

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Argued - February 28, 2008

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

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2006-11488

DECISION & ORDER

Dialcom, LLC, respondent, v AT&T Corp.,  
et al., appellants.

(Index No. 12026/03)

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Sidley Austin LLP, New York, N.Y. (John J. Kuster, Lynn A. Dummett, and William V. Reiss of counsel), for appellants.

Oved & Oved LLP, New York, N.Y. (Darren Oved, Terrence A. Oved, and Thomas Freedman of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated October 17, 2006, as granted that branch of the plaintiff's motion which was for leave to amend the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Leave to amend a complaint should be liberally granted absent prejudice to the opposing party, as long as the proposed amendment is not palpably insufficient to state a cause of action (*see Jackson Hgts. Care Ctr., LLC v Bloch*, 39 AD3d 477, 480; *Ruddock v Boland Rentals*, 5 AD3d 368, 370). "The determination whether to grant leave to amend a pleading is within the sound discretion of the court to be determined on a case-by-case basis" (*Guiliano v Carlisle*, 296 AD2d 438, 439 [citations omitted]). It is proper to deny a plaintiff leave to amend the complaint to re-assert a cause of action that was previously dismissed (*see Blum v New York Stock Exch.*, 298 AD2d 343, 345).

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The defendants failed to establish prejudice or surprise. Moreover, the claims in the proposed amended complaint are not palpably insufficient, or duplicative of any previously-dismissed claims. Therefore, the Supreme Court properly granted that branch of the plaintiff's motion which was for leave to amend the complaint.

The defendants' remaining contentions are without merit.

RIVERA, J.P., FLORIO, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court