

**IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

LARRY KLAYMAN, :
 :
 Plaintiff, :
 :
 v. :
 :
 PGA TOUR, DP WORLD TOUR, JOSEPH :
 WILLIAM MONAHAN IV, and KEITH :
 PELLEY, :
 :
 Defendants. :
 :
 _____ :

Case No. 50-2022-CA-006587

**PGA TOUR AND JOSEPH WILLIAM MONAHAN IV'S
MOTION TO DISMISS**

NOT A CERTIFIED COPY

Pursuant to Fla. R. Civ. P. 1.140(b)(6), Defendants PGA TOUR and its Commissioner, Joseph William Monahan IV (collectively, the “TOUR” or “PGA TOUR”), move to dismiss this action filed by Plaintiff Larry Klayman for failing to state a claim upon which relief can be granted,¹ and state:

Preliminary Statement

Plaintiff—a frequent *pro se* plaintiff in frivolous, ultimately dismissed lawsuits in this Court and elsewhere²—has filed a bare-bones antitrust complaint that fails to meet the fact-pleading requirements under Florida law. Plaintiff claims that the TOUR’s decision to suspend PGA TOUR members who, on June 9, 2022, participated in a professional golf tournament organized by LIV Golf Investments (“LIV”) was intended to prevent LIV from competing against the TOUR in the United States. He further makes the unsupportable assertion that this decision, in turn, somehow caused plaintiff to pay too much for spectator admission tickets to TOUR-sanctioned tournaments since June 9, 2022. Plaintiff alleges that the TOUR’s conduct violated the Florida Antitrust Act, Fla. Stat. §§ 542.18, 542.19.

The complaint has no basis in fact or in law. It is clear that plaintiff brought this suit as a mere publicity stunt; since filing the complaint, plaintiff has been on an active campaign to promote the interests of LIV and its players, including by filing a defamation lawsuit against the media and seeking discovery in this action unrelated to the allegations in the complaint in an effort to gain attention in the media. Plaintiff’s complaint fails in several independent respects, and, for

¹ The TOUR makes this motion on behalf of itself and Commissioner Monahan only.

² See, e.g., Gus Garcia-Roberts, *Larry Klayman, Conservative Wingnut Lawyer, Gets Reprimanded By Florida Bar, Is Broke*, Miami New Times (Nov. 1, 2011), <https://www.miaminewtimes.com/news/larry-klayman-conservative-wingnut-lawyer-gets-reprimanded-by-florida-bar-is-broke-6532819> (“What with all of his insane lawsuits against the Clintons, Facebook, Rachel Maddow, President Obama, and his own mother, conservative Florida activist and lawyer Larry Klayman is pretty damn busy.”).

each of these reasons, this action should be dismissed.

First, the complaint should be dismissed because plaintiff lacks antitrust standing. Supreme Court case law makes clear that consumers do not have antitrust standing to bring suit unless they are a direct purchaser from the alleged antitrust violator. The complaint, however, fails to plead any facts to establish that plaintiff purchased admission to a TOUR-sanctioned golf tournament directly from the TOUR. Tellingly, plaintiff does not allege when and from whom he purportedly purchased his spectator admission tickets for TOUR-sanctioned events in 2022, and he acknowledges that he has not purchased admission tickets for events in 2023 from anyone. As an indirect and prospective purchaser of spectator admission tickets to TOUR-sanctioned golf tournaments, plaintiff lacks standing under the Florida Antitrust Act.

Second, the complaint pleads no facts to support plaintiff's conclusory assertion that defendants' alleged conduct caused the price of spectator admission at TOUR-sanctioned golf tournaments to increase to a supracompetitive level after June 9, 2022. Plaintiff pleads no facts showing the price of spectator admission at any TOUR-sanctioned golf event, either before or after June 9, 2022, and pleads no facts that, if true, would establish that the price of spectator admission at any TOUR event has increased since June 9, 2022.

Third, the complaint pleads no facts to support plaintiff's conclusory assertion that the defendants' alleged conduct caused a lessening of competition in professional golf tournaments in the United States. To the contrary, the complaint expressly acknowledges that LIV is actively competing in the United States, recruiting well-known, highly-ranked golfers and scheduling professional tournaments in the United States and abroad. Plaintiff pleads no facts even to suggest that the suspension of a handful of golfers from participating in TOUR events has deterred LIV or caused it to reduce its competitive efforts in the United States.

Fourth, because Florida law does not recognize civil conspiracy as a freestanding tort, plaintiff's civil conspiracy claim fails for the same reasons his antitrust claims fail.

*Alleged Facts*³

According to the complaint, the TOUR is “the leading organizer of professional golf tournaments in the United States.” (Compl. ¶ 5.) Defendant DP World Tour, located in the United Kingdom, was “formerly known as the PGA European Tour.” (*Id.* ¶ 7.) Plaintiff asserts that, in 2021, the TOUR and the DP World Tour entered into a strategic alliance, pursuant to which the PGA TOUR and the DP World Tour would, among other things, co-sanction the Scottish Open in Scotland and, purportedly, the Barbasol and Barracuda Championships in the United States. (*Id.* ¶¶ 7, 19.) LIV is a professional golf tour operating company that is seeking to compete with the TOUR in the United States. (*Id.* ¶ 16.) LIV held its inaugural professional golf tournament from June 9-11, 2022 in Hertfordshire, England. (*Id.* ¶ 17.) LIV's second tournament was held from June 30-July 2, 2022 in Portland, Oregon, with additional LIV tournaments scheduled for 2022 and 2023. (*Id.*)⁴

According to plaintiff, seventeen TOUR members participated in the LIV inaugural event. (*Id.* ¶ 18.) Plaintiff asserts that, on or about June 9, 2022, the TOUR announced the suspension of

³ Many of the allegations in the complaint are factually inaccurate, but the TOUR accepts them as true for purposes of this motion to dismiss only.

⁴ Plaintiff incorporates the LIV schedule in his complaint by reference, and this Court may thus consider that schedule on this motion to dismiss. *Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So. 3d 1246, 1249 (Fla. 2d DCA 2011). That schedule consists of eight events in 2022, including five LIV tournaments in the United States: Portland, Oregon (June 30-July 2); Bedminster, New Jersey (July 29-31); Boston, Massachusetts (Sept. 2-4); Chicago, Illinois (Sept. 16-18); and Miami, Florida (Oct. 27-30). See Dom Farrell, *LIV Golf tour schedule 2022: Dates, locations for all eight events in the controversial Saudi-backed PGA Tour rival*, The Sporting News (Aug. 1, 2022), <https://www.sportingnews.com/us/golf/news/liv-golf-tour-schedule-2022-dates-locations-prize-money/k8y0uoimtfm96lj6nd0xadhn>. Moreover, LIV has announced that it will expand its schedule in 2023 to fourteen team events and another eleven “International Series” tournaments in cooperation with the Asian Tour, for a total of twenty-five events in 2023 across North and Latin America, Asia, Australia, the Middle East, and Europe. See *LIV Golf Announces 2023 League Launch With 48 Players, 12 Established Team Franchises, 14-Event Schedule*, LIV Golf (July 27, 2022), <https://www.livgolf.com/news/liv-golf-announces-2023-league-launch-48-players-12-established-teams-14-events>.

those seventeen golfers from further eligibility to participate in TOUR-sanctioned tournaments. (*Id.*) Plaintiff also asserts that, on June 24, 2022, the DP World Tour announced that it was fining each of the DP World Tour golfers who participated in the LIV inaugural event approximately \$125,000 and banning them from participating in the upcoming Scottish Open and the Barbasol and Barracuda Championships. (*Id.* ¶ 20.) Plaintiff pleads that, despite the suspensions, LIV has recruited well-known, highly-ranked TOUR members, including Phil Mickelson, Brooks Koepka, Dustin Johnson, Bryson DeChambeau, Patrick Reed, Kevin Na, Charl Schwartzel, Ian Poulter, Lee Westwood, and Sergio Garcia, to play in LIV events. (*Id.* ¶ 22.)

Plaintiff alleges that he purchased spectator admission tickets to three TOUR-sanctioned events: (i) the John Deere Classic, held in Silva, Illinois, on June 30, 2022 (the same weekend as the LIV tournament in Portland, Oregon); (ii) the Barracuda Championship, held in Truckee, California, on July 14-17, 2022; and (iii) the Fortinet Championship, scheduled in Napa Valley, California, on September 16-19, 2022 (the same weekend as the LIV tournament in Chicago, Illinois). (*Id.* ¶ 27.) Plaintiff further alleges that he “is committed” to purchase spectator admission tickets to two TOUR events in 2023: (i) The Honda Classic, scheduled in Palm Beach Gardens, Florida, on February 24-27, 2023; and (ii) The Players Championship, scheduled in Ponte Vedra Beach, Florida, on March 10-14, 2023. (*Id.*) Plaintiff alleges that, as a result of defendants’ alleged conduct, he and other Florida residents paid “supracompetitive prices” for “admission to [TOUR]-organized tournaments in Florida.” (*Id.* ¶ 28.) Critically, plaintiff has not alleged when and from whom he purchased admission tickets for the three events in 2022, or what he paid for those tickets. Nor has he alleged that he has, in fact, purchased tickets for any TOUR event in Florida.

The Class Action Complaint

Plaintiff challenges the suspensions and fines that the TOUR and the DP World Tour imposed on their members who participated in LIV’s London tournament on June 9, 2022.

Specifically, plaintiff alleges that defendants suspended and fined the golfers in an effort to prevent LIV from competing with the TOUR in the United States market for the “organizing, sanctioning, and offering spectators admission to professional golf tournaments.” (*Id.* ¶¶ 24-25, 31-32, 40-41, 47-48, 55-56.) Plaintiff alleges that the suspensions and fines were imposed pursuant to an agreement between the TOUR and DP World Tour to refuse to deal with golfers who participate in LIV events, to exclude LIV from competing in the United States and Europe, and to maintain and preserve the TOUR’s alleged monopoly in the United States. (*Id.* ¶¶ 30, 34, 38, 42, 51-52, 59-62.) Plaintiff brings this action for alleged violation of the Florida Antitrust Act and civil conspiracy law on behalf of himself and a putative class of Florida residents “who, after June 9, 2022, have purchased and/or will purchase spectator admission to professional golf tournaments organized and sanctioned by” the TOUR. (*Id.* ¶ 9.) According to plaintiff, defendants’ conduct caused plaintiff and others to suffer injury “by maintaining supracompetitive prices for spectator admission to PGA TOUR-organized and sanctioned golf tournaments in the United States.” (*Id.* ¶¶ 36, 45, 53, 63, 69.) As demonstrated below, plaintiff’s claims fail and should be dismissed.

Argument

Under Florida law, a plaintiff must plead “a short and plain statement of the ultimate facts showing that the pleader is entitled to relief.” Fla. R. Civ. P. 1.110(b)(2); *James v. Crews*, 132 So. 3d 896, 900 (Fla. 1st DCA 2014) (affirming dismissal where “even a lenient reading of the complaint . . . [did] not reveal the assertion of ultimate facts showing that” the plaintiff was entitled to the relief sought). Although a court must accept a plaintiff’s well-pleaded factual allegations as true for purposes of a motion to dismiss, the court is not required to accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions. *See Point Conversions, LLC v. Omkar Hotels, Inc.*, 321 So. 3d 326, 328 (Fla. 1st DCA 2021) (“Legal conclusions presented as allegations of fact, however, are not deemed true.”). Pleading opinions,

theories, legal conclusions, or arguments are insufficient. *See Toney v. C. Courtney*, 191 So. 3d 505, 507 (Fla. 1st DCA 2016) (noting that “a complaint that simply strings together a series of sentences and paragraphs containing legal conclusions and theories does not establish a claim for relief”) (citation omitted). A motion to dismiss should be granted if it appears that the complaint’s *factual* allegations (as opposed to speculation and legal conclusions), even if true, are inadequate to support a claim that would entitle plaintiff to relief. *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So. 2d 489, 495 (Fla. 4th DCA 2001); *see Bohannon v. Shands Teaching Hosp. & Clinics, Inc.*, 983 So. 2d 717, 721 (Fla. 1st DCA 2008) (affirming dismissal where allegations were unsupported by facts, legally insufficient, and constituted “mere conclusions tracking the language of the statutory definitions”).

I. Plaintiff Has Not Adequately Pleaded Facts To Support His Antitrust Claims.

“[T]he Florida legislature has, in effect, adopted as the law of Florida the body of antitrust laws developed by the federal courts under the Sherman Act.” *St. Petersburg Yacht Charters, Inc. v. Morgan Yacht, Inc.*, 457 So. 2d 1028, 1032 (Fla. 2d DCA 1984) (citing Fla. Stat. § 542.32). Plaintiff alleges that the TOUR has conspired with the DP World Tour in violation of Section 542.18 and has monopolized and attempted to monopolize the market for professional golf tournaments in violation of Section 542.19. Sections 542.18 and 542.19 are analogous to Sections 1 and 2 of the Sherman Act. *Compare* Fla. Stat. §§ 542.18, 542.19 *with* 15 U.S.C. §§ 1, 2. These federal and state statutes require plaintiff to plead facts that, if true, would establish that defendants’ conduct (i) unreasonably reduced competition in a relevant market and (ii) caused plaintiff to suffer antitrust injury, which is injury that results from the reduction in competition. *See Okeelanta Power Ltd. P’ship v. Fla. Power & Light Co.*, 766 So. 2d 264, 267 (Fla. 4th DCA 2000); *accord Spanish Broad. Sys. of Fla. Inc. v. Clear Channel Commc’ns, Inc.*, 376 F.3d 1065, 1071-74 (11th Cir. 2004).

1. Plaintiff Lacks Standing Under The Florida Antitrust Act.

Plaintiff's antitrust claims must be dismissed because plaintiff has not alleged—indeed, cannot allege—that he purchased spectator admission tickets to the three events in July and September 2022 directly from the TOUR. “Florida adheres to the ‘direct purchaser’ rule.” *Mack v. Bristol-Myers Squibb Co.*, 673 So. 2d 100, 102 (Fla. 1st DCA 1996) (denying standing to indirect purchaser under Florida Antitrust Act). The direct purchaser rule, articulated by the United States Supreme Court in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), grants standing to bring a claim for damages under the antitrust law only to the direct purchaser from the alleged antitrust violator; indirect purchasers—purchasers who did not deal directly with the alleged antitrust violator, but who dealt with someone further down the chain of distribution—lack standing to bring such a claim. *Id.* at 728-29. The complaint in this case contains no factual allegations about when and from whom plaintiff purportedly purchased spectator admission tickets to the three TOUR-sponsored events in 2022. And plaintiff readily concedes that he has not purchased any admission tickets for TOUR-sanctioned events for 2023 from anyone. (Compl. ¶ 4.) In the absence of factual allegations that he purchased spectator admission tickets directly from the TOUR, plaintiff lacks antitrust standing to assert a viable damages claim under the Florida Antitrust Act. *Mack*, 673 So. 2d at 102.

2. Plaintiff Has Not Adequately Pleaded Facts To Support His Conclusion That Defendants' Conduct Caused TOUR Golf Tournament Ticket Prices In The United States To Increase Above A Competitive Level.

Plaintiff's claims fail for the additional reason that he pleads no facts that, if proven, would establish that defendants' suspension of several golfers caused the price of admission tickets for any TOUR-sanctioned event after June 9, 2022, to rise to an artificially inflated level. Indeed, plaintiff pleads no facts whatsoever about the price of spectator admission tickets at TOUR-sanctioned tournaments. He does not allege what he paid for the tickets that he purportedly bought

for events in July and September. And he does not allege what he expects to pay for tickets next year. Nor does he allege facts that, if proven, would establish that the price of admission tickets at any TOUR event has changed in any way since June 9, 2022. In the absence of *factual allegations* (not conjecture or conclusory assertions) showing that the golfers' suspensions caused the spectator admission tickets that he purportedly purchased for three TOUR events in July and September to increase above a competitive level, plaintiff has failed to state a viable antitrust claim.

3. *Plaintiff Has Not Adequately Pleaded Facts To Support His Conclusion That Defendants' Conduct Lessened Competition In The United States Market For Professional Golf Tournaments.*

Plaintiff's claims fail for the independent reason that he pleads no facts that, if true, would show that defendants' suspension of several golfers caused a reduction in competition in the United States market for professional golf tournaments. In fact, that conclusory assertion is contradicted by plaintiff's factual allegations that LIV is actively competing with the TOUR in the United States by recruiting well-known, highly-ranked professional golfers and scheduling golf tournaments. (Compl. ¶¶ 17, 22.) Indeed, the complaint identifies ten such golfers and asserts that "[m]ore are expected to join the LIV Golf tour." (*Id.* ¶ 22.) Plaintiff concedes that LIV has scheduled several professional golf tournaments in 2022 and more in 2023. As noted above, LIV's tournament schedule includes eight tournaments in 2022, including five in the United States, with two of those events competing directly on the same weekends with TOUR tournaments for which plaintiff allegedly purchased admission tickets. And LIV has increased its schedule for 2023 to twenty-five tournaments, including fourteen team events, many of which will take place in the United States, and eleven "International Series" events in cooperation with the Asian Tour. Plaintiff pleads no facts that, if proven, would even suggest that LIV has curtailed its competitive vigor in the United States or that LIV will not succeed in its competitive efforts. In the absence of *factual allegations* (as opposed to speculation and mere conclusory assertions) showing that the golfers'

suspensions caused a reduction in competition in the United States professional golf tournament market, plaintiff has failed to state a viable antitrust claim.

II. Plaintiff Has Not Adequately Pleaded Facts To Support His Civil Conspiracy Claim.

“Florida does not recognize civil conspiracy as a freestanding tort.” *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018) (citation omitted). “The gist of a civil conspiracy is not the conspiracy itself, but the underlying civil wrong occurring pursuant to the conspiracy and which results in the plaintiff’s damages.” *Id.*; *Marriott Int’l, Inc. v. Am. Bridge Bahamas, Ltd.*, 193 So. 3d 902, 909 (Fla. 3d DCA 2015). An alleged “civil conspiracy” does not give rise to an independent cause of action, but is merely a vehicle to allow a plaintiff to spread liability to those involved in causing the underlying tort. *See Lorillard Tobacco Co. v. Alexander*, 123 So. 3d 67, 80 (Fla. 3d DCA 2013) (“Conspiracy is not a separate or independent tort but is a vehicle for imputing the tortious acts of one coconspirator to another to establish joint and several liability.”) (citation omitted). Accordingly, a civil conspiracy plaintiff must plead facts that, if proven, would establish the underlying tort. And because a civil conspiracy claim is “inextricably linked with the underlying tort” (*Banco de los Trabadores*, 237 So. 3d at 1136 (citation omitted)), it fails to state a claim for relief if the factual allegations in the complaint fail to state such a claim as to the underlying tort.

Plaintiff’s civil conspiracy claim thus fails for the same reasons as his antitrust claims fail: he pleads no facts that, even if proven, would show that defendants’ conduct caused a lessening of competition or an increase in spectator admission ticket prices for TOUR-sanctioned events that, in turn, caused injury to plaintiff. Even assuming the truth of plaintiff’s few factual allegations, plaintiff has not pleaded any facts that, if proven, would establish that defendants’ conduct caused spectator admission ticket prices to increase to supracompetitive levels after June 9, 2022, or caused LIV to compete less vigorously against the TOUR in the United States. As explained

above, the complaint's factual allegations make clear that LIV is competing aggressively and successfully to recruit well-known, highly-ranked golfers to participate in its tournaments, has scheduled its inaugural international 2022 season with five tournaments in the United States, and has scheduled additional tournaments in the United States and abroad for 2023. (Compl. ¶¶ 17, 22.) Plaintiff pleads no facts to suggest that LIV has pulled its competitive punches or has been hampered in the rollout of its golf tournaments by defendants' suspensions of certain golfers. Furthermore—and critically for plaintiff's case—the complaint contains no factual allegations even to suggest that the suspension of a handful of golfers from TOUR events has had any impact whatsoever on the price of spectator admission at TOUR-sanctioned events in the United States. In the absence of some facts on which to predicate a finding of reduced competition for professional golf tournaments in the United States and harm to plaintiff and other Florida ticket buyers, plaintiff cannot state an antitrust claim and, by extension, cannot state a claim for civil conspiracy under Florida law.

Conclusion

For the foregoing reasons, this Court should dismiss this action with prejudice.

Dated: September 2, 2022

Respectfully submitted,

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