

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MACHNE MENACHEM, INC.
& YAKOV SPRITZER,

Plaintiffs,

MEMORANDUM AND ORDER

97-CV-2550

-against-

MENDEL HERSHKOP, MEIR HERSHKOP,
AARON HERSHKOP, (a/k/a "Lelli"),
SHNEUR HERSHKOP, (a/k/a "Gadi"),
LEVI HARTMAN, SHMUEL HEBER &
YOSEF GOLDMAN,

Defendants.

-----X

GLASSER, United States District Judge:

Plaintiff Machne Menachem, Inc. ("MM") brought this action alleging violations of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, et seq. ("RICO"), by filing a complaint on May 6, 1997. It now moves to amend the complaint to fully set forth their RICO claims, add pendent assault and breach of fiduciary duty claims and add Yakov Spritzer – a member of the Board of Directors of MM – as a plaintiff. For the following reasons, its motion is granted.

FACTS

For a description of the identities of the parties and the facts underlying this action, see this Court's Memoranda and

Orders of July 1, 1997 and September 12, 1997.

The proposed amended complaint divides the RICO claim contained in the complaint into two claims, one for substantive violations of the RICO and a second for conspiracy to violate the RICO. In addition, instead of the cursory nature of the RICO allegations contained in the complaint, it sets forth detailed allegations and includes various allegations concerning events that occurred after the commencement of this action.

DISCUSSION

The denial or grant of a motion to amend is within the discretion of the district court, Evans v. Syracuse City School Dist., 704 F.2d 44, 46 (2d Cir.1983) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)), and leave to amend "shall be freely given when justice so requires." Fed.R.Civ.P. 15(a).¹ In Foman, the Supreme Court instructed that leave to amend was to be liberally granted absent "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing

¹ The identical standard applies to motions to supplement the pleading under Fed. R. Civ. P. 15(d). See Quarantino v. Tiffany & Co., 71 F.3d 58, 66 (2d Cir. 1995).

party by virtue of allowance of the amendment, [and] futility of amendment." See Williams v. Brooklyn Union Gas Co., 819 F.Supp. 214, 223 (E.D.N.Y. 1993).

Only one of the deferdants – Yosef Goldman ("Goldman") – has opposed plaintiff's motion to amend. He argues that this motion should be denied because it (1) "includes generalizations which cannot be responded to because events are asserted to have occurred for which no dates or times are given, no places are described, no actual specification of the alleged wrong is made, beyond saying that wrong was done," Goldman Aff., ¶ 7; (2) includes allegations concerning events post-dating the commencement of this action, id., ¶ 8; (3) is untimely insofar as it includes allegations relating to events that had already occurred when the initial complaint was filed. Id., ¶ 9. Because the first two of these contentions are clearly without merit², only the third is addressed at length herein.

² In support of the first contention – that the proposed amended complaint is too general for a response to be fashioned – Goldman cites ¶ 91 as an example of this supposed generality. However, a review of that paragraph – which alleges that "the HERSHKOP FAMILY increased their efforts to intimidate, use physical force, and harass other persons with the purpose of influencing, delaying, or preventing the testimony of persons in the

While Goldman is correct in his assertion that allegations relating to events pre-dating the initial complaint could have been included in the initial complaint, that in itself should not lead to denial of a motion to amend. Not only is the motion not particularly late – discovery has barely begun, Bornstein Aff., ¶ 14 – but “[d]elay alone . . . does not usually warrant denial of leave to amend.” Rachman Bag Co. v. Liberty Mut. Ins. Co., 46 F.3d 230, 234-35 (2d Cir. 1995).

litigation of this case” – does not reveal any allegation too general to elicit a response.

As to the second contention, it should be noted that Fed. R. Civ. P. 15(d) specifically allows for supplemental pleadings including allegations relating to events occurring after the filing of the initial complaint.

CONCLUSION

For the foregoing reasons, plaintiff's motion is granted.

SO ORDERED.

Dated: Brooklyn, New York
July 17th 1998



I. Leo Glasser, U.S.D.J.

Copies of the foregoing Order were this day sent to:

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