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Judge Dismisses State Civil Lawsuit After Finding Conflict With Claim in Prior Federal Criminal Case

BY DANIEL WISE

A LONG Island man who claimed poverty in pleading guilty to drug charges in federal court ten years ago, has been barred from bringing a civil lawsuit in Suffolk County Supreme Court in which he claimed to have had \$600,000 to invest shortly after he was sentenced in 1999.

Applying the doctrine of judicial estoppel, Justice Emily Pines last week barred William Watkins, who served five years in federal prison on the drug charge, from pursuing a lawsuit claiming that a former business partner in a real estate venture had swindled him.

In light of Mr. Watkins' statements concerning his financial condition in 1999, Justice Pines dismissed his lawsuit, saying she could not "imagine a more apt scenario for application of the doctrine of judicial estoppel."

In the civil action filed in 2007, *Watkins v. JC Land Development*, 30678/07, Mr. Watkins claimed that he had invested approximately \$600,000 in the real estate venture within months of his sentencing on drug charges in June 1999.

After pleading guilty in March 1999, Mr. Watkins provided information to the U.S. Department of Parole which concluded in its presentence report that he lacked the financial ability to pay a substantial fine.

Based on the parole agency's report, Southern District Judge Jed S. Rakoff waived an otherwise required fine of between \$10,000 and \$2 million. The U.S. Sentencing Guidelines in 1999 only permitted waiver of a fine for defendants who had established that they were "unable" to pay one, U.S. Sentencing Guidelines §5E1.2(a).

In an attempt to build a case that Mr. Watkins was taking a position at odds with the one he took in



Justice Pines



Judge Rakoff

the criminal case, Matthew J. Barnes, the lawyer who represents John Cenci, Mr. Watkins' alleged business partner, requested in February 2009 that Judge Rakoff release the financial portions of Mr. Watkins' otherwise confidential presentence report.

Mr. Barnes, of Barnes & Barnes in Garden City, also asked for the release of any statements Mr. Watkins made to his parole officers about his finances during the four years he was on parole.

Judge Rakoff granted the request in a June 9 ruling in *Cenci v. Watkins*, 98 CR 1142, finding that disclosure was "necessary to protect the judicial system," given the apparent discrepancies in Mr. Watkins' statements in the two proceedings.

Justice Pines, after reviewing the newly released records, found that Judge Rakoff had "specifically relied on [Mr.] Watkins' assertion of penury in declining to impose an otherwise mandatory fine."

In granting summary judgment dismissing the case on June 19, Justice Pines ruled that Mr. Watkins "will not be permitted to utilize the State Court system to litigate his claims to real property or accountings based on funds he now states he began transferring at the precise time of his contradictory statements to probation, relied upon by a federal judge."

Daniel R. Alonso, a former head of the criminal division in the Eastern District U.S. Attorney's Office, who is now a partner at Kaye Scholer and is not involved in this case, said that lying to a federal probation officer is a felony. But Mr. Watkins is unlikely to face new criminal charges, Mr. Alonso said, because the crime has a five year statute of limitations.

In the state lawsuit, Mr. Watkins claimed that he was a 50-50 partner with Mr. Cenci in JC Land Development, a company the two formed in March 1999, the same month he entered his guilty plea in the federal criminal case.

Mr. Watkins claimed that Mr. Cenci, together with a second defendant, had transferred several properties acquired by JC Land to either themselves or Mr. Cenci's wife for "no adequate consideration."

Mr. Cenci rejoined that he was the sole shareholder in JC Land, and asserted a counterclaim for \$600,000.

Although she dismissed Mr. Watkins' lawsuit, Justice Pines allowed Mr. Cenci to proceed with his counterclaim.

Mr. Watkins was represented by Marc Wasserman of Thaler & Gertler in East Meadow, who declined to comment.

@ Daniel.Wise@incisivemedia.com

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Matthew J. Barnes, Esq.
Barnes & Barnes, P.C.
1461 Franklin Avenue
Garden City, New York 11530
Tel: 516-673-0674
E-Mail: mjb@barnespc.com