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Case Number: 25-BC03A-0007

THE BUSINESS COURT OF TEXAS,
THIRD DIVISION

JERRY B. REED.	§	
	§	
Plaintiff,	§	
	§	Cause No. 25-BC03A-0007
v.	§	
	§	
	§	
ROOK TX, LP, et al.	§	
	§	
Defendants.	§	

DEFENDANTS ROOK TX LP AND ROOK GP LLC'S
RULE 91a MOTION TO DISMISS

Plaintiff Jerry B. Reed ("Plaintiff") claims that despite winning $7.5 million dollars following the May 17, 2023 Lotto Texas jackpot, he is entitled to more. To support his contention that his "May 17th jackpot win would have been $102.5 million instead of $7.5 million," Plaintiff alleges a series of unsubstantiated criminal allegations, speculatory untruths, and sheer conjecture. Plaintiff asserts that had there not been a winner in the April 22, 2023 Lotto Texas jackpot, he would have been entitled to those sums. But Plaintiff states these conclusory assumptions without connecting any dots. Because he can't.

Plaintiff brings claims against Defendants Rook TX LP and Rook GP LLC (collectively "Defendants") for (1) money had and received, (2) conspiracy, (3) aiding and abetting, (4) assisting and participating, (5) concert of action, and (6) negligence per se. While Plaintiff's Second Amended Petition[1] alleges a plethora of purported "facts," a closer look at Plaintiff's allegations makes it clear that there is no link between the alleged conduct and the claims against Defendants.

[1] Defendants Rook TX LP and Rook GP LLC file this motion based on the allegations in Plaintiff's live pleading, which is his Second Amended Petition. Plaintiff served Defendants Rook TX LP and Rook GP LLC with its Original Petition on April 19, 2025. However, Plaintiff never served Defendants with its First Amended Petition or Second Amended Petition.

Because Plaintiff bases his claims on mere conclusory allegations, those claims have no basis in law or fact. Accordingly, this lawsuit should be dismissed under Texas Rule of Civil Procedure 91a.

ARGUMENTS AND AUTHORITIES

Rule 91a of the Texas Rules of Civil Procedure provides that a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. TEX. R. CIV. P. 91a.1. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them do not entitle the claimant to the relief sought. *Id.* A cause of action has no basis in fact if no reasonable person could believe the facts as pled. *Id.* In ruling on a Rule 91a motion, a court may not consider evidence and must decide the motion based solely on the petition. TEX. R. CIV. P. 91a.6.

Courts have addressed petitions that, like Plaintiff's, rely on conclusory allegations. A claim has no basis in law when the petition alleges too few facts to show a viable, legally cognizable right to relief. *Stallworth v. Ayers*, 510 S.W.3d 187, 190 (Tex. App.—Houston [1st Dist.] 2016, no pet.). Even when a petition alleges a plethora of facts, the analysis is not on the length of the petition or substantive allegations, but whether the causes of action are made up of conclusory statements. *Fiamma Statler, LP v. Challis*, No. 02-18-00374-CV, 2020 WL 6334470, at *1 (Tex. App.—Fort Worth Oct. 29, 2020, pet. denied) (mem. op.). "Unadorned recitals of the elements of a cause of action, supported by mere conclusory statements, fail to sufficiently allege a cause of action under the fair-notice and Rule 91a standards." *Id.* at 12. "In other words, inadequate content may justify dismissal because it does not provide fair notice of a legally cognizable claim for relief." *Id.* at 8.

Plaintiff alleges two claims and four theories of derivative liability. For the following reasons, all of Plaintiff's causes of action should be dismissed under Rule 91a.

A. Plaintiff's claim for money had and received has no basis in law because Plaintiff fails to show how he is entitled to the lottery proceeds.

Money had and received is an equitable doctrine designed to prevent unjust enrichment. *Merry Homes, Inc., v. Luc Dao,* 359 S.W.3d 881, 884 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (citing *London v. London,* 192 S.W.3d 6, 13 (Tex. App.—Houston [14th Dist.] 2005, pet. denied)). This cause of action arises only when a party obtains money that, in equity and good conscience, belongs to another. *Id.* (citing *Hunt v. Baldwin,* 68 S.W.3d 117, 132 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

Plaintiff alleges that "Defendants hold money that, in good conscience, belongs to Plaintiff." Sec. Am. Pet. ¶ 58. Plaintiff further alleges that "by illegally rigging the game to win the $95 million jackpot on March 22, 2023 [sic], Defendants reduced the size of the Lotto Texas jackpot won by Plaintiff on May 17, 2023, and therefore deprived Plaintiff of that money." *Id.* But Plaintiff provides no factual detail for his contention that the $95 million belonged to him. Plaintiff does not allege that he is the winner of the April 22, 2023 Lotto Texas jackpot; therefore, Plaintiff cannot establish that he is entitled to the April 22, 2023 winnings. Instead, Plaintiff argues that as the May 17, 2023 winner he should get the winnings from a month earlier. But Plaintiff has failed to provide any factual basis to support this theory. The purported "facts" in Plaintiff's Second Amended Petition are nothing more than inflammatory speculative statements.

For example, Plaintiff's allegation of criminal wrongdoing lacks merit. Plaintiff points to nothing other than his *opinion* to support his statement that the game was "illegally rigged." Plaintiff *claims* that if there was not a winner in the April 22, 2023 Lotto Texas drawing, that money "would have rolled over" into the money he won on May 17, 2023. Sec. Am. Pet. ¶ 57. But

Plaintiff's conclusion relies on stacked assumptions. He wrongly assumes that Defendants broke the law. He assumes that Defendants should not have won the April 22, 2023 drawing despite holding the winning ticket. He assumes that there would have been no intervening winner, and he also assumes that Plaintiff would have been the only winner in the May 17, 2023 drawing—a fact that is not necessarily true if, as Plaintiff claims, the potential winnings should have been substantially larger. The problem with these assumptions is that they are not facts.

Because Plaintiff makes conclusory allegations unsupported by anything other than assumptions and opinions, his claim for money had and received has no basis in law and must be dismissed.

B. Plaintiff's claim for negligence per se has no basis in law because Defendants do not owe a legal duty to Plaintiff.

The threshold inquiry in a negligence case is duty. *In re Luminant Generation Co.*, Nos. 01-23-00102-CV, 01-23-00103-CV, 2023 WL 8630982, at *4 (Tex. App.—Houston [1st Dist.] Dec. 14, 2023, orig. proceeding) (citing *Elephant Ins. Co. v. Kenyon*, 644 S.W.3d 137, 145 (Tex. 2022)). "A duty is a legally enforceable obligation to conform to a particular standard of conduct and can be assumed by contract or imposed by law." *Id.* (citing *Helbing v. Hunt*, 402 S.W.3d 699, 702 (Tex. App.—Houston [1st Dist.] 2012, pet. denied)). To determine whether a defendant owes a particular legal duty to a claimant, a court must first determine whether the law has recognized such a duty under the same or similar circumstances. *In re Luminant Generation Co.*, 2023 WL 8630982, at *4.

Here, Plaintiff does not allege a legal duty imposed by contract or common law. Instead, Plaintiff cites to several provisions of the Texas Government Code as the basis for his negligence per se claim. Notably, however, none of the sections cited by Plaintiff confer a duty on Defendants, nor are they a basis for a duty owed to Plaintiff. Rather, Plaintiff alleges that the "statutes and

administrative regulations aim to ensure fairness and integrity in Texas Lottery games and to prevent cheating." Sec. Am. Pet. ¶¶ 63-67. But this is not enough to establish that Defendants somehow owed a legal duty to Plaintiff under a negligence theory. Simply put, Plaintiff cannot establish a legal duty owed to it by Defendants under Texas law. Because there is no legal duty, Plaintiff's negligence per se claim has no basis in law and should be dismissed under Rule 91a.

C. Plaintiff's theories of vicarious liability all fail.

Plaintiff asserts four other theories of liability. But each theory attempts to hold some Defendants liable for the acts of other Defendants. Because there is no sufficient pleading of underlying torts, each theory of vicarious or derivative liability fails.

a. Plaintiff's claim for conspiracy is conclusory and fails to identify an underlying tort, therefore it has no basis in law.

Conspiracy requires a pleading that the defendant was a member of a combination of two or more persons, to accomplish an unlawful purpose or accomplish a lawful purpose by unlawful means, that the members had a "meeting of the minds" on the object or course of action, and that the members committed one or more unlawful, "overt acts" in furtherance of the conspiracy. *Agar Corp. v. Electro Circuits Int'l*, 580 S.W.3d 136, 141 (Tex. 2019). To be cognizable, a civil conspiracy requires the coconspirator to have the specific intent to agree to accomplish something unlawful or to accomplish something lawful by unlawful means. *Moody v. Greer, Herz & Adams LLP*, No. 01-21-00575-CV, 2023 WL 2697889, at *10 (Tex. App.—Houston [1st Dist.] Mar. 30, 2023, pet. denied) (mem. op.) (citation omitted). "Civil conspiracy is a derivative action premised on an underlying tort." *Gary E. Patterson & Assocs., P.C. v. Holub*, 264 S.W.3d 180, 204 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) (citing *Gonzales v. Am. Title Co.*, 104 S.W.3d 588, 594 (Tex. App.—Houston [1st Dist.] 2003, pet. denied)). Because conspiracy requires a specific intent, as a matter of law it cannot be predicated on an underlying claim of negligence. *Firestone*

Steel Products Co. v. Barajas, 927 S.W.2d 608, 617 (Tex. 1996) (defendant negated claim for civil conspiracy because it was based on negligence and "expressly" disapproving, again, of prior opinion from the Beaumont Court of Appeals "to the extent it held there can be a civil conspiracy to be negligent.").

Plaintiff's Second Amended Petition conclusively states that Defendants "*intended* to rig the April 22, 2023, Lotto Texas draw." Sec. Am. Pet. ¶ 59 (emphasis added). Yet Plaintiff alleges no facts to establish that Defendants had the requisite specific intent. Plaintiff simply states Defendants did. Without providing a factual basis alleging that Defendants had the "specific intent to agree to accomplish something unlawful," Plaintiff's claim fails to stand up to Rule 91a scrutiny. *Fiamma*, 2020 WL 6334470, at *12 (holding that "unadorned recitals of the elements of a cause of action, supported by mere conclusory statements, fail to sufficiently allege a cause of action under the fair-notice and Rule 91a standards.").

Further, Plaintiff alleges that Defendants "caused injury" to Plaintiff and that Defendants engaged in illegal activity "depriving other players of prize money." Sec. Am. Pet. ¶ 59. But Plaintiff fails to identify an underlying act or tort. Plaintiff is *convinced* that Defendants' win was illegal, but again, there has been no allegation of any illegality or wrongdoing. Instead, Plaintiff wants to step into the shoes of the Texas Lottery Commission because he believes that he should have won more money. But Plaintiff's belief and speculative allegations cannot form the basis of a conspiracy claim—particularly when he fails to establish the tort on which the alleged conspiracy is based. The Texas Supreme Court previously held that it has "found no basis for holding an alleged co-conspirator liable where the underlying torts did 'not exist.'" *Nettles v. GTECH Corp.*, 606 S.W.3d 726, 738 (Tex. June 12, 2020) (citations omitted) (dismissing a conspiracy claim

against a lottery ticket manufacturer). For these reasons, Plaintiff's conspiracy claim has no basis in law and should be dismissed.

b. Plaintiff's claim for aiding and abetting has no basis in law because it fails to identify an underlying tort, and it is conclusory.

"It is an open question whether Texas recognizes aiding and abetting another to commit a tort as a basis for liability." *Moody*, 2023 WL 2697889, at *11. The Texas "Supreme Court has not decided whether a claim for aiding and abetting exists." *Id.* To the extent aiding and abetting liability does exist, it is a dependent claim that is premised on an underlying tort. *Nettles*, 606 S.W.3d at 738 (only recognizing aiding and abetting as a "derivative" liability theory). This derivative liability theory "depend[s] upon liability for an underlying tort, and it survives or fails alongside that tort." *Id.*

In this case, Plaintiff fails to identify the underlying tort to support its aiding and abetting claim. While Plaintiff claims that Defendants actions caused "harm" and "financial injury," Plaintiff fails to tether this claim to an actual tort—because he can't. In addition to not identifying an underlying tort, Plaintiff's allegations are conclusory. Plaintiff states that "Defendants knew that the conduct outlined above was illegal." Sec. Am. Pet. ¶ 60. However, Plaintiff does not provide any factual allegations that would establish such knowledge. Both the Houston and Fort Worth Court of Appeals affirmed Rule 91a dismissals of claims for aiding and abetting when the plaintiffs alleged "knowledge" without any supporting factual allegations. *Moody*, 2023 WL 2697889, at *11 (dismissing an aiding and abetting claim where the element of knowledge was not supported by factual allegations.); *Fiamma*, 2020 WL 6334470, at *12 (holding that unadorned recital that defendant "knew" or had "full knowledge" of breach of fiduciary duty without supporting factual allegations did not provide fair notice and affirming trial court's Rule 91a dismissal of aiding-and-abetting claim as conclusory).

The same result is warranted here. Plaintiff's claim for aiding and abetting has no basis in law and should be dismissed under Rule 91a.

c. Plaintiff's claim for assisting and participating has no basis in law as it is not a recognized cause of action in Texas.

Texas has not clearly recognized that assisting or encouraging a primary actor's tort is a recognized cause of action independent of a civil conspiracy claim. *Fiamma*, 2020 WL 6334470, at *10 (citations omitted). Similar to the aiding and abetting analysis above, even if the claim is recognized, it requires an underlying tort and supporting facts. Plaintiff alleges neither. Plaintiff claims that Defendants "substantially assisted one another in causing the unlawful actions used to accomplish the illegal bulk purchase of lottery tickets" and that each of the Defendant's assistance and participation, separate from one another's acts, breached duties owed to the lottery players of the State of Texas, including Plaintiff." Sec. Am. Pet. ¶ 61.

While Plaintiff alleges that Defendants breached duties to the lottery players of the State of Texas, he never identifies the source or scope of the alleged duties. Similar to the flaws with Plaintiff's claim for negligence per se, Plaintiff fails to plead a legal duty under contract, statute, or common law that the Defendants allegedly breached.

Plaintiff's petition and the facts that are unrelated to his claim illustrate that there is no connection between Plaintiff and Defendants. This is why Plaintiff cannot articulate an underlying tort for any of its derivative claims nor can he establish that there was a breach of an alleged duty. Because of this, Plaintiff's claim for assisting and participating has no basis in law and therefore, requires dismissal.

d. Plaintiff's claim for concert of action has no basis in law because even if the allegations are taken as true, they do not entitle Plaintiff to relief.

"The purpose of the concert of action theory is to deter antisocial or *dangerous* behavior." *Juhl v. Arlington* 936 S.W.2d 640, 644 (Tex. 1996) (emphasis added). The Texas Supreme Court has stated, however, that whether the "concert of action" theory of liability is recognized in Texas is "an open question." *Id.* at 643. Even still, when looking at potential liability under a concert of action theory, liability has been imposed only in situations where the conduct poses a high degree of risk to others. *Id.* at 645. It typically involves "highly dangerous, deviant, or anti-social group activity which is likely to cause serious injury or death to a person or certain to harm a large number of people." *Id.*

For example, the Texas Supreme Court discussed cases in other jurisdictions in which liability under concert of action was imposed for "all parties who drag raced on public streets" when "one vehicle caused injury to a bystander." *Id.* The Court further considered liability in a case where two people were target shooting with a high-powered rifle and a ricocheting bullet hit the plaintiff. *Id.* The Court then considered liability in a case when a passenger in a car assisted the driver in becoming intoxicated and was responsible for the resulting harm. *Id.* In considering these scenarios, the Texas Supreme Court declined to find concert of action liability when a police officer filed suit against a dozen protestors for a back injury he sustained while trying to arrest one of the protestors. *Id.* The Court held that the "defendants' conduct was simply not the type of highly dangerous, deviant, or anti-social group activity" to warrant liability. The same is true here.

In his Second Amended Petition, Plaintiff alleges that Defendants "caused harm to the integrity and reputation of the Texas Lottery and harm to millions of lottery players who relied upon honesty and fairness of the Texas Lottery." Sec. Am. Pet. ¶ 62. Even if this Court takes these allegations as true—which they are not—Plaintiff's allegations do not rise to the level of a highly

dangerous act to warrant liability. Plaintiff does not allege serious injury or harm to anyone—other than the speculative financial harm to him of not winning more money. *See Beddingfield v. Beddingfield*, No. 10-15-00344-CV, 2018 WL 6378553, at *13 (Tex. App.—Waco Dec. 5, 2018, pet. denied) (mem. op.) (dismissing a concert of action claim under Rule 91a when the allegation was that defendants redeemed cash under an insurance policy that belonged to the plaintiff).

Because Plaintiff cannot establish a claim for concert of action, dismissal under Rule 91a is proper.

PRAYER

For the reasons stated above, Defendants Rook TX LP and Rook GP LLC pray that this Court grant this Rule 91a Motion to Dismiss. Defendants Rook TX LP and Rook GP LLC seek all other relief, in law or equity, to which they may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing instrument on opposing counsel on June 18, 2025, as follows:

By electronic service

/s/ *David E. Harrell, Jr.*
David E. Harrell, Jr.

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with Local Rule 5(a) and contains 3,011 words, excluding the case caption, any index, table of contents or table of authorities, signature blocks, attached evidence, or any required certificates.

/s/ David E. Harrell, Jr.
David E. Harrell, Jr.

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