

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

Case No. 8:13-bk-00922-KRM

CASEY MARIE ANTHONY,

Chapter 7

Debtor.

In re:

ROY KRONK,

Adversary No. 8:13-AP-00629-KRM

Plaintiff.

v.

CASEY MARIE ANTHONY,

Defendant.

**DEBTOR/DEFENDANT'S MOTION TO STRIKE AND EXCLUDE PLAINTIFF'S
DOCUMENTS AND EVIDENCE [DOCKETNO. 70] FILED IN RESPONSE TO
DEBTOR/DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

Debtor/Defendant, CASEY MARIE ANTIHONY, by and through her undersigned attorney, files this, her Motion To Strike and Exclude Plaintiff's Documents and Evidence filed by Plaintiff [Docket Number 70] in Response to Debtor/Defendant's Motion For Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12 (c) [Docket Number 68] and as grounds therefore states:

1. Plaintiff filed his Complaint on July 22, 2013 [Docket Number 1].
2. Plaintiff filed his Amended Complaint on November 26, 2013 [Docket Number 21].
3. Debtor/Defendant filed her Answer and Affirmative Defenses on January 13, 2014 [Docket Number 27] and the pleadings are now closed.
4. Debtor/Defendant filed her Motion For Judgment on the Pleadings [Docket Number 68] on January 7, 2016.

5. Plaintiff filed his Response to Debtor/Defendant's Motion For Judgment on the Pleadings on January 15, 2016 at 10:26 pm. and the undersigned counsel's office was closed in observance of Dr. Martin Luther King Day on Monday, January 18, 2016.
6. In Plaintiff's Response, Plaintiff asserts that the Court should consider matters outside the pleadings including an affidavit from Dominic Casey, an investigator previously hired by the Defendant's criminal defense team, the Defendant and the Defendant's family; the Defendant's Answer to Plaintiff's Request For Admissions Number 21; and Defendant's response to interrogatory number 8 of Plaintiff's Amended First Set of Interrogatories.
7. Defendant's Motion For judgment on the Pleadings is brought pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. Motions under Rule 12(c) test the adequacy of the Plaintiff's pleadings and are generally treated the same as a motion to dismiss based upon Rule 12(b)(6). Accordingly, the Defendant's Motion will be granted if Defendant is entitled to judgment as a matter of law. 2009 Federal Civil Rules Handbook p. 444.
8. By introducing extrinsic materials that are not part of the pleadings, Plaintiff is attempting to convert Defendant's Motion to a Motion For Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure.
9. Because the Motion is designed to test the sufficiency of the Plaintiff's Amended Complaint, with a few narrow exceptions, courts may not consider materials outside the pleadings when ruling on the Motion. See *Winget v JP Morgan Chase Bank*, 537 F. 3d. 565 (6th Cir. 2008) and *14.02 Acres of Land More or Less in Fresno County*, 530 F. 3d. 883 (9th Cir. 2008). The Court therefore has the discretion to consider or exclude such materials.
10. Exceptions to the Motion include exhibits attached to the Complaint or otherwise incorporated therein; matters of public record, orders of record in the lawsuit and other material subject to judicial notice that the Plaintiff claims it pleadings are based upon. *Alvarado v KOB-TV, LLC*. 493 F. 3d. 1210 (10th Cir. 1997), and *Roth v Jennings*, 489 F. 3d. 499 (2d. Cir. 2007), *Minch v City of Chicago*, 486 F. 3d. 294 (7th Cir. 2007).
11. None of the aforesaid exceptions apply to the materials Plaintiff attempts to introduce. Rather, Plaintiff states that the Court should consider the materials because they " will show that Casey Anthony directed her attorneys to publish false and defamatory statements about Plaintiff to the media to portray him (Kronk) as the kidnapper and murderer of Caylee Anthony, for the purpose of redirecting public blame for her daughter's murder to Plaintiff and with full knowledge of the falsity of the statements".
12. The Court may also exclude the materials where the materials are found to be irrelevant to the motion. *Stahl v U.S. Dept. Of Agriculture*, 327 f. 3d. 697 (8th Cir. 2003) and *Terracom v Valley Nat. Bank*, 49 F. 3d. 555 (9th Cir. 1995).
13. Specifically the Plaintiff has filed an affidavit of Dominic Casey, a private investigator whose first name is coincidentally the same as the Defendant's but who is unrelated; and the Defendant's answer to Plaintiff's Requests for Admission 21; and Defendant's response to interrogatory 21 of Plaintiff's Amended First Set of Interrogatories.
14. The affidavit of Dominic Casey is insufficient on its face and is purely speculative, conjecture and conclusory. The facts purportedly supporting Mr. Casey's conclusion do not support it. Nor do the inferences that can be drawn from them support his conclusory remarks.

15. The response to Plaintiff's request for admission number 21 is taken out of context and is contradicted by Defendant's other responses. The same is true when considering the Defendant's response to Interrogatory number 8.
16. Plaintiff also attempts to claim that inferences can be drawn from Defendant's claims of her 5th Amendment Rights. The problem here is that the Defendant did respond and answer those interrogatories that are relevant to Plaintiff's cause of action.
17. Plaintiff also attempts to support his position by citing the case of *TempPay, Inc. v Bilres Staffing of Tampa Bay, LLC.*, 945 F. Supp. 2d. 1331 (M.D. Fla. 2013). This case however is a motion for summary judgment case, not a motion for judgment on the pleadings case.
18. Finally, Plaintiff is attempting to avoid the "Law of the Case" as established in this Court's ruling in the adversary case filed in this matter by Zenaida Fernandez Gonzales in *Gonzalez v Anthony*, 538 BR 145 (M.D. Fla. 2015).

WHEREFORE, Debtor/Defendant moves this Court to enter an order striking and excluding the Plaintiff's extrinsic materials including the Affidavit of Dominic Casey, the Defendant's Response to Request For Admission Number 21; and Defendant's response to interrogatory number 8, and for such other and further relief as the Court deems just and proper.

/s/ David L. Schrader

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CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing document has been emailed to Howard Marks, Esq., Burr & Forman, LLP., hmarks@burr.com; rshuker@lseblaw.com; Jonathan M. Sykes, Esq., Burr & Furman, LLP. At jsykes@burr.com; and Cheny Masson, Esq. cheneylaw@aol.com; and ChenMas4@aol.com this 19th day of January, 2016.

/S/ David L. Schrader

David L. Schrader, Esquire