

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 KINOJUZ'S REPLY
TO THE OPPOSITION OF
DEFENDANTS IGOR ERLIKH AND
OULIAN DOUBININE
TO KINOJUZ'S MOTION
TO AMEND COMPLAINT**

Plaintiff Kinojuz I.P. ("Kinojuz") herewith file its Reply to the Opposition of Defendants Igor Erlickh ("Erlickh") and Oulian Doubinine ("Doubinine") to the Motion for Leave to Amend. That Opposition was served on Kinojuz's counsel in the regular mail and marked by the U.S. District Court's clerk office as filed pro se in a hard copy on September 1, 2011.

Because of Defendants' misnomer of their filings, it is useful to identify that Kinojuz's underlying Motion was for leave of this honorable Court to amend its Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2), which was filed on August 29, 2011. The Motion was accompanied by the Proposed Amended Complaint.

While Defendants' present Opposition was not apparently filed on ECF/Pacer, Kinojuz annexes that Opposition herewith electronically (with the apology that the hard copies arrived in the mail in a damaged form and the automatic scans are less than perfect).

a) Defendant Igor Erlikh Admitted That His Statement About Leaving the Country for Several Months, as Made to This Court, Was Untrue

As a section (a) of the Opposition, the representation by Erlich that Kinojuz's counsel should have not filed the Motion electronically, his argument is strange. Erlikh represented to this Court, through a filing, that he was leaving the country. Namely, 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.

However, unexpectedly, Erlikh showed up at the Case Status Conference on September 7, 2011, to Kinojuz's surprise.

Moreover, Erlikh represented to the Court that his representation about his leaving the country to the Court was untruthful and the real reason was his extending the time for obtaining an attorney. (Kinojuz has ordered the transcript of the conference, on a 7-day turnaround basis and reserves the request to file the transcript into the docket for referencing to Erlikh's statements).

Moreover, Erlikh actually represented to the Court in his prior filing, as well as advising the parties, that he was leaving on a 'time-sensitive business matter'. It looks like Erlikh misled the Court and plaintiff here, and if there is anyone to blame for an ECF filing, as the circumstances required, it should be himself.

Again, Kinojuz had no knowledge of Erlikh's true intentions, i.e. that he was misleading the Court and the parties as to his foreign voyages and that he intended to attend the Conference.

Therefore, Kinojuz undertook the filing by ECF which was required by the circumstances, not awaiting Erlikh's returning to the country early next year.

b) Objections to Use of Subpoenaed Documents from J.P. Morgan Bank Are Without Basis

Kinojuz, frankly, has difficulty to understand what Erlikh has been trying to say about the irrelevancy of the banking records received from J.P. Morgan Bank, concerning the banking records of Defendant IRP International Inc.

The banking records conclusively prove that Erlikh and his son converted the \$199,980 received from Kinojuz, spending it on personal needs (including designer shoes) and liquidating Kinojuz's money within 6 weeks. Actually, Erlikh bought expensive vacation packages almost immediately once the money landed on that account.

Then Erlikh makes representations that are somewhat incomprehensive, with due consideration to the fact that Erlikh is a pro se litigant.

Erlikh also annexes an unauthenticated e-mail, with an uncertified translation, probably written in Russian on February 9, 2010.

However, that date of the e-mail was about 3 years after Erlikh already converted all the money that he had received from Kinojuz on December 5, 2007. It is entirely irrelevant and/or inadmissible.

What Kinojuz deduces from those representations, Erlikh undertook some other transactions in Kazakhstan. However, those transactions had nothing to do with Kinojuz, the plaintiff here. There is some reference to some criminal case in Kazakhstan, but it is

unclear who was the defendant, on information and belief, someone connected to Erlikh, but who had nothing to do with Kinojuz.

Erlikh, apparently, believes that if he had other transactions in Kazakhstan, he should settle those transactions with any and all parties in Kazakhstan he had dealings with in one basket. (Kinojuz does not attribute any credibility to Erlikh's representations about his other transactions, on information and belief, he simply perpetrated some other frauds with other parties).

In any events, obviously, this detour has nothing to do with the present case, which is the collection of the converted asset of \$199,980, that Erlikh used for his personal needs. If Erlikh wishes to sue any parties in Kazakhstan, he should do so. However, again, this has nothing to do with this particular case.

c) Allegation that the Amended Complaint is Biased

Kinojuz does not understand what Erlikh wishes to say, by telling the Court that the Amended Complaint is 'biased'.

The Amended Complaint fully and correctly pleads Kinojuz's causes of action against 3 Defendants and seeks the recovery of \$199,980 converted by Erlikh.

Then Erlikh represents that the contract (of December 3, 2007), upon which \$199,980 was wired was invalid (claiming forgery of Doubinine's signature on the contract). In Erlikh's mind, Kinojuz had a motive to forge Doubinine's signature, just in order to wire funds to IRP's account. This hypothesis is obviously without any sense. Kinojuz denies forgery of the signature of Doubinine, but Kinojuz has already agreed with Defendants that there was no valid contract between Kinojuz and IRP.

Yes, indeed, Kinojuz has recognized that there was no valid contract between Kinojuz and IRP (nor any other parties acting on its behalf).

There is no dispute here. The Amended Complaint duly asserts that there was no valid contract between the parties, and the Counts based on Breach of Contract and based on Violation of Fiduciary Duties were taken out. Obviously, if the contract was invalid, Defendants had no fiduciary duty to act according to the purported invalid contract, but they did have the duty to return the funds received from Kinojuz. Therefore, the claim for conversion and for fraud committed by Erlikh was highlighted in the Amended Complaint.

Rather, this shows again that the proposed amendment was fully justified, timely and should be allowed.

Therefore, the Motion for leave to amend should be granted.

Respectfully submitted:

Dated: September 12, 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 12, 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 12, 2011.

/s/

George Lambert