

Relationship Mktg. Factory, LLC v Perlman
2024 NY Slip Op 35257(U)
April 4, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 207470/2022
Judge: James Hudson
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Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision

PRESENT:

HON. JAMES HUDSON
Acting Justice of the Supreme Court

ORIG. MOTION DATE: 11/22/23

FINAL SUBMITTED DATE: 2/14/24

Mot. Seq. #: **002 – MG**

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THE RELATIONSHIP MARKETING FACTORY,
LLC; and IQUEUE RESPONSE MANAGEMENT,
LLC,

Plaintiffs,

-against-

JEFFREY PERLMAN; and the ROEHM PERLMAN
FAMILY TRUST a/k/a the ROEHM PERLMAN
TRUST,

Defendants,

-----X
JEFFREY PERLMAN, and the ROEHM PERLMAN
FAMILY TRUST a/k/a ROEHM PERLMAN TRUST,

Counter-Plaintiffs,

-against-

THE RELATIONSHIP MARKETING FACTORY, LLC;
and IQUEUE RESPONSE MANAGEMENT, LLC,

Counter-Defendants,

-----X
JEFF PERLMAN, and the ROEHM PERLMAN
FAMILY TRUST,

Third-Party Plaintiffs,

-against-

ELLEN RYAN and TIMOTHY RYAN,

Third-Party Defendants.

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Jeffrey Perlman and the Roehm Family Trust a/k/a the Roehm Perlman Trust, request an order pursuant to **CPLR 3025 (b)** granting permission to amend the amended answer, affirmative defenses and counterclaim, and third-party complaint.

This is a breach of contract action concerning the members of The Relationship Marketing Factory LLC; a domestic limited liability company. The company was formed during 2006 and operated by members Jeffrey Perlman, (later the Roehm Perlman Family Trust, administered by Jeffrey Perlman) and Ellen Ryan. Ms. Ryan holds a 51% interest in the company, and the Trust, 49%. On May 22nd, 2018, Ms. Ryan and Mr. Perlman formed Iqueue Response Management LLC “IQRM”). Ms. Ryan holds a 51% interest in IQRM, and Mr. Perlman holds a 49% interest. A more detailed discussion of the interrelationships among the parties may be found in the September 18th, 2023 decision and order.

The Court will now consider the motion (seq. no. 002) by the defendants/counter-plaintiffs/third-party plaintiffs to amend their amended answer, affirmative defenses and counterclaim and third-party complaint (“Amendments”).

Leave to serve an amended pleading is freely given (**CPLR 3025 [b]**).

The Court must determine whether the proposed amendments are palpably insufficient, cause prejudice to the plaintiff, counter-defendants, and third-party defendants, and/or are totally devoid of merit (*Alatorre v. Hee Ju Chun*, 44 AD3d 596, 596, 848 NYS2d 174 [2d Dept 2007]).

The determination of whether to grant leave to amend is within the discretion of the Court and will not be lightly set aside (*Board of Education of Sachem Central School*

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Dist. v. Eugene J. Donohue Associates, Inc., 298 AD2d 482, 483, 748 NYS2d 504 [2d Dept 2002]). It is an abuse of discretion not to allow an amendment to a pleading in the absence of prejudice to an opposing party (see *Dinsenhacher v. Dowis*, 5 AD3d 347, 772 NYS2d 532 [2d Dept 2004]; *Brook-Hattan Utils. V, 893 Constr. Corp.*, 180 AD2d 660, 579 NYS2d 705 [2d Dept 1992]; *Lechtrecker v. Lechtrecker*, 176 AD2d 284, 574 NYS2d 392 [2d Dept 1991]).

Jeffrey Perlman and the Roehm Perlman Family Trust a/k/a the Roehm Perlman Trust (“Perlman”, “Perlman Parties”) state that no prejudice will occur as the result of the court granting the requested relief, because the case is in its early stages. The Perlman parties state that discovery has not yet commenced.

22 NYCRR 202.12 (b) requires that a preliminary conference be held within 45 days from the date of filing the request for judicial intervention; which was filed on December 19th, 2022. No P.C. has been requested or held. The Court will schedule a preliminary conference as part of this decision and order.

The plaintiffs/counter-defendants The Relationship Marketing Factory LLC and Iqueue Response Management LLC (“LLC parties”) and the third-party defendants Ellen Ryan and Timothy Ryan (“Ryan parties”) argue that the proposed amendments lack merit. They contend that the amendments fail to meet the minimum pleading requirements of **CPLR 3013**. The LLC/Ryan parties allege a lack of particularity; but have not filed a cross-motion pursuant to **CPLR 3024 (a)** for a more definite statement (see *Pisula v. Roman Catholic Archdiocese of New York*, 201 AD3d 88, 159 NYS3d 458 [2d Dept 2021]; *Rosen v. Raum*, 164 AD2d 809, 559 NYS2d 541 [1st Dept. 1990]).

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They specifically call the Court's attention to the 10th cause of action of the proposed amended complaint. That cause of action concerns the use by Ellen Ryan of a company credit card for business expenses (NYSCEF Doc. 41, p. 6). They argue the cause of action is conclusory and vague. The amended complaint clearly alleges improper use of that business credit card by Ms. Ryan for personal expenses.

They also assert that the Perlman parties statement of their performance in accordance with the parties' contract must state with specificity the manner in which the Perlman parties performed in order to afford the LLC/Ryan parties notice. That is not a material element of a cause of action alleging breach of contract (*see 34-06 73, LLC v. Seneca Insurance Company*, 39 NY3d 44, 178 NYS3d 1, 198 NE3d 1282 [2022]).

Complaint allegations need not be stated in detail, provided the parties are put on notice of the underlying transactions or occurrences as required. "It is only a want of notice or the absence of a material element that violates CPLR 3013" (*Patrick M. Connors, Siegel, N.Y. Prac. §208*, [6th ed., December 2023]).

The criterion is whether the Perlman parties have a cause of action, not whether one has been stated (*Maddicks v. Big City Properties, LLC*, 34 NY3d 116, 123, 114 NYS3d 1, 137 NE3d 459 [2019]; *Leon v. Martinez*, 84 NY2d 83, 88, 614 NYS2d 972, 638 NE2d 511 [1994]). The Perlman parties have no obligation to demonstrate evidentiary facts to support their complaint (*Stuart Realty Co. v. Rye Country Store, Inc.*, 296 AD2d 455, 456, 745 NYS2d 72 [2d Dept 2002]). The Court will not consider whether the amended complaint will survive a summary judgment motion or whether the Perlman parties will be able to

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prove their claims (*Redwood Property Holdings, LLC v. Christopher*, 211 AD3d 758, 177 NYS3d 895 [2d Dept 2022]).

The Perlman parties have uploaded their proposed amended answer, affirmative defenses and counterclaim, and third-party complaint.

The Court has carefully considered the balance of the arguments presented in opposition to the proposed amendments and finds them neither mandatory or persuasive.

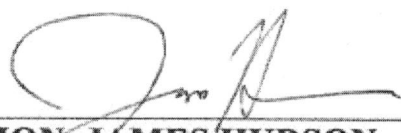
Accordingly, it is

ORDERED, that the motion (seq. no. 002) by Jeffrey Perlman and the Roehm Family Trust a/k/a the Roehm Perlman Trust, which requests, pursuant to **CPLR 3025 (b)**, permission to amend the amended answer, affirmative defenses and counterclaim and third-party complaint, is granted; and it is further

ORDERED, ADJUDGED and DECREED, that the parties will attend a preliminary conference on May 21st, 2024 at 10:00 a.m. via Microsoft Teams and will, prior to that conference, complete and upload to the NYSCEF case record a proposed preliminary conference order.

This memorandum also constitutes the Order of the Court.

Dated: April 4th, 2024
Riverhead, NY


HON. JAMES HUDSON
Acting Justice of the Supreme Court