obstruct[], or impede[], or endeavor[] to influence, obstruct, or impede, the due administration of justice." 18 U.S.C. § 1503.

Viehweg's allegations, taken as true, do not rise to the level of an "endeavor" to "impede the due administration of justice," as opposed to a routine case of zealous advocacy. See *United States v. Cueto*, 151 F.3d 620, 632 (7th Cir. 1998) (recognizing importance of distinguishing good faith advocacy from criminal conduct in applying section 1503). Section 1503 reaches a "broad spectrum of conduct" that facilitates "the miscarriage of justice." *United States v. Cueto*, 151 F.3d 620, 631 (7th Cir. 1998): *United States v. White*, 698 F.3d 1005, 1013 (7th Cir. 2012) (soliciting

harm to juror); *United States v. England*, 507 F.3d 581, 589 (7th Cir. 2007) (threatening juror); *United States v. Macari*, 453 F.3d 926, 936 (7th Cir. 2006) (inducing false testimony). But Viehweg has cited no authority for the proposition that the federal obstruction of justice statue applies to an arguable overwrought statement made in a filing with the court, which is what is at issue here. That said, the defendants' conduct did not involve threats or force, and despite Viehweg's repeated conclusory assertions that the defendants acted "corruptly, " he has not pleaded any factual allegations that plausibly support the proposition that the defendants acted "with the purpose of obstructing justice." *United States v. Machi*, 811 F.2d 991, 996 (7th Cir. 1987) (quotation omitted). The judge to whom the "gibberish" argument was addressed was fully able to review the relevant filing on her own and determine whether it was intelligible.

Viehweg's argument that Bracey, Cunningham and Hasenstab violated section 1503 by appearing as their own attorneys also fails. As the Court has concluded earlier in the present litigation, the argument is based on a misunderstanding of 28 U.S.C. § 1654. Section 1654 says that in any U.S. court, "the parties may plead and conduct their own cases personally or by counsel . . . " Viehweg seems to read the "or" as meaning that a party who is a lawyer cannot represent himself, and he contends that the attorney-defendants' *pro se* appearances are prohibited because it would "create an unlawful conflict of interest." Pl.'s

Am. Compl. ¶¶ 116, 139, 147. The Supreme Court has recognized the potential issues that may arise when attorneys appear on their own behalf in court but has never ruled that they are prohibited from doing so. See *Kay v. Ehrler*, 499 U.S. 432, 437 (1991) ("Even a skilled lawyer who represents himself is at a disadvantage in contested litigation."). Neither 28 U.S.C. § 1654 nor any other federal statute or rule bars attorneys from representing themselves in court. See *Black v. Wrigley*, 997 F.3d 702, 713 (7th Circuit 2021) (citing 28 U.S.C. § 1654) ("[C]ivil litigants, like criminal defendants, have a statutory right to proceed pro se."). Similarly, the defendants' appearances as their own attorneys do not violate any Illinois Supreme Court rules. See *In re Thomas Consol. Indus., Inc.*, 289 B.R. 647, 652-53 (N.D. Ill. 2003) (reversing disqualification of attorney who appeared on behalf of himself as well as another party).

For the reasons discussed, the Court holds that Viehweg has not plausibly alleged the commission of even one predicate act in his amended complaint. Because the RICO statute requires at least two predicate acts, his claim under section 1962(c) is dismissed for failure to state a claim.

2. 18 U.S.C. § 1962(d)

When a plaintiff "fails[s] to establish a violation of section 1962(c), their section 1962(d) claim based on the same facts must fail as well." *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 677 (7th Cir. 2000). Because Viehweg has failed to

adequately allege the defendants engaged in racketeering activity, the Court dismisses the RICO conspiracy claim on this basis.

Conclusion

For the foregoing reasons, the Court grants the defendants' motions to dismiss [39] [41] [45]. Unless plaintiff files, by January 16, 2024, a motion for leave to amend along with a proposed second amended complaint including at least one viable claim over which the Court has jurisdiction, the Court will enter judgment against him.

_____(s)_____
MATTHEW F. KENNELLY
United States District Judge

Date: December 29, 2023

UNITED STATES DISTRICT COURT

for the

Central District of Illinois

William H. Viehweg,	)	
Plaintiff,	)	
	)	
vs.	)	Case Number: 23-cv-3047
	)	
Insurance Programs Management	)	
Group, LLC, City of Mount Olive,	)	
John M. Sketch, Joe Berry, Melinda	)	
Zippay, Marcia Schulte, Howard Hall)		
Richard Webb, Ernie Parish, Steve	)	
Remer, Leah Wheatley, John	)	
Goldacker, Chuck Cox, Dan O'Brien,)		
Molly Margaritas, Jeff Bone, Bradley	)	
G. Hummert, Henry Meisenheimer	)	
& Gende, Inc., O'Halloran Kosoff	)	
Geitner & Cook, LLC, Karen L.	)	
McNaught, Lawrence E. Leyland,	)	
Benjamin Jacobi, Joseph Bracey,	)	
Brown & James, P.C., John P.	)	
Cunningham, Daniel G. Hasenstab	)	
Gregg Peterson, Jane Doe 1-10,	)	

and John Doe 11-20.)

Defendants.

JUDGMENT IN A CIVIL CASE

☐ JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ DECISION BY THE COURT. This actin came before the Court, and a decision has been rendered.

IT IS ORDERED AND ADJUDGED this case is dismissed with prejudice.

6/16/2023: Defendants Lawrence E. Leyland, City of Mount Olive, and Benjamin Jacobi terminated pursuant to filing of Amended Complaint.

Dated: January 26, 2024

s/ Shig Ysunaga.

Shig Yasunaga

Clerk, U.S. District Court

Case: 24-1287 Document: 19 Filed: 09/12/2024 Pages: 5

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 11, 2024*
Decided September 12, 2024

Before
DIANE S. SYKES, *Chief Judge*
MICHAEL B. BRENNAN, *Circuit Judge*
CANDANCE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-1287

WILLIAM H. VIEHWEG
Plaintiff-Appellant,

v.

INSURANCE PROGRAMS MANAGEMENT GROUP, LLC, *el al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.
No. 3:23-cv-3047-MFK

Matthew F. Kennelly,
Judge.

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*We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

ORDER

William Viehweg alleges that twenty-four defendants violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by attempting to get him. To demolish an unsafe garage on his property. *See 18 U.S.C. Section 1964.* The district judge granted the defendants' motions to dismiss because Viehweg failed to state a civil RICO claim. That ruling, and three related procedural rulings, were correct; thus we affirm. We decline to sanction Viehweg for filing this appeal, but we warn him against frivolous litigation.

This appeal is the latest episode in a series of lawsuits between Viehweg and city officials in Mount Olive, Illinois, about his garage. See, e.g., *Viehweg v. City of Mount Olive,* 559 F. App. 550 (7th Cir. 2014). Most recently, Viehweg sued the city, city officials, and an engineering firm that inspected buildings for the city, invoking 42 U.S.C. Section 1983 and the Fourteenth Amendment. See *Viehweg v. City of Mount Olive*, No. 21-cv-3126, 2023 WL 3065190 (C.D. ILL. Apr. 21, 2023). He sought leave in that suit to amend his complaint to allege RICO violations against city officials, the engineering firm and its president, an insurance company and its president, and the lawyers representing the defendants in that suit. After the district judge denied Viehweg's request for leave, Viehweg file this suit. (Viehweg's Section 1983 suit was later dismissed.)

In this suit, Viehweg criticizes city officials for notifying hiim that he needed to demolish his garage, which, under the Illinois Municipal Code, they deemed unsafe. See 65 ILCS 5/11-31-1. Viehweg alleges that the notice from city officials—and the barricades and tape that officals placed around his garage —was unauthorized, the defendants served the notice to extort him, and they later attempted to bribe him and obstruct justice during his previous Section 1983 suit. According to Viehweg, this activity was criminal and injured him in his "business reputation and character as a self-represented individual" and "in his property, including loss of value and loss of enjoyment."

Before the district judge addressed whether Viehweg's suit stated a legal claim, he denied several of Viehweg's motions. First, the judge denied Viehweg's motions to disqualify the lawyer-defendants in this suit from representing themselves. Second, the judge denied Viehweg's motion to hold all defendants and a non-defendant attorney in civil contempt of court. Third, the judge denied Viehweg's motion to recuse the district judge for bias against Viehweg. The judge then granted the defendants' motions to dismiss Viehweg's suit for failure to state a claim. *See* FED R. CIV. P. 12(b)(6). The judge reasoned that Viehweg failed to allege that the defendants engaged in racketeering activity, as required for a civil RICO claim, because none of the alleged actions violated Illinois or federal criminal law.

On appeal, Viehweg first argues that his allegations were sufficient to state a civil RICO claim. We review a dismissal under Rule 12(b)(6) de novo. *Dix v. Edelman Fin. Servs., LLC*, 978 F.3d 507, 512 (7th Cir. 2020). A RICO violation requires "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Menzies v. Seyfarth Shaw LLP*, 943 F.3d 328, 336 (7th

Cir. 2019) (quoting *Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496-97 (1985)*). It also requires that the plaintiff be "injured in his business or property" by the RICO violation. 18 U.S.C. Section 1964(c). The requirement of an injury to business or property limits who may sue. First, the requirement bars recovery for "personal injuries and the pecuniary losses incurred." *Ryder v. Hyles*, 27 F.4th 1253, 1257 (7th Cir. 2022) (quoting *Doe v. Roe*, 958 F.2d 763, 767 (7th Circuit. 1992)). Second, the injury to business or property must be concrete, not speculative. *Evans v. City of Chicago,* 434 F.3d 916, 932 (7th Cir. 2006), *overruled on other grounds by Hill V. Tangherlini,*, 724 F.3d 965 (7th Cir. 2013). Third, and relatedly, the damages must be clear and definite. *Id.* (citing *Motorola Credit Corp. v. Uzan*, 332 F.3d 130, 135 (2d Cir. 2003)).

The district judge properly dismissed Viehweg's suit for failure to state a claim. Although we agree with the judge that Viehweg did not state a claim (because he did not allege racketeering activity), we can reach this result on more straightforward grounds: Viehweg also failed to allege an injury to his business or property under Section 1964(c). He alleges that the defendants injured his "business reputation and character as a self-represented individual," but this allegation has two fatal flaws. First, it is a legal conclusion, and a plaintiff must allege "more than labels and conclusions." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Second, injury to reputation and character as a pro se litigant is akin to a personal injury, which in not actionable under RICO. *See Ryder*, 27 F.4th at 1257. His only allegation about injury to property is also insufficient. Viehweg alleges that, by notifying hm about court action to demolish his garage and by placing barricades and tape around it, the defendants caused a "loss

of value and loss of enjoyment" in his property. But he does not allege that these actions yielded a definite financial loss. *See Evans*, 434 F.3d at 932. A demolition of his garage by court order is a contingent event that may never occur, and he has not alleged what, if any, financial activity the barricades and tape have prevented. Therefore, he as failed to state a civil RICO claim.

Viehweg next unpersuasively challenges the district judge's denial of his motion to disqualify the lawyer-defendants who were representing themselves. We review the judge's denial of the motion to disqualify the attorneys for abuse of discretion. *Watkins v. Trans Union, LLC*, 869 F.3d 514, 518 (7th Cir. 2017). Viehweg repeats the argument that he made in the district court — that 28 U.S.C. Section 1654 and the holding of *Kay v. Ehrler,*, 499 U.S. 432 (1991), prevent the attorney-defendants from representing themselves in this case — but he is incorrect. The Supreme Court in *Kay* merely held that a self-represented lawyer could not collect a fee award under 42 U.S.C. Section 1988. *See Kay*, 499 U.S. at 437-38. Further, *Kay* presumes that attorneys can represent themselves in federal court, *see id.*, a viewpoint that vitiates Viehweg's argument that the defendants here cannot represent themselves. As for 28 U.S.C. Section 1654, that statute says nothing to suggest that an attorney cannot represent himself, and Viehweg cites no authority to support his interpretation of the statute.

Viehweg next argues that the district judge erred in denying his motion to hold all defendants in contempt. To prevail on that motion, Viehweg had to prove by clear and convincing evidence that the defendants violated a court order. *Golubu v. Sch. Dist. Of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995),. Because Viehweg did

not point to any court order that the defendants violated, the judge properly denied his motion. *See id.*

Viehweg also argues that the district judge was biased and should have recused himself from the case. We review the denial of a motion to recuse de novo. *See In re Gibson*, 950 F.3d 919, 923 (7th Cir. 2019). As evidence of bias, Viehweg cites the judge's denial of Viehweg's motions to disqualify the lawyer-defendants. But as we have explained, the judge correctly denied those motions, and adverse "judicial rulings alone are almost never a valid basis for for a recusal motion." *United States v. Barr*, 960 F.3d 906, 920 (7th Cir. 2020) (citing *Litany v. United States*, 510 U.S. 540, 555 (1994)). Viehweg also contends that the judge showed bias when he "snapped" at Viehweg at a conference. But "even a stern and short-tempered judge's ordinary efforts at courtroom administration" do not show bias without compelling evidence that the judge harbors personal animus against the litigant. *Id.* (quoting *Litany*, 510 U.S. at 556). Here, the transcript from that hearing shows that the judge merely instructed Viehweg not to interrupt when the judge was speaking to the parties. Because Viehweg provided no compelling evidence of personal animus, the judge had no reason to recuse himself.

We have one final matter to address. Two appellees (the engineering firm, Henry Meisenheimer & Gender, Inc., and its president, Bradley Humbert) have moved under Rule 38 of the Federal Rules of Appellate Procedure for attorneys' fees and costs. Rule 38 allows us to "award just damages and single or double costs to the appellee[s]" if we rule that an appeal is frivolous. *See* FED. R. APP. P. 38. "An appeal is frivolous within the meaning of Rule 38 when it is prosecuted with no reasonable expectation of altering the district court's judgment and for purposes of delay or

harassment or out of sheer obstinacy." *Bluestein v. Cent. Wis. Anesthesiology, S.C.*, 769 F.3d 944, 957-58 (7th Cir. 2014) (collecting cases). Because Rule 38 is permissive rather than mandatory, we may decline to impose fees even if an appeal is frivolous. *Id.* Although. These appellees argue that Viehweg litigated this appeal out of sheer obstinacy, it appears to us that Viehweg genuinely misunderstood the legal obstacles to his claim. We therefore decline to impose monetary sanctions, but we sternly warn him that any future litigation based on these already-litigated events may result in monetary sanctions against him that, if unpaid, can lead to a filing bar. *See Support System. Int'l, Inc. v. Mack,*. 45 F.3d 185 (7th Circuit.1995).