

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiffs,

- v. -

11-CV-2564(LBS)

POKERSTARS, et al.,

Defendants,

ALL RIGHT TITLE AND INTEREST IN THE
ASSETS OF POKERSTARS, et al.

Defendants-In-Rem.

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**CHRISTOPHER FERGUSON’S MEMORANDUM JOINING HOWARD LEDERER’S
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION
TO DISMISS THE VERIFIED FIRST AMENDED COMPLAINT**

Christopher Ferguson joins in the Memorandum of Points and Authority in Support of Howard Lederer’s Motion to Dismiss the Verified First Amended Complaint (the “Complaint”) for failure to state a claim under Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. The deficiencies in the Complaint and the legal arguments asserted by Mr. Lederer apply equally to Mr. Ferguson and he, therefore, joins in Mr. Lederer’s motion and memorandum.

1. The Specific Factual Allegations Against Mr. Ferguson Fail to State a Claim.

With respect to the specific allegations that could give rise to a claim against Mr. Ferguson and his *in rem* property, there are none. The only factual allegations in the Complaint relating to Mr. Ferguson are: (1) he was a founder and member or chairman of the board of Full Tilt Poker (Compl. ¶¶ 8, 23); and (2) he received distributions from the company in a significantly lesser amount than allocated to him in accordance with his ownership interest

(Compl. ¶¶ 109). In fact, in 90 paragraphs of factual allegations, Mr. Ferguson is mentioned only once and then it is only in reference to distributions from Full Tilt. Nowhere does the Complaint allege that Mr. Ferguson was involved in the management of the company; he was not identified as a managing member or an employee. Nor does the Complaint allege that he had any knowledge whatsoever, or was involved in any way in the decisions regarding management, payment processing or the segregation of player funds. The Complaint, as to Mr. Ferguson, does not come close to meeting the exacting pleading standards of Rules 9(b) of the Federal Rules of Civil Procedure or even the lesser standards of Rules (8) and 12(b)(6). *See Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009) (the Court should identify and eliminate conclusory allegations because they are not entitled to an assumption of truth and should evaluate the remaining allegations to determine if they plausibly suggest an entitlement to relief). With respect to the *in rem* claims, Mr. Ferguson joins in the arguments asserted by Mr. Lederer. Because the Complaint fails to state a claim Mr. Ferguson the claims against him should be dismissed.

2. IGBA Does Not Apply to Full Tilt Poker’s Hosting of Online Card Play On Its Internet Poker Site Because There Is No Evidence Full Tilt Poker Operates A Gambling Business Which Violates The Law Where Full Tilt’s Business Is Conducted.

In addition to the arguments raised by Howard Lederer, in which Mr. Ferguson joins, the IGBA claim should be dismissed because IGBA applies only to one who “conducts, finances, manages, supervises, directs or owns all or part of *an illegal gambling business*.” 18 U.S.C. §1955(a) (emphasis added). Importantly, the definition of “illegal gambling business” requires proof of a “gambling business” which “is a violation of the law of the State or political subdivision in which it is conducted”. 18 U.S.C. §1955(b)(1). Therefore, for there to be a violation of the IGBA, it is “the gambling business which must violate [the] state law” where that business is conducted. *See Sanabria v. United States*, 437 U.S. 54, 70 (1978).

As explained by the Eighth Circuit: “The statute defines an ‘illegal gambling business’ as one which ‘is a violation’ of state law. 18 U.S.C. § 1955(b)(1)(i). The word ‘is’ strongly suggests that the Government must prove more than a violation of some state law by a gambling business. *The gambling business itself* must be illegal.” *United States v. Bala*, 489 F.3d 334, 340 (8th Cir. 2007)(emphasis in original). The Government has not proven that the alleged “gambling business” conducted by Full Tilt Poker is illegal in the place where that business is conducted. The sole “gambling business” conducted by Full Tilt Poker is the hosting of a licensed Internet poker cardroom through a data processing server located on Guernsey and as duly licensed and regulated by United Kingdom protectorate Alderney in the British Channel Islands¹ outside of any State or political subdivision in the United States. Because the IGBA applies only when the “business” violates the laws of the “State or political subdivision” where the “business” is conducted, and Full Tilt Poker’s “business” is not “conducted” in any such State, the instant action cannot be predicated on any alleged violation of the IGBA.

¹ From 2004 through 2007, the Full Tilt Poker virtual online poker card room was conducted from servers located on the sovereign Kahnawake Mohawk Indian reservation outside of Montreal, Canada and was duly licensed and regulated by the Kahnawake Gaming Commission (KGC) therefrom. Thereafter, the Alderney Gambling Control Commission (AGCC) regulated the Full Tilt Poker virtual online poker card room for peer-to-peer gaming thereon.

CONCLUSION

For the reasons stated above and those presented in Howard Lederer's Motion to Dismiss and Memorandum of Points and Authorities, the Complaint as to Mr. Ferguson should be dismissed.

July 9, 2012

Respectfully submitted:

 / s / Julie Withers

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2012, I served the foregoing Notice of Motion to Dismiss the Verified First Amended Complaint and the accompanying Memorandum of Christopher Ferguson joining the Memorandum of Points and Authority in Support of Howard Lederer's Motion to Dismiss the Verified First Amended Complaint upon all counsel who have appeared via the ECF filing system.

Dated: July 9, 2012

Respectfully submitted:

 / s / Julie Withers

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