

EXHIBIT “C”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WADE ROBERTSON,

Plaintiff,

v.

WILLIAM C. CARTINHOOR, JR. et al.,

Defendants.

Civil Action No. 11-1919 (ESH)

MEMORANDUM OPINION

This case involves parties and events that have been before this and other courts many times. Previously, Wade Robertson sued William Cartinhour in this Court, but the jury found against Robertson and returned a verdict in Cartinhour's favor for \$3.5 million in compensatory damages and \$3.5 million in punitive damages for breach of fiduciary duties as a partner and as a lawyer and for legal malpractice. Now, Robertson has sued Cartinhour and the lawyers who represented him, as well as several of Cartinhour's Serbian associates. In this new suit, which was originally filed in the Southern District of New York, Robertson recasts as a conspiracy the events underlying the first suit, seeking to recover \$3.83 million in damages based on claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, and for fraud, defamation, and tortious interference. Defendants have filed motions to dismiss all counts which, for the reasons set forth, will be granted.¹

¹ All defendants have moved to dismiss except for Vesna Kustodic, Tanja Milicevic, and Aleksander Popovic. To date, only Tanja Milicevic has been served and default was entered on February 23, 2012.

BACKGROUND

I. ROBERTSON I

A. Factual Background

The facts giving rise to the instant suit have been detailed in a raft of opinions, but most comprehensively in *Robertson I*, 691 F. Supp. 2d 65, 68 (D.D.C. 2010), and *In re W.A.R. LLP*, No. 11-cv-1574, 2012 U.S. Dist. LEXIS 9565 (D.D.C. Jan. 27, 2012).² The long and tortured history of Robertson's relationship with Cartinhour and proceedings in appellate, district, and bankruptcy courts need not be restated at length here, but a summary of the factual and procedural history of Robertson's attempts to stop Cartinhour from recovering his \$3.5 million investment in W.A.R., LLP ("WAR") is necessary to address the instant motions.

In September 2004, Robertson, an attorney, and Cartinhour, an 82-year-old retired physician, entered into a partnership, WAR, to invest in class action securities litigation. *Robertson I*, 691 F. Supp. 2d at 68. From September 2004 to April 2006, Cartinhour contributed a total of \$3.5 million. *Id.* From September 2004 to August 2009, Robertson allegedly contributed legal services, which he values at \$3.83 million, almost entirely in the class action

² See also *Robertson v. Cartinhour*, 429 Fed. Appx. 1 (D.C. Cir. 2011); *In re Robertson*, No. 10-cv-5231, 2010 U.S. App. LEXIS 19454 (D.C. Cir. Sept. 15, 2010); *Robertson v. Cartinhour*, Nos. 10-cv-7015, 10-cv-7016, 10-cv-7044, 2010 U.S. App. LEXIS 10037 (D.C. Cir. May 14, 2010); *Robertson v. Cartinhour*, No. 10-cv-7017, 2010 U.S. App. LEXIS 25024 (D.C. Cir. Mar. 15, 2010); *Robertson v. Cartinhour*, No. 09-cv-1642 (Sept. 16, 2011); *Robertson v. Cartinhour*, No. 09-cv-1642 (July 19, 2011); *Robertson v. Cartinhour*, No. 09-cv-1642, 2011 U.S. Dist. LEXIS 31959 (D.D.C., Mar. 28, 2011); *Robertson v. Cartinhour*, No. 09-cv-1642 (Dec. 30, 2010); *Robertson v. Cartinhour*, No. 09-cv-1642 (May 17, 2010); *Robertson v. Cartinhour*, 711 F. Supp. 2d 136, 137 (D.D.C. 2010); see also *In re W.A.R. LLP*, No. 11-00044, 2011 Bankr. LEXIS 2650 (Bankr. D.D.C. July 11, 2011); *In re W.A.R. LLP*, 2011 Bankr. LEXIS 2599 (Bankr. D.D.C. July 6, 2011); *In re W.A.R. LLP*, No. 11-00044, 2011 Bankr. LEXIS 2448 (Bankr. D.D.C. June 23, 2011); *In re W.A.R. LLP*, No. 11-00044, 2011 Bankr. LEXIS 2273 (Bankr. D.D.C. June 15, 2011); *In re W.A.R., LLP*, No. 11-00044, 2011 Bankr. LEXIS 850 (Bankr. D.D.C. Mar. 16, 2011). All of the bankruptcy, district and appellate court proceedings associated with this first suit will be cited hereinafter as "*Robertson I*."

securities suit *Liu v. Credit Suisse First Boston Corp.*, No. 04-cv-03757 (S.D.N.Y. 2004). *Id.* at 68–69. Ultimately, the *Liu* case was dismissed and, as a result, WAR recovered nothing. *Id.* at 69; *Robertson I*, 2012 U.S. Dist. LEXIS 9565, at **9–10.

Even though the *Liu* litigation was dismissed by the district court in April 2005, Cartinhour contributed his final \$1.5 million to WAR in April 2006 and, that same month, by Robertson’s request, Cartinhour signed three agreements. *Robertson I*, 691 F. Supp. 2d at 68–69. The first, the Indemnification Agreement, purported to release Robertson from all claims by Cartinhour for “any future injuries, losses, or damages not known or anticipated” and required Cartinhour to indemnify him for any damages if he filed suit against him. *Id.* at 68–69.³ The second was an amended partnership agreement giving Robertson “exclusive” control over WAR and allowing partners to take out interest-free loans from WAR without having to repay them until the partnership was liquidated. *Id.* at 69 n. 5. Third, Cartinhour signed an “Attestation and Certification of No Attorney-Client Relationship with Wade Robertson,” which relinquished any claims that Cartinhour may have against Robertson “that could arise from any attorney-client relationship, whether actual or mistakenly assumed, or otherwise.” *Id.* at 70. One month later,

³ The Indemnification Agreement, provided that it would “release, acquit, and forever discharge Wade A. Robertson personally” from

any and all past, present and future claims, counterclaims, demands, actions, causes of action, liabilities, damages, costs, loss of services, expenses, compensation, third-party actions, suits at law or in equity, of every nature and description, whether known or unknown, suspected or unsuspected, foreseen, or unforeseen, real or imaginary, actual or potential, and whether arising at law or in equity, under the common law, state or federal law, or any other law, or otherwise, including, but not limited to, any claims that have been or might have been asserted as a result of any relationship[.]

Id. at 69 n. 4 (alternation in original).

the Second Circuit affirmed the district court's dismissal of *Liu* and the Supreme Court thereafter denied certiorari. *Id.* at 69.

Despite failures in the *Liu* litigation and unbeknownst to Cartinhour, Robertson borrowed \$3.405 million from the partnership via two interest-free loans, the repayment of which was not due until January 2030 and January 2040, respectively. *Robertson I*, 429 Fed. Appx. at 1. He deposited this money into an account opened in his own name and quickly lost \$1.9 million of this money in the stock market. *See Robertson I*, Preliminary Injunction Hearing Tr. 93:3–6 (D.D.C. Mar. 26, 2010). All of the money for the loans to Robertson came from Cartinhour's investment. *Robertson I*, 2012 U.S. Dist. LEXIS 9565, at *13.

After the *Liu* litigation collapsed, Robertson stopped responding to Cartinhour's inquiries about the status of the case and his investment. *Robertson I*, 691 F. Supp. 2d at 69. Finally, on January 9, 2009, and February 6, 2009, Cartinhour's attorney, Albert Schibani, wrote a letter demanding that Robertson return Cartinhour's money. (Compl. ¶ 72.) When Robertson did not comply, another one of Cartinhour's attorneys, Carlton Obecny of the law firm Selzer Gurvitch Rabin & Obecny ("SGRO"),⁴ sent two demand letters in August 2009 and threatened to file suit. (*Id.* ¶ 76.) Robertson still did not return the money. *Robertson I*, 691 F. Supp. 2d at 69.

B. *Robertson I*

Instead, on August 28, 2009, Robertson filed suit in this Court, seeking a declaratory judgment that he was not liable for Cartinhour's investment in WAR based on the agreements signed by Cartinhour in April 2006 that supposedly authorized him to take interest-free loans and released him from all liability. SGRO, on Cartinhour's behalf, answered,

⁴ Obecny, Dattaro, Gurvitch, Polott, Rabin, Strickland, and Kearney are shareholders and managers of SGRO. (*Id.* ¶ 18.) Defendant Bramnick is a SGRO employee with some management responsibilities. (*Id.*)

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