

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO.: 1:13-cv-22589-KMW

MIGUEL ANGEL CORBACHO
DAUDINOT

Plaintiff,

v.

YASIEL PUIG VALDES a/k/a
YASIEL PUIG and MARITZA
VALDES GONZALEZ,

Defendants.

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendants, Yasiel Puig Valdes a/k/a Yasiel Puig and Maritza Valdes Gonzalez, hereby move to dismiss plaintiff's second amended complaint ("SAC"). [DE 24].

Introduction

On December 20, 2013, the Court entered an order requiring plaintiff to file a second amended complaint addressing the pleading deficiencies identified by the Court at the hearing on defendants' motion to dismiss plaintiff's first amended complaint ("Order"). [DE 23.] Specifically, the Court ordered plaintiff to set forth with particularity the facts supporting his claim that defendants entered into an agreement with the Cuban government to torture plaintiff. (Order at 2.)

I. Plaintiff has again failed to plead secondary liability under the TVPA.

Although this latest iteration of plaintiff's complaint contains incendiary (and false) allegations intended to paint Mr. Puig in a negative light, nowhere does plaintiff provide any factual specificity, as he must, to support the central allegation of his case – namely, that defendants entered into an agreement with the Cuban government to torture plaintiff. See *In re Chiquita Brands Int'l Alien Tort Statute and Shareholder Deriv. Litig.*, 792 F. Supp. 2d 1301, 1344 (S.D. Fla. 2011).

Instead, plaintiff resorts to crafty draftsmanship, alleging that Mr. Puig met with Cuba's baseball commissioner, "who guaranteed to Puig that he would be reinstated into the National baseball team as well as the national series team if he became an informant for the government, accusing people of Human Trafficking, and ensuring their imprisonment and torture." (SAC ¶ 235; see also SAC ¶ 130.)

Of course, claiming that Mr. Puig was told he could again play on the national team if he became an informant is not the same as alleging that Mr. Puig agreed to plaintiff's torture. The Court will note that plaintiff's mealy-mouthed allegation does not state that the subject of torture was actually discussed during this alleged meeting. This is hardly an inconsequential omission, given that in the very next paragraph plaintiff alleges that "Puig met with [the baseball commissioner] and state security officers on many occasions to collaborate on accusations of Human Trafficking against several individuals," yet never mentions a discussion about torture in any of these meetings. (SAC ¶ 236; see also SAC ¶ 131.)

Put simply, plaintiff is again asking the court to indulge him in his factually unfounded supposition that defendants must have agreed to plaintiff's torture at the

hands of the Cuban government when they agreed to testify against plaintiff. That does not suffice. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289 (11th Cir. 2007) quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (“factual allegations must be enough to raise a right to relief above the speculative level”).

II. Plaintiff’s allegations still fail to meet the TVPA’s definition of torture.

Defendants moved to dismiss the previous iteration of plaintiff’s complaint on the ground that plaintiff’s allegations regarding his harsh treatment in the Cuban prison system did not satisfy the TVPA’s stringent standard for pleading “torture.” Because the second amended complaint’s allegations failed to correct this deficiency, (see SAC ¶¶ 101 and 103), defendants renew their argument as to the insufficiency of plaintiff’s torture allegations.¹

Without belaboring the point, the TVPA specifically defines “torture” as “any act, directed against an individual in the offender’s custody or physical control by which *severe pain or suffering* . . . whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession . . . intimidating or coercing that individual.” 28 U.S.C. §1350, note § 3(b)(1) (emphasis added). “Mental pain or suffering,” in turn, is defined as “prolonged mental harm caused by or resulting from the intentional infliction or threatened infliction of *severe physical pain or suffering* . . . [or] the threat of imminent death.” TVPA, 28 U.S.C. § 1350, note § 3(b)(2) (emphasis added).

Merely alleging physical pain and suffering or mental harm arising out of harsh

¹ See Order at 3 (“If Defendants choose to file a Motion to Dismiss the Second Amended Complaint, Defendants need not re-file or re-submit those arguments already made to the Court; previous motions will be considered. However, Defendants may file a supplement regarding any additional allegations made by Plaintiff.”)

prison conditions is not sufficient to constitute torture. The alleged mistreatment must also be “severe,” “extreme” and “unusually cruel.” See 28 U.S.C. § 1350, note 3(b)(1); see, e.g., *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1322-40 (N.D. Ga. 2002) (describing mental harm caused by daily savage beatings with objects which went on for months, having teeth extracted with pliers, being forced to play Russian Roulette, being shot at, but having bullets go over victim’s head, carrying away bodies of fellow prisoners who were beaten to death, being forced to eat religiously forbidden food, and being forced to lick own blood off the boots of the oppressor.)

Because the second amended complaint is devoid of any such allegations, it must be dismissed. See, e.g., *Simpson v. Socialist People’s Libyan Arab Jamahiriya*, 326 F.3d 230, 234 (D.C. Cir. 2003) (dismissing claim for torture as that term is used in the TVPA). If plaintiff’s “torture” allegations here are deemed sufficient to state a claim under the TVPA, every prisoner in Cuba, or anywhere else in the world where prison conditions are harsh, is free to bring a TVPA claim in this Court (especially if the TVPA is applied extraterritorially, as urged by plaintiff). Plainly, the TVPA does not countenance such a result. Congress did not intend for the United States District Courts to sit in judgment as to prison conditions in other countries.

III. The TVPA does not apply extraterritorially to the facts alleged.

Finally, defendants restate their argument that, pursuant to *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013), and *Murillo v. Bain*, 2013 WL 1718915 (S.D. Tex. 2013), the TVPA has no application to the facts alleged here.

Again, this is an action brought by a Cuban citizen who was arrested in Cuba, was tried and convicted in Cuba, and is currently serving a prison sentence in Cuba, all as a result of allegedly false testimony given by defendants in Cuba regarding acts that

took place in Cuba. This action has nothing to do with the United States and, as such, the TVPA has no application here. See *Murillo* at *3 (“This case has nothing to do with the United States. The parents of a deceased Honduran are suing a Honduran politician, complaining about the Honduran army’s behavior at a Honduran airport. American laws like the ... Torture Victim Protection Act are presumed not to apply beyond the borders of the United States.”)

Conclusion

For these reasons, and for the reasons set forth in defendants’ previous motion to dismiss (which is incorporated by reference), plaintiff’s second amended complaint must be dismissed, with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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