

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
FOR LEAVE
TO SUBMIT TRANSCRIPT OF
SEPTEMBER 7, 2011**

**AND TO SUPPLEMENT EVIDENCE
IN OPPOSITION TO DEFENDANT
IGOR ERLIKH'S MOTION TO
DISMISS OR TO COMPEL
ARBITRATION**

Plaintiff Kinojuz I.P. ("Kinojuz") moves this honorable Court for leave to submit the transcript of the Case Status Conference, held in this case on September 7, 2011 and to supplement its previously submitted evidence in connection with its Opposition to the Motion to Dismiss or to Compel Arbitration, filed by Defendant Igor Erlikh ("Erlikh") on June 30, 2011. Kinojuz's Opposition to the Motion to Dismiss was filed on August 25, 2011, Docket #42.

At the time Kinojuz's Opposition was filed, Kinojuz, understandably, could not know of, or have, that new evidence, which developed from Erlikh's admissions on the judicial record about 2 weeks later, on September 7, 2011.

Kinojuz diligently ordered the transcript and obtained it earlier on this day.

Being guided by the utmost diligence, Kinojuz promptly submits, on the same day, the annexed transcript, subject to the present Motion for Leave, which is understandable for purposes of assisting the Court by all possible means. This also relieves the Court from directing the transcript to be submitted to the Court.

Kinojuz makes a disclaimer that Erlikh's Motion to Dismiss was referred by the U.S. District Judge to the Magistrate Judge for his Report and Recommendations. In Kinojuz's understanding, the Individual Practice of the U.S. District Judge, which requires filing a Motion together with an Opposition and a Reply, does not apply here.

Furthermore, a diligent submission of the transcript will certainly save judicial resources and will expedite just adjudication of the pending Motion to Dismiss, as well as this diligence appropriately serves the ends of justice in this matter.

Kinojuz points to two admissions made by Erlikh in the course of the Conference. Namely, with reference to the \$199,980, Erlikh admitted receiving from Kinojuz in December of 2007, he made the following statement, on p. 11 (lines 20-21):

“MR. IGOR ERLIKH: **It's my money.** I can do whatever I want.”

Then, again, Erlikh repeated his admission and/or confession (on p. 25, lns 23-25:

“...which I stole \$200,000 and I spend it. I have proof. **This is my money** and I can spend every way I want it. Even go to Atlantic City to spend it.” (Emphases added).

In a nut shell, this essentially proved Kinojuz's case at bar, right there.

Erlikh admitted on the record that” (1) there was no corporate separateness as to IRP International Inc. and that he treated that money on a purported corporate account as “his” own, i.e. owned by him individually; (2) conversion of Kinojuz's funds by Erlikh is proven; (3) Erlikh's intent to defraud and fraud is proven; (4) Kinojuz's claim for restitution is proven; (5) Erlikh's claim for arbitration is void, he never intended to

recognize the December 3, 2007 contract (under which \$199,980 was sent), whereas his privy Oulian Doubinine has already abated that contract by his two Affidavits in this action, that he did not sign or authorize it.

The remainder of Erlikh's theories where he claims to have some debtors in Kazakhstan, but other than Kinojuz, against whom he applied that money, is entirely irrelevant. Those other parties (even if his claim were *arguendo* true, which it is not) are not the parties in this case. If Erlikh believes that he has some cross-claims against some other parties in Kazakhstan, he should file his separate action(s) in Kazakhstan courts and make claims in a court of law. However, this would have nothing to do with *this* case and with the claim for conversion made by one and only party, i.e. Kinojuz.

Kinojuz is of the opinion that the above admissions and confessions by Erlikh that he deemed Kinojuz's funds "his money", made on judicial record (even though not under oath) are admissible under the Fed. R. Evid. 801(d)(2) and/or under other law. Moreover, Kinojuz anticipates filing its Motion for Summary Judgment, in due course.

THEREFORE, the transcript should be admitted into evidence and considered by the Court in its adjudicating the Motion to Dismiss or to Compel Arbitration.

Respectfully submitted:

Dated: September 23, 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 September 23, 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 September 23, 2011.

/s/

George Lambert