

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

KINOJUZ I.P.
(a company under the laws of Kazakhstan)

Plaintiffs

v.

IRP INTERNATIONAL INC.
(a New York corporation);
OULIAN DOUBININE; IGOR ERLIKH
(both residents of New York State)

and DOES from 1 to 100

Defendants

CIVIL ACTION No. 11cv0299-DLI-VVP

PLAINTIFF'S MOTION

TO AMEND COMPLAINT

**AND FOR LEAVE TO ECF-FILE
WITHOUT AWAITING DEFENDANT
IGOR ERLIKH'S RESPONSE**

Plaintiff Kinojuz I.P. ("Kinojuz") moves this honorable Court to amend its Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2).

Amending the initial Complaint is warranted for two reasons, more specifically shown below. In sum, first, Kinojuz received the subpoenaed banking records from J.P. Morgan Bank, disclosing the activities on the account of defendant IRP International Inc. ("IRP"), which evidence is highly relevant for this case. Second, Defendant Oulian Doubinine ("Doubinine") in his two Affidavits filed in this action reneged on concluding on behalf of IRP any contract with Kinojuz. That requires eliminating from the initial Complaint two Counts, relating to cause of action based on breach of contract, and emphasizing relief sought on the basis of conversion and money had and relief.

Plaintiff further requests leave of Court to allow filings this Motion on ECF without awaiting an Opposition from Defendants, in *ad hoc* deviation from the Individual Motion Practice and Rules of The District Judge the Hon. Dora. Irizarry, section D-1, for a compelling reason, explained below.

Defendant Igor Erlikh (“Erlikh”) advised the Court that he would be absent from the country ‘on a time sensitive business’ from September of 2011 till the beginning of 2012, avoiding to attend the Case Status Conference on September 7, 2011 and apparently making himself unavailable. See Docket #37, of August 18, 2011.

Therefore, should Plaintiff serve the Motion on Erlikh first and await Erlikh’s Opposition thereto, there is a high likelihood that no Opposition would be served back by Erlikh until early 2012. Justifiably, Plaintiff should not be compelled to wait several months before Plaintiff would be able to file the Motion with the Court.

THEREFORE, Kinojuz moves the Court to amend its Complaint and for leave to file the moving papers on ECF without awaiting Erlikh’s response at an undetermined time.

Respectfully submitted:

Dated: August 29, 2011

/s/

GEORGE LAMBERT (D.C. Bar No. 979327),
pro hac vice
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Memorandum of Points and Authorities

As this Court is aware, this is an action to collect the amount of about \$199,980, paid by Kinojuz and obtained by Defendants on false pretenses. Plaintiff further seeks that the Court's judgment against defendants to award other damages.

Upon the subpoenaed banking records on IRP's account received by Plaintiff's counsel from J.P. Morgan Bank, highly relevant evidence was obtained as follows.

On December 5, 2007 the account in the name of IRP, at JP Morgan Bank, ABA 021000021, account 907248892065, was in fact credited with the exact amount of \$199,980 (\$200,000 wire transferred, minus \$20 bank fee). These funds were received from Kinojuz, wired transferred by Zhurabek Musabayev ("Musabayev"). These funds were paid by Kinojuz in good faith anticipation that those funds would be used for its cinematic project, described in the Complaint.

However, on the next day after that wire transfer was credited on IRP's account, on December 6, 2011, the first transaction Erlikh undertook was ordering a vacation package at Apple Vacations East, for \$4,078, which was debited from that account on December 10, 2006. One day later, on December 7, 2007, Erlikh paid \$11,280 (check 1030) for another vacation package, in Dominica, the Caribbean.

Erlikh almost immediately started to take cash from IRP's account at the bank's local branches, depositing IRP's checks, on the following occasions: - \$10,000 (check 1028) on December 10; - \$5,000 (check 1025) on December 18; - \$5,000 (check 1027) on December 19; - \$5,000 (check 1028) on December 20; and - \$3,000 (check 1035) on December 28, 2007.

Erlikh and his son Igor Erlikh ("Igor"), the second signatory on that account, went on a buying spree, using the debit cards for IRP's account, paying to Little People Kids'

Boutique: \$1,100 and then \$250; to Chuckies Designer Shoes: \$795 and then \$217; to Victoria's Secret \$280.67; to Scarlet Flowers \$150.00, making payments for new cable television services, and the like.

Likewise Erlikh and his son Igor, using debit card on IRP's account, made numerous purchases of at the groceries' stores, pharmacies, laundromates, obviously none of that having anything to do with Kinojuz's project or with any legitimate business expenses.

As the banking records showed, in December of 2007, Erlikh with his son Igor also took out cash from the IRP account from the ATM booths on the streets, using two ATM cards in the name of IRP. On December 7, Erlikhs took out \$800, December 10: \$400, December 14: \$400; December 17: \$1,000 (in two withdrawals); December 19: \$400; December 20: \$400; December 24: \$400; December 26: \$700 (in two withdrawals); December 27: \$1,500 (in 3 withdrawals); and on December 31: \$400.

On December 10, 2007, Erlikh paid to his co-conspirator Oulian Doubinine ("Doubinine") \$15,000 (check 1032), apparently as a compensation for the successful fraud on Kinojuz and as some fraudulent commission.

Within less than a month after Kinojuz's wire transfer, the balance as of December 31, 2007 was only \$18,337. Erlikh then continued to withdraw Kinojuz's money, pay for items unrelated to Kinojuz's project, including restaurants.

By January 31, 2008, Erlikh and his son essentially already liquidated the IRP account, leaving only a \$1,020 balance. After that, the IRP account showed only insignificant activities and several penalties for overdraft, ultimately abandoned with zero balance and becoming inactive.

B) Defendant Olian Doubinine's Affidavits Reneging on Signed Contract Require Amendment

Doubinine filed with this Court two Affidavits. In his Affidavits, he declared that the signature on the contract between IRP and Kinojuz was not his and was a forgery. See his Affidavit, refiled again in Docket #41. That statement by Doubinine, under the penalty of perjury, was untrue. As shown separately through the Affidavit of Musabayev, with reference to Docket #42, Doubinine, before returning to the USA in the summer of 2007, left blank signed papers with the affixed seals of IRP with Kinojuz. Those were to be filled in for submission to the bank, depending upon the exact amount the bank in Kazakhstan would be willing to lend for that cinematic project.

Once Kinojuz found a bank willing to lend money on that project (with collateral representing Musabayev's residential property), and the amount was ascertained, \$200,000, that finalization of papers was accomplished in late November of 2007. Musabayev obtained from Doubining consent to fill in the papers, given over the phone. By way of his additional Affidavit, however, Doubinine asserted that he did not consent to filling in the blank papers. See Docket #37, Exhibit C. See the Proposed Amended Complaint.

As a result of that renunciation by Doubinine of the contract, under the penalties of perjury, there was obviously no contract between the parties. At the same time, Defendants may not invoke or rely on that contract anymore, too (nor seek arbitration).

This requires amending the Complaint, taking out two Counts, i.e. based on breach of contract and on breach of fiduciary duties, but emphasizing instead the remaining Counts based on conversion, money had and received, fraud, misrepresentation, declaratory relief, etc.

C) Case Law Favors Granting Relief under Rule 15

The Second Circuit said that leave of court should be freely given when justice so requires. See *Cortec Industries, Inc. v. Sum Holding L.P.*, C.A.2 (N.Y.) 1991, 949 F.2d 42, certiorari denied 112 S.Ct. 1561, 503 U.S. 960, 118 L.Ed.2d 208.

Granting a motion to amend a complaint filed after a responsive pleading has been served is within the discretion of the trial court. See *Rogers v. White Metal Rolling & Stamping Corp.*, C.A.2 (Conn.) 1957, 249 F.2d 262, certiorari denied 78 S.Ct. 777, 356 U.S. 936, 2 L.Ed.2d 812.

Leave to amend a complaint shall be freely given when justice so requires, and if plaintiff has at least colorable ground for relief, justice does so require unless plaintiff is guilty of undue delay or bad faith or unless permission to amend would unduly prejudice the opposing party. See *S.S. Silberblatt, Inc. v. East Harlem Pilot Block--Building 1 Housing Development Fund Co., Inc.*, C.A.2 (N.Y.) 1979, 608 F.2d 28.

THEREFORE, the Motion should be granted.

Respectfully submitted:

Dated: June August 29, 2011

/s/

GEORGE LAMBERT (D.C. Bar No. 979327),
pro hac vice
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CERTIFICATE OF SERVICE

I, George Lambert, counsel of record, pro hac vice, for plaintiff Kinojuz I.P., certify that on August 29, 2011, I served, by U.S. First Class Mail, postage prepaid, the foregoing, on the pro se defendants in this action, as follows:

Igor Erlikh

6910 Avenue U, Apt.# 2S

Brooklyn, NY 11234

and

Oulian Doubinine

1437 W. 4th Street, Apt.# 3

Brooklyn, NY 11204

Done on August 29, 2011.

/s/

George Lambert