

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KAREN McPETERS, individually, and on §
behalf of those individuals, persons and entities §
who are similarly situated §
Plaintiff §

vs. §

CIVIL ACTION NO. 4:10-CV-01103

JURY

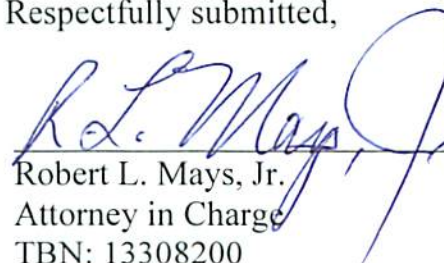
THE HONORABLE FREDERICK E. §
EDWARDS; BARBARA GLADDEN §
ADAMICK, DISTRICT CLERK; §
MONTGOMERY COUNTY, TEXAS, and §
REED ELSEVIER, INC. d/b/a LexisNexis §
Defendants §

PLAINTIFF'S HEARING BRIEF No. 7 -
LEXISNEXIS CHARGES ARE CRIMINAL ACTS

Plaintiff Karen McPeters submits the attached brief as the law and evidence
in support of her request that Defendants' Rule 12(b)(6) motions be denied.

Date: December 9, 2010

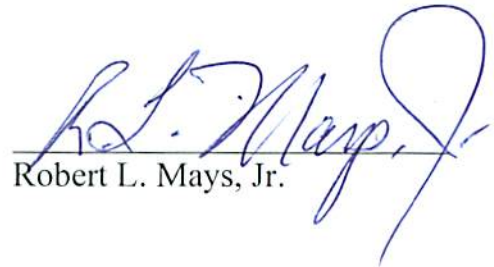
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I hand delivered a copy of this "Plaintiff's Hearing Brief No. 7 – LexisNexis Charges Are Criminal Acts" on December 9, 2010 to each counsel for Defendant present at the hearing.


Robert L. Mays, Jr.

Extortion as a RICO Element

18 U.S.C.A. § 1961

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;

Texas Penal Code

§ 31.02. Consolidation of Theft Offenses

Theft as defined in Section 31.03 constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

§31.03. Theft

(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent;

§31.01(3)

(3) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

§1.07(9)

(9) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense;

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

§1.07(41)

(41) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) **an officer, employee, or agent of government;**

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

§ 31.09. Aggregation of Amounts Involved In Theft

When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as **one offense and the amounts aggregated in determining the grade of the offense.**

§31.03(e)(5)

(5) a felony of the third degree if the value of the property stolen is **\$20,000 or more** but less than \$100,000

§ 12.34. Third Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than **2 years.**

§ 7.01. Parties to Offenses

(a) **A person is criminally responsible as a party to an offense** if the offense is committed by his own conduct, by the **conduct of another** for which he is criminally responsible, or by both.

(b) Each party to an offense may be charged with commission of the offense.

(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

§ 7.02. Criminal Responsibility for Conduct of Another

(a) A person is criminally responsible for an offense committed by the conduct of another if:

(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

No Particular Unlawful Conduct Required

"Although section 31.03(a) uses the term "unlawfully" in defining the elements of the offense, section 31.03(b) specifically defines when the appropriation of property is "unlawful" in relation to the offense of theft. TEX. PEN.CODE ANN. § 31.03(b) (Vernon Supp.2008). The appropriation of property is "unlawful" when it is without the owner's effective consent. *Id.* Therefore, the State was not required to generally prove that Roberts's conduct was criminal or tortious. Instead, the State was required to establish that Roberts appropriated property without the owner's effective consent."

Roberts v. State, 278 S.W.3d 778, (Tex.App.-San Antonio, 2008, pet. refused)