

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

PLASTIQUIM, S.A., et al.,

CASE NO: 18-19966 CA

Plaintiffs,

v.

JOHN CHRISTOPHER POLIT, et al.,

Defendants.

**ODEBRECHT GLOBAL SOURCING, INC.'S MOTION TO
DISMISS PLASTIQUIM, S.A., AND MAURICIO NEME'S COMPLAINT**

Plaintiffs seek to take advantage of a satisfied New York court case relating to Odebrecht S.A., by copying the information therein and then demanding groundless compensation from Odebrecht Global Sourcing, Inc., which has no involvement whatsoever in the allegations related to that settlement. Yet, when it comes to Plaintiffs, the Complaint only alleges that Plaintiffs got a favorable loan from non-parties and repaid it—i.e. Plaintiffs did not lose money, but rather gained money. This has nothing to do with Odebrecht Global Sourcing, Inc., and does not create an actionable tort against it. Plaintiffs failed to allege any actual damages, and instead allege that underlying events created only “irreparable harm.” Compl. ¶ 32. This Court cannot monetize irreparable harm. Plaintiffs cite no contract or statute entitling them to payment of their attorneys’ fees by Odebrecht Global Sourcing, Inc. or overcoming the American Rule that each party bears its own fees. Compl. ¶¶ 32–34. Plaintiffs fail to allege any direct causation by Odebrecht Global Sourcing, Inc., and fail to allege any connection of this matter to Florida. Compl. ¶¶ 26, 27, 31, 34, and 45 (alleging all events occurring in Ecuador and Peru).

This is not a sustainable lawsuit or actionable set of allegations against Odebrecht Global Sourcing, Inc. In sum, the Court must dismiss Plaintiffs’ Complaint and quash service, given that plaintiffs failed to state a cause of action on each claim.

Because of the Plaintiffs' pleading failures, Odebrecht Global Sourcing, Inc., is in no position to mount and prepare a defense. Accordingly, the Court must dismiss this improper action as to Odebrecht Global Sourcing, Inc.

BACKGROUND FROM COMPLAINT

Plastiquim and Neme filed a civil action in the 11th Judicial Circuit in Miami Dade County arising out of their participation in a money laundering scheme for C. Polit against C. Polit and a number of unrelated defendants including Odebrecht Global Sourcing, Inc., for (1) fraud, (2) violation of the Federal Racketeer Influenced and Corrupt Organizations Act (**RICO**), (3) civil conspiracy, and (4) violation of Florida's Deceptive and Unfair Trade Practices Act (**FDUTPA**).

Plastiquim and Neme admit that from April through May 2014 they received loans with attractive interest rates from J.C. Polit. Compl. ¶ 22. They further allege that these loans were part of a money laundering scheme for C. Polit. Compl. ¶ 23. They allege that C. Polit, a PetroEcuador official assisted Odebrecht and Odebrecht Ecuador in obtaining government contracts in exchange for kickbacks. They do not clarify what Odebrecht entity they are referring to when they say "Odebrecht" and the entity "Odebrecht Ecuador" does not even exist. In any event Odebrecht Global Sourcing Inc. has no business in Ecuador and would have nothing to do with the actions of a PetroEcuador official. They allege that in order to hide the kickbacks J.C. Polit would recruit individuals to receive loans at favorable interest rates that would then be repaid to Venture, an entity owned and controlled by C. Polit. Compl. ¶¶ 24, 25. Plaintiffs acknowledge that they came under investigation by the Ecuadorian Government for their involvement in this scheme. Compl. ¶ 31.

Plastiquim and Neme laundered money for C. Polit and financially benefitted from this arrangement. Nevertheless, they insist on making extensive reference to Odebrecht S.A.'s payment of bribes in Latin America and their guilty plea in a separate and resolved matter in the

Federal Court in New York. It should be emphasized that Odebrecht Global Sourcing Inc. had nothing to do with this settlement agreement or the allegations therein. They also note that Odebrecht S.A. paid the required fine for separate conduct unrelated to arrangements mentioned in the Complaint that were solely organized and implemented by C. Polit and the Plaintiff's. Compl. ¶ 27-29. None of this has any relation to Odebrecht Global Sourcing Inc.

Despite their general assertions about unrelated and resolved conduct of co-defendant Odebrecht S.A. the specific claims they make are unsupported. The Complaint follows a pattern of asserting legal conclusions without factual support for the basic elements of these assertions.

As to the claims of fraud, Plastiquim and Neme failed to state which specific person at Odebrecht Global Sourcing, Inc., misrepresented which specific fact to which specific person at Plastiquim and Neme, on which date. Plastiquim and Neme only allege that J. Polit “represented [in conversation] to Neme and Plastiquim that the loan would be from legitimate and recognized sources” Compl. ¶ 38. Their Complaint does not even specify in which way this statement is a misrepresentation. It is not clear, if they are alleging that the sources are not “recognized”, or in what way the sources are not “legitimate”. In fact, their Complaint includes no allegations about the sources of the money whatsoever but seems to focus on their purpose instead. Their Complaint does not allege any specific knowledge or involvement of Odebrecht Global Sourcing, Inc., in this arrangement. Plastiquim and Neme also failed to allege justifiable reliance, causation, and damages as to Plastiquim and Neme individually from Odebrecht Global Sourcing, Inc. Compl. ¶¶ 43-48. The damage being claimed appears to arise from their legal defense and reputational harm arising from their own involvement in a money laundering scheme they profited from. Compl. ¶ 47.

Similarly Plaintiff's Federal RICO case relies on the same underlying allegation of Fraud which fails to state which specific person at Odebrecht Global Sourcing, Inc., misrepresented

which specific fact to which specific person at Plastiquim and Neme, on which date. Their Complaint does not allege any specific knowledge or involvement of Odebrecht Global Sourcing, Inc., in this arrangement. They merely assert that fraud consisted of Kleinfeld disguising bribe payments and money laundering as a legitimate loan and that the Plaintiffs made bribe payments to Plastiquim and Neme to the benefit of all of the Defendants. Compl. ¶ 51. In their own allegations they state that the alleged fraud was conducted by Kleinfeld and do not even allege that the defendants participated – they merely claim that the Defendants benefited. At no point do they explain any connection between Odebrecht Global Sourcing, Inc., and these events. They also failed to allege justifiable reliance, causation, and damages as to Plastiquim and Neme individually from Odebrecht Global Sourcing, Inc. Compl. ¶¶ 49-56.

The claim for Civil Conspiracy similarly rests on unsubstantiated and unspecified allegations of Fraud. Compl. ¶¶ 57-59. It merely states there was a conspiracy without any alleged events or support for this statement. This claim again fails to state which specific person at Odebrecht Global Sourcing, Inc., misrepresented which specific fact to which specific person at Plastiquim and Neme, on which date. This cause of action does not allege any specific knowledge or involvement of Odebrecht Global Sourcing, Inc., in this arrangement. Plastiquim and Neme also failed to allege justifiable reliance, causation, and damages as to Plastiquim and Neme individually from Odebrecht Global Sourcing, Inc. Compl. ¶¶ 57-64.

The claim for violations of FDUTPA also relies on an unsubstantiated and unspecified allegation of Fraud. Compl. ¶¶ 65-72. The Complaint again merely alleges that there was statement about the originators of a loan but does not explain how it was false or allege any specific connection between Odebrecht Global Sourcing, Inc., and this specific loan. It also aims to describe a single loan from Kleinfeld as an unfair method of competition by all the defendants that harms the consuming public in Florida. This claim again fails to state which specific person at

Odebrecht Global Sourcing, Inc., misrepresented which specific fact to which specific person at PlastiQuim and Neme, on which date. This cause of action does not allege any specific knowledge or involvement of Odebrecht Global Sourcing, Inc., in this arrangement. PlastiQuim and Neme also failed to allege justifiable reliance, causation, and damages as to PlastiQuim and Neme individually from Odebrecht Global Sourcing, Inc. Compl. ¶¶ 65-78. No actual damages have been alleged by the Plaintiffs arising out of their interactions with Odebrecht Global Sourcing, Inc.

LEGAL STANDARD FOR MOTION TO DISMISS

If a plaintiff fails to perfect service of process, the Court must quash service and dismiss the improperly served parties. *Clauro Enters., Inc. v. Aragon Galiano Holdings, LLC*, 16 So. 3d 1009, 1011 (Fla. 3d DCA 2009).

To withstand a motion to dismiss for failure to state a cause of action, a complaint needs to state ultimate facts sufficient to indicate the existence of a cause of action. *Clark v. Boeing Co.*, 395 So. 2d 1226, 1229 (Fla. 3d DCA 1981). On a motion to dismiss, the trial court is asked to apply the rules of pleading: "[t]he complaint . . . must set forth factual assertions that can be supported by evidence which gives rise legal liability. It is insufficient to plead opinions, theories, legal conclusions, or argument. Furthermore, the assertions are to be stated simply and succinctly." *Barrett v. City of Margate*, 743 So.2d 1160, 1163 (Fla. 4th DCA 1999) (citing *Seaboard Air Line Ry. v. Rents*, 60 Fla. 429 (Fla. 1910)). If the pleader fails to comply with these rules of pleading, the complaint should be dismissed. *Id.* Further, if a document attached to or incorporated into a complaint negates the pleader's cause of action, then dismissing the complaint is also appropriate. *Warren v. Dairyland Ins. Co.*, 662 So. 2d 1387, 1388 (Fla. 4th DCA 1995).

LEGAL ARGUMENT WITH INCORPORATED MEMORANDUM OF LAW

A. Plaintiffs failed to state a cause of action on every claim.

Under Florida law, a claimant must set forth the elements of a claim along with the *supporting facts* to reasonably inform his adversary of what the claimant proposes it will prove, in order to provide the other side with a fair opportunity to meet it with affirmative defenses and prepare his evidence.¹

Under Florida Rule of Civil Procedure 1.110(b), a plaintiff must state the elements and *facts* showing that the pleader is entitled to relief. Fla. R. Civ. P. 1.110(b). The stated facts must be sufficient to support the minimum elements of the cause of action that is plead. Certainty is required when pleading, and pleading conclusions of law unsupported by allegations of ultimate fact is legally insufficient—legal conclusions such as ownership, without allegations of ultimate fact showing the ownership, does not constitute sufficient pleading.² Similarly legal conclusions about fraud in the absence of any indication of any interaction whatsoever between the plaintiff and the defendant do not constitute sufficient pleading. Failure to provide any specific factual allegations subjects the pleading to dismissal.³

A motion to dismiss tests the legal sufficiency of a complaint.⁴ To withstand a motion to dismiss for failure to state a cause of action, a complaint needs to state ultimate facts sufficient to indicate the existence of a cause of action.⁵ On a motion to dismiss, the trial court is asked to apply the rules of pleading: "[t]he complaint . . . must set forth factual assertions that can be supported by evidence which gives rise legal liability. It is insufficient to plead opinions, theories, legal

¹ *Zito v. Washington Fed. Sav. and Loan Ass'n of Miami Beach*, 318 So. 2d 175, 176 (Fla. 3d DCA 1975) (pleading did not set forth claim with requisite degree of certainty); *Cady v. Chevy Chase Sav. and Loan, Inc.*, 528 So. 2d 126, 138 (Fla. 4th DCA 1988) (pleading failed to allege sufficient facts for requisite certainty); *Walker v. Walker*, 254 So. 2d 832, 834 (Fla. 1st DCA 1971) (claimant did not plead sufficient facts to give responding party requisite certainty).

² *Cady v. Chevy Chase Sav. and Loan, Inc.*, 528 So. 2d 136, 138 (Fla. 4th DCA 1988).

³ *Id.*

⁴ *Barbado v. Green & Murphy, P.A.*, 758 So. 2d 1173, 1174 (Fla. 4th DCA 2000).

⁵ *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So. 2d 489, 495 (Fla. 4th DCA 2001).

conclusions, or argument. Furthermore, the assertions are to be stated simply and succinctly."⁶ The complaint should be dismissed if the pleader fails to comply with these rules of pleading.⁷

a. Plaintiffs failed to state a claim for fraud (Count II)⁸ because they failed to state the particular misrepresentation, made by a particular person at Odebrecht Global Sourcing, Inc., to cause actual damages to Plaintiffs.

To state a cause of action for fraud, the plaintiff must allege *with supporting facts*: (a) a false statement of material fact; (b) known by the defendant to be false at the time it was made; (c) made for the purpose of inducing the plaintiff to act in reliance thereon; (d) action by the plaintiff in reliance on the correctness of representation; and (e) resulting damage or injury.⁹ Unless all of the elements are present and properly pled with supporting facts, a Court cannot grant relief for a claim of fraudulent misrepresentation.

In addition, because of litigants' habit of loosely slinging the term "fraud" into pleadings, the law requires that a complaint describe fraud in precise terms. Florida Rule of Civil Procedure 1.120(b) mandates that "the circumstances constituting fraud ... shall be stated with such particularity as the circumstances may permit."¹⁰ This means that plaintiff's complaint must plead with specificity as to the exact misrepresentative statement, its speaker, when he or she made the statements, and how they were fraudulent. In other words, the fraud claim complaint must allege facts showing: (i) exactly who made the false statement, (ii) the exact substance of the false

⁶ *Barrett v. City of Margate*, 743 So.2d 1160, 1163 (Fla. 4th DCA 1999).

⁷ *Id.* at 1163; *List v. St. Petersburg Hotel Ass'n, Ltd.*, 466 So. 2d 1258, 1260 (Fla. 2d DCA 1985).

⁸ Count 1, Fraud in the inducement, is only against J.C. Polit.

⁹ *Nat'l Ventures, Inc. v. Water Glades 300 Condominium Ass'n*, 847 So. 2d 1070, 1074 (Fla. 4th DCA 2003) (holding plaintiff failed to allege fraud where complaint contained no allegations that defendant made false statements of fact which were known to be false); See Also, *Johnson v. Davis*, 480 So.2d 625 (Fla. 1985).

¹⁰ *Thompson v. Bank of New York*, 862 So. 2d 768, 770 (Fla. 4th DCA 2003) (aff'ing dismissal with prejudice where plaintiff failed to plead fraud with sufficient particularity).

statement; (iii) the exact period and date on which it was made; and (iv) the exact context in which the statement was made.¹¹

Acts that affect plaintiff but are not an affirmative false representation to plaintiff cannot give rise to a cause of action for fraud and deceit.¹² Thus, **misstating the motivation for an act is not grounds for fraud**.¹³ Additionally a mere statement of opinion, belief, or expectation, although untrue and resting upon no information, is not such a false representation as to constitute fraud.¹⁴ A misstatement of motivation cannot sustain a claim of fraud but rather a complaint show that there was reliance on an actual false representation.¹⁵

Further, a plaintiff cannot sue for fraud where the defendant in fact paid the amounts in contention and there were no damages from any alleged inducement.¹⁶ Courts have repeatedly emphasized that actual damages are essential as a matter of law in establishing a claim of fraud.¹⁷

¹¹ *Eagletech Commc'ns., Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So. 3d 855, 862 (Fla. 4th DCA 2012) (aff'ing that fraud was insufficiently pled without these facts).

¹² *Am. Int'l Corp. v. Hanna*, 323 So. 2d 567, 569-70 (Fla. 1975); *Schauer v. Gen. Motors Acceptance Corp.*, 819 So. 2d 809, 814 (Fla. 4th DCA 2002) (plaintiff must have relied on the representation to his detriment).

¹³ *Stow v. Nat'l Merchandise Co., Inc.*, 610 So. 2d 1378, 1383 (Fla. 1st DCA 1992).

¹⁴ *Glass v. Craig*, 83 Fla. 408, 91 So. 332, 335 (1922) (holding that "a mere statement of opinion, belief, or expectation, although untrue and resting upon no information, is not such a false representation as to constitute fraud"); *Reimsnyder v. Southtrust Bank, N.A.*, 846 So.2d 1264, 1266 (Fla. 4th DCA 2003) (determining that statements made by bank officer were either not demonstrably false or were mere opinion and thereby not actionable under a fraud claim); *Thor Bear, Inc. v. Crocker Mizner Park, Inc.*, 648 So.2d 168, 172 (Fla. 4th DCA 1994) (finding that a claim for fraudulent misrepresentation is not actionable if premised on mere opinion and not material fact); *Baker v. United Servs. Auto. Ass'n*, 661 So.2d 128, 131 (Fla. 1st DCA 1995) (reasoning that for a claim of misrepresentation to be actionable, it must be of fact rather than opinion); *Wasser v. Sasoni*, 652 So.2d 411, 412 (Fla. 3d DCA 1995) (finding that seller's statements that the building was "a very good building" requiring "normal type of maintenance," and "an excellent deal," were clearly statements of opinion and not fraudulent misrepresentations); *Carefree Vills. Inc. v. Keating Props., Inc.*, 489 So.2d 99, 102 (Fla. 2d DCA 1986) (finding that a seller's statement that he thought the lifetime leases could be broken was nothing more than an opinion, upon which no action for misrepresentation could be grounded).

¹⁵ *American International Land Corp. v. Hanna*, 323 So.2d 567 (Fla.1975).

¹⁶ *Stow v. Nat'l Merchandise Co., Inc.*, 610 So. 2d 1378, 1383 (Fla. 1st DCA 1992) (employer not liable for fraud for inducing signature on bonus payment, where employer in fact paid bonus).

¹⁷ *Nat'l Equip. Rental, Ltd. v. Little Italy Rest. & Delicatessen, Inc.*, 362 So.2d 338, 339 (Fla. 4th DCA 1978) (Stating that it is fundamental that "[a]ctual damages and the measure thereof are essential as a matter of law in establishing a claim of fraud.") See also, *Casey v. Welch*, 50 So.2d 124, 125 (Fla.1951). ("Damage is of the very essence of an action for fraud or deceit."); *Stokes v. Victory Land Co.*, 99 Fla. 795, 128 So. 408 (1930); *Pryor v. Oak Ridge Dev. Corp.*, 97 Fla. 1085, 119 So. 326 (1928); *Wheeler v. Baars*, 33 Fla. 696, 15 So. 584 (1894); *Nat'l Aircraft Servs., Inc. v. Aeroserv Int'l, Inc.*, 544 So.2d 1063 (Fla. 3d DCA 1989); *Nat'l Equip. Rental*, 362 So.2d at 339.

Without proof and pleading of actual damage, the fraud is not actionable. Thus, to prevail in an action for fraud, a plaintiff must properly plead with supporting facts, and prove an actual loss from acting in reliance on the false representation.

Here, the fraud claim is insufficiently pled by the Plaintiffs. At most, it appears that Plaintiffs have claimed fraud on the basis of alleged “conversations that took place between April through May 2014, J.C. POLIT specifically represented to [Plaintiffs] NEME and PLASTIQUIM that the loans would be from legitimate and recognized sources and would be originated by a private company.” Compl. ¶ 38. **Even if we take the entirety of the Complaint as accurate, a claim for fraud must fail as the Complaint itself does not even specify that this statement is false. They do not allege that the source was “unrecognized” they do not allege that the source was “illegitimate”, nor do they allege that someone other than a “private company” originated the money. The Complaint makes no claims about the source of the funds only about their purpose. One party’s personal motivations for a business transaction can never constitute fraud, as those personal motivations do not create a fraudulent misrepresentation upon which the other party relies. The legal elements of fraud and deceit are wholly absent from this Complaint.**

Plainly, Odebrecht Global Sourcing, Inc., did not make the purportedly actionable statements and thus no fraud claim can be sustained against Odebrecht Global Sourcing, Inc. Plaintiffs do not even allege that Odebrecht Global Sourcing, Inc., had any knowledge of these statements. The pleadings fall short of the required specificity needed under Florida Law with respect to all of the Defendants.

Finally, Plaintiffs’ allegations contradict any actual damages and confirm that there are no actual monetary damages. *Plaintiffs allege they gained money, rather than lost money*, when they receive a loan that they requested at favorable rates. Compl. ¶ 21. There are no allegations showing

any actual damages that a monetary award could compensate. Although Plaintiffs broadly allege legal costs, attorney's fees and costs incurred while defending or prosecuting a claim are not recoverable in the absence of a statute or contractual agreement authorizing their recovery.¹⁸

Accordingly, this Court must dismiss this action.

b. Plaintiffs failed to state a Federal RICO claim (Count III) because they failed to allege that Odebrecht Global Sourcing, Inc., committed any violation of 18 USC § 1962 which directly caused actual damages to Plaintiffs.

To properly plead a federal RICO violation, a plaintiff must allege *with supporting facts*: (1) a specific violation of 18 USC § 1962, (2) injury to a business or property, and (3) that the RICO violation caused the alleged injury. For a Florida state RICO violation, the plaintiff must show the Defendant (1) committed a designated crime under the RICO statute, (2) associated with a criminal enterprise and participated in the conduct of that enterprise's affairs, and (3) in so doing, had a pattern of racketeering activity.¹⁹ To show a criminal enterprise, a plaintiff must generally show that there was an ongoing organization with a common purpose of engaging in a course of criminal conduct, which functions as a continuing unit. Additionally, the complaint must demonstrate that the alleged violation caused injury to a business or property.

In this case, Plaintiffs are improperly seeking to use Odebrecht S.A.'s settlement with the New York courts and public as a basis for a personal RICO claim. Yet, Odebrecht Construction Inc., has no involvement in the allegations related to that settlement. **There are no new allegations in this Complaint that connect Plaintiffs directly to Odebrecht Global Sourcing, Inc., and they do not present an independent basis for a violation of 18 USC § 1962 (RICO).** Plaintiffs seem to rely on a insufficiently plead allegation of fraud which, as discussed above, fails for lack

¹⁸ *Price v. Tyler*, 890 So. 2d 246, 250 (Fla. 2004) (holding fees incurred in defense were not recoverable, under the general American Rule); *Bidon v. Dep't of Prof. Reg., Fla. Real Estate Com'n*, 596 So. 2d 450, 452 (Fla. 1992) ("actual or compensatory damages are not defined as including attorney's fees.").

¹⁹ Claimants refer to the Federal Statute despite bringing their claim in a Florida Court.

of any specific misrepresentation, lack of attribution to Odebrecht Global Sourcing, Inc., and a lack of actionable damages.²⁰ The Complaint fails to provide any actionable basis for fraud.

This claim must also fail for lack of causation between any purported underlying wrong and any purported actual damages. Plaintiffs' allegations contradict any actual damages and confirm that there are no actual monetary damages. Plaintiffs allege they gained money, rather than lost money, when they receive a loan that they requested at favorable rates. Compl. ¶ 21. There are no allegations showing any actual damages that a monetary award could compensate. Although Plaintiffs allege legal costs, attorney's fees and costs incurred while defending or prosecuting a claim are not recoverable in the absence of a statute or contractual agreement authorizing their recovery.²¹ Plaintiffs fail to allege any act by Odebrecht Global Sourcing, Inc., that directly caused actual and recoverable damages to Plaintiffs. Accordingly, this Court must dismiss this claim as to Odebrecht Global Sourcing, Inc.

c. Plaintiffs failed to state a claim for conspiracy (Count IV) because they failed to allege an agreement between the parties to undertake an unlawful act that resulted in damages to Plaintiffs.

To properly plead a civil conspiracy, a plaintiff must allege with supporting facts: (1) an agreement between two or more parties, (2) to do an unlawful act or to do a lawful act by unlawful means, (3) the doing of some overt act in pursuance of the conspiracy, (4) damage to the plaintiff as a result of the acts done under the conspiracy, and (5) an underlying tort or wrong. The gist of a civil conspiracy is not the conspiracy itself but the civil wrong done through the conspiracy that results in injury to the plaintiff.²²

²⁰ The Complaint merely and conclusively states that "Defendants violated 18 USC § 1962 by collaborating and jointly perpetrating an ongoing fraud against NEME and PLASTIQUIM...". Compl. ¶ 51.

²¹ *Price v. Tyler*, 890 So. 2d 246, 250 (Fla. 2004) (holding fees incurred in defense were not recoverable, under the general American Rule); *Bidon v. Dep't of Prof. Reg., Fla. Real Estate Com'n*, 596 So. 2d 450, 452 (Fla. 1992) ("actual or compensatory damages are not defined as including attorney's fees.").

²² *Buckner v. Lower Fla. Keys Hosp. Dist.*, 403 So. 2d 1025, 1027 (Fla. 3d DCA 1981) (holding no conspiracy to defame, where plaintiff failed to allege elements to establish a defamation); *Palm Beach Cnty. Health Care Dist. v. Prof. Med. Educ., Inc.*, 13 So. 3d 1090, 1096 (Fla. 4th DCA 2009) (holding that because plaintiff failed to properly

Here, Plaintiffs are again misusing the settlement in New York court with another entity, which did not involve Odebrecht Global Sourcing, as a basis for this Complaint. Merely reciting pleadings in that settled New York court case, which in no way mentions Plaintiffs, nor Odebrecht Global Sourcing cannot create a conspiracy claim for Plaintiffs. Plaintiffs here must properly plead, *with supporting facts*, that there was a coordinated effort to defraud Plaintiffs in such a way that directly caused damages to Plaintiffs. Plaintiffs have failed to do so. Thus, this Court must dismiss this claim as to Odebrecht Global Sourcing, Inc.

d. Plaintiffs failed to state a FDUTPA claim (Count V) because they failed to allege any actual damages, Plaintiffs are not consumers of Odebrecht's goods, and Plaintiffs failed to allege any unfair or deceptive business practice upon Plaintiffs.

To plead a FDUTPA claim, a plaintiff must plead *with supporting facts*: (1) a deceptive or unfair business practice (as defined under the FDUTPA statute), (2) directly causing, (3) actual damages. The purpose of the FDUTPA law is to protect consumers from those who engage in unfair methods of competition.²³ Under the law, an “unfair practice” is one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.²⁴

FDUTPA only allows recovery of actual damages from the consumer transaction. § 501.212(3). Under Florida law, the difference in the market value of the product or service in the condition in which it was delivered and its market value in the condition in which it should have been delivered according to the contract of the parties are the measure of actual damages for

plead a basis for tortious interference with, so too the conspiracy count thereon must fail). An act that does not constitute a basis for an action against one person cannot be made the basis of a civil action for conspiracy. *Id.*

²³ Stat. § 501.202.

²⁴ *Porsche Cars North America, Inc. v. Diamond*, 140 So. 3d 1090 (Fla. 3d DCA 2014)

FDUTPA claims. No consequential damages are available under FDUTPA.²⁵ Proper pleading of actual damages is necessary to sustain a FDUTPA claim.²⁶

Here, Plaintiffs failed to allege any act by Odebrecht Global Sourcing, Inc., which would amount to a deceptive or unfair trade practice under Florida law. There is no specified factual nexus at all between Odebrecht Global Sourcing, Inc., and Plaintiffs as to any purported deceptive or unfair trade practice as recognized under FDUTPA.

Further, there are no actual damages alleged at all, much less any actual damages related to property, which was the subject of any consumer transaction. In fact, the claimants acknowledge that terms of the loan transaction were “attractive”. Compl. ¶ 22. Plaintiffs’ allegations contradict any actual damages and confirm that there are no actual monetary damages. *Plaintiffs allege they gained money, rather than lost money*, when they receive a loan that they requested, in what they thought were legitimate loans. Compl. ¶ 21. There are no allegations showing any actual damages that can be compensated by a monetary award. Accordingly, this Court must dismiss this claim as to Odebrecht Global Sourcing, Inc.

B. Plaintiffs’ claims fail when read altogether as a whole, as the Complaint reflects a shotgun pleading that fails to distinguish individual parties or their individual acts.

Plaintiffs have mashed all Defendants and Plaintiffs together into multiple counts, failing to plead each distinct claim in a separate count for each party, as required by Florida law. *K.R. Exch.* at 893; *Pratus* at 797. Plaintiffs failed to set out facts to support each element as to each individual defendant, thereby prohibiting the Court and each defendant from clearly determining what is being alleged as to each defendant. *Id.* The alleged facts themselves are inconsistent and

²⁵ *Fort Lauderdale Lincoln Mercury, Inc. v. Corgnati*, 715 So. 2d 311 (Fla. 4th DCA 1998).

²⁶ *Rollins, Inc. v. Heller*, 454 So. 2d 580, 585 (Fla. 3d DCA 1984).

self-cancelling, muddling the roles of each defendant and prohibiting each defendant's preparation of its individualized defenses.

Plaintiffs appear to base their claims entirely on already settled matters in the New York Courts by other entity. This settlement cannot be used as a basis for Plaintiffs claim against Odebrecht Global Sourcing, Inc., given that neither Odebrecht Global Sourcing Inc., nor Plaintiffs are never mentioned therein, and Plaintiffs fail to state any factual and actionable nexus between those matters and Plaintiffs' loan.

CONCLUSION

This is not a sustainable lawsuit or actionable set of allegations against Odebrecht Global Sourcing, Inc., given that Plaintiffs failed to state a cause of action on each claim. Plaintiffs' pleading failures prohibit Odebrecht Global Sourcing, Inc., from mounting and preparing a defense. Accordingly, the Court must dismiss this improper action as to Odebrecht Global Sourcing, Inc.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that, in accordance with Fla. R. Jud. Admin. 2.516, a copy of this document was served on December 18, 2018, and re-served with certification of conferral on April 16, 2019, to: Gustavo D. Lage, Esq., glage@smgqlaw.com.

CERTIFICATE OF CONFERRAL

I CERTIFY that, in accordance with the Court's order to confer, on April 1, 2019, the movant's attorney Mr. Pereira met in-person with the respondents' attorneys Augusto Lopez and Gustavo Lage to confer on this pending motion. Consensus could not be reached on the motion or on amendment of the Complaint, and Mr. Lopez advised that the motion must be heard in full. On April 12, 2019, Mr. Pereira sent Mr. Lopez an email requesting confirmation on the amount of time needed for hearing on this motion, to which Mr. Lopez responded that he would ask for a motion response deadline at the April 17, 2019 CMC and then address thereafter.

/s/ Diogo M. Pereira, Esq.

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