

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FELD ENTERTAINMENT, INC.	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 07- 1532 (EGS)
	:	
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY ANIMALS, <u>et al.</u>	:	
	:	
Defendants.	:	
	:	

PLAINTIFF’S OPPOSITION TO MOTION TO STRIKE

Plaintiff Feld Entertainment, Inc. (“FEI”) hereby opposes the Motion of Defendants Jonathan Lovvorn and Kimberly Ockene (“Lovvorn & Ockene”) to Strike Section III of Plaintiff’s Notice of Supplemental Authority (07-05-11) (Docket Entry (“DE”) 79). The motion has no basis and should be denied.

In the first place, three of the authorities noted in Section III of FEI’s Notice of Supplemental Authority (DE 77),¹ had been cited in FEI’s Notice of Authority, filed on June 21, 2011, prior to the hearing on the motions to dismiss. DE 76. While the Court struck that filing, Minute Order (06-21-11), the Court stated at the June 23, 2011, hearing that its action was not because it was inappropriate to call the Court’s attention to such authority. Rather “I struck your notice only because we didn’t have enough time to deal with 200 additional pages. That’s not to say that the court won’t give you and the defendants as appropriate additional time to make whatever point you had to.” Transcript of Hearing at 3-4 (06-23-11) (“Tr. of Hearing”). As the Court described it, “no harm, no foul.” *Id.* at 4. Furthermore, during the June 23 hearing, five of

¹ *Thomas v. Ross & Hardies*, 9 F. Supp. 2d 547 (D. Md. 1998); *In re American Honda Motor Co.*, 958 F. Supp. 1045 (D. Md. 1997); *Shuttlesworth v. Housing Opportunities Made Equal*, 873 F. Supp. 1069 (S.D. Ohio 1994).

the authorities noted in Section III of FEI's Notice of Supplemental Authority,² were actually discussed by counsel for FEI. See Tr. of Hearing at 71, 86-87 (citing *American Honda, Thomas, Bainbridge Management, A&P Trucking* and *Ansani*). Counsel for Lovvorn and Ockene made no objection at the time to the citations of these cases. Therefore, FEI properly included them in its Notice of Supplemental Authority.

Nor does Section III of FEI's Notice of Supplemental Authority violate the Court's June 24, 2011 Minute Order. The Minute Order directed that the parties could alert the Court to authority dated from before the original briefing was completed if (1) the party "has a good faith belief that such authority is DISPOSITIVE of its arguments;" and (2) the party "shall explain why it failed to include such authority in its original briefing to the Court." Minute Order (06-24-11) (original capitalization). FEI's Notice complies with the Minute Order. The cases cited are indeed dispositive, *i.e.*, directly on point, with respect to the assertions of Lovvorn and Ockene (1) that they cannot be held liable vicariously under civil RICO for the predicate acts of their law partners; and (2) that they cannot be liable themselves for obstruction or for bribery by merely appearing at a deposition where a witness gave false testimony or by merely participating in payments to Tom Rider. See DE 77 at 6-7.

Lovvorn and Ockene make no attempt in their Motion to Strike to demonstrate that FEI's authorities are not in fact dispositive of Lovvorn and Ockene's efforts to escape liability under the RICO statute. Nor do they dispute the point that FEI's citations respond to arguments made for the first time in Lovvorn and Ockene's reply brief. See DE 77 at 6. Indeed, it was perfectly clear from the First Amended Complaint that FEI was suing Lovvorn and Ockene, in part, on the basis of their status as partners in a general partnership engaged in racketeering activity. First

² *United States v. A&P Trucking Co.*, 358 U.S. 121 (1958); *United States v. Bainbridge Mgmt, Inc.*, 2002 U.S. Dist. Lexis 6309 (N.D. Ill. Apr. 10, 2002); *Thomas v. Ross & Hardies*, 9 F. Supp. 2d 547 (D. Md. 1998); *In re American Honda Motor Co.*, 958 F. Supp. 1045 (D. Md. 1997); *United States v. Ansani*, 138 F. Supp. 454 (N.D. Ill. 1956).

Amended Complaint ¶¶ 39, 44-45 (02-16-10) (DE 25) (“FAC”). It should have been equally clear that the multitude of predicate acts alleged in the FAC included actions in which Lovvorn and/or Ockene were personally involved, including the Rule 30(b)(6) deposition of AWI, Rider’s false interrogatory answers, the organizations’ false or misleading interrogatory answers, the payments by HSUS to Rider through WAP and the procurement of Rider’s absence from the 2008 contempt hearings. *Id.* ¶¶ 160-68, 192-216, 223-34. None of this was a mystery to Lovvorn or Ockene. But they feigned ignorance in their opening motion and saved their real arguments for the reply brief after FEI’s opposition had been filed. It therefore was appropriate for FEI to bring to the Court’s attention authorities responsive to these points raised by Lovvorn and Ockene.³

The Motion to Strike should be denied.

Dated: July 7, 2011

Respectfully submitted,

/s/

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³ Lovvorn and Ockene appear to be embarked on a similar course here. But because they fail to demonstrate in their Motion to Strike why FEI’s Notice of Supplemental Authority does not comply with the Court’s Minute Order, they should not be heard to make such points in their reply. In addition, despite their claims of “assiduously play[ing] by the rules laid out by the Court,” DE 79 at 2, Lovvorn and Ockene filed their Motion to Strike in violation of the pre-filing consultation requirements of LCvR 7(m) and without the proposed order required by LCvR 7(c).