

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANCHORBANK, FSB, and
PLUMB TRUST COMPANY, on behalf of
all AnchorBank Unitized Fund Participants,

Plaintiffs,

v.

CLARK HOFER,

Defendant.

OPINION and ORDER

09-cv-610-slc

Before the court is defendant Clark Hofer's motion for reconsideration of that portion of the court's September 20, 2012 opinion and order dismissing his counterclaim for extortion under Wis. Stat. § 943.30. Dkt. 185. The motion will be denied. Nothing in Hofer's briefs, including his unauthorized reply (which I have considered, along with plaintiffs' unauthorized surreply, *see* dkt. 189, 190), persuades me that I erred in concluding that Wisconsin does not recognize a private civil cause of action under Wis. Stat. § 943.30 for the acts alleged to have been taken by plaintiffs in this case.

To the contrary, the authorities cited in plaintiffs' brief make clear that my decision was correct. As plaintiffs point out, Wis. Stat. § 895.446, a statute that authorizes private causes of action for violations of certain criminal statutes, *excludes* extortion from the list of criminal statutes upon which a private civil action may be brought. Br. in Opp., dkt. 188, at 1-3. *See also Jackson v. United Migrant Opportunity Services*, No. 2009AP1207, 2010 WL 2035826, ¶17 (Wis. Ct. App. May 25, 2010) ("[T]he criminalization of blackmail, see Wis. Stat. § 943.30, does not create a private cause of action") (citing *United States ex rel. Verdone v. Circuit Court for Taylor County*, 851 F. Supp. 345, 352 (W.D. Wis. 1993)). To the extent that courts *have* allowed private causes of action under Wis. Stat. § 943.30 or its predecessor statutes, it has only been for cases alleging an injury to one's reputation, trade, business or profession. *See Elbe v. Wausau*

Hospital Center, 606 F. Supp. 1491, 1500 (W.D. Wis. 1985); *Bernegger v. Banks*, 2008 WL 3539777, *2 (E.D. Wis. Aug. 12, 2008) (citing *Elbe* and noting that defendant had not opposed plaintiff's motion to amend complaint to include claim under Wis. Stat. § 943.30). Hofer does not make such allegations here. Accordingly, my ruling on his extortion claim stands.

ORDER

IT IS ORDERED THAT:

1. Defendant's motion for leave to file a reply, dkt. 189, is GRANTED;
2. Plaintiffs' motion for leave to file a surreply, dkt. 190, is GRANTED; and
3. Defendant's motion for reconsideration, dkt. 185, is DENIED.

Entered this 9th day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge