

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE)
 PREVENTION OF CRUELTY TO)
 ANIMALS, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 RINGLING BROS. AND BARNUM &)
 BAILEY CIRCUS, *et al.*,)
)
 Defendants.)
 _____)

Case No. 1:03-cv-02006 (EGS/JMF)

**DEFENDANT’S RESPONSE TO “PLAINTIFFS’ NOTICE OF FILING OF
 SUPPLEMENTAL EXHIBIT IN SUPPORT OF THEIR OPPOSITION TO
 DEFENDANTS’ [SIC] MOTION FOR SUMMARY JUDGMENT”**

Defendant Feld Entertainment, Inc. (“FEI”) hereby responds to Plaintiffs’ Notice of Filing Supplemental Exhibit in Support of Their Opposition to Defendants’ [Sic] Motion for Summary Judgment (“Notice”) (May 15, 2007) (Docket No. 145).

Plaintiffs submit an email message by an FEI employee, *id.*, Ex. OO, on the pretext that it purportedly shows “that there are material issues in dispute in this case and that defendants [sic] are not entitled to judgment as a matter of law.” (Notice at 2). This document is totally immaterial to FEI’s motion for summary judgment. It has nothing to do with the straightforward, and purely legal, issues presented by FEI’s motion for summary judgment. That motion raises two questions: whether the Asian elephants at issue in this lawsuit are either (i) excluded from the “taking” prohibition of the Endangered Species Act by the express exception for “pre-Act” species, *see* 16 U.S.C. § 1538(b)(1) (2000); 50 C.F.R. § 17.4 (2005); or (ii) were bred in captivity in the United States and currently are subject to a valid captive-bred wildlife permit issued by the

United States Fish and Wildlife Service authorizing FEI to “take” them. *See* Docket No. 82. Neither of these issues turns upon the treatment that plaintiffs claim the elephants receive. Rather, they depend solely upon the language, purpose and history of the statute and regulations and the accompanying case law. As it was with plaintiffs’ summary judgment opposition, the Notice is simply a further smokescreen that attempts to divert the Court’s attention from legal points that plaintiffs cannot refute.¹

The May 15, 2007 Notice continues a pattern of conduct by plaintiffs in which they have attempted to distract the Court’s attention from the real issues at hand. As they have done on prior occasions, *see* Docket Nos. 113 & 122, plaintiffs have filed this exhibit after briefing on the motion for summary judgment has been closed and without leave of Court. Furthermore, plaintiffs admit that this document has already been submitted to the Court once before – in response to FEI’s motion for leave to assert a counterclaim against plaintiffs under the Racketeer Influenced and Corrupt Organizations (“RICO”) statute. (Notice at 1). Just as it is irrelevant to the summary judgment motion, that document has nothing to do with, and is not a defense to, the claims that plaintiffs have engaged in bribery, illegal gratuity payments, perjury amounting to obstruction of justice, and mail and wire fraud. This and plaintiffs’ other immaterial filings will not make the RICO claims go away and do not obscure the straightforward legal issues presented by FEI’s motion for summary judgment. Finally, the document attached to plaintiffs’ latest filing was produced on July 19, 2006, before FEI ever moved for

¹ Exhibit OO does not even bear on what plaintiffs themselves claim are the issues in this case, namely use of the guide, tethering and weaning. Moreover, the elephant purportedly involved – Angelica -- is not one of the elephants as to which plaintiff Rider allegedly has an “emotional attachment.” Thus, even if Angelica were not covered by FEI’s captive bred wildlife permit (and there is no genuine dispute on that point) and therefore would be subject to some kind of “taking” claim, she is not one of the animals as to which plaintiffs have any standing to argue about.

summary judgment. Even if this item was material, and it is not, plaintiffs make no effort to explain why this exhibit was not, and could not have been, submitted earlier. There is no legitimate reason for the filing.

The Court should disregard this and the other immaterial and extraneous filings by plaintiffs, grant the motion for summary judgment and enter final judgment against plaintiffs.

Dated: May 18, 2007

Respectfully submitted,



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