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**ROBERT JAMES, et al., Plaintiffs, -against- UNIVERSAL MOTOWN RECORDS,
INC., et al., Defendants.**

03 Civ. 4487 (LAK)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

2005 U.S. Dist. LEXIS 4442

March 22, 2005, Decided

PRIOR HISTORY: James v. Universal Motown Records, Inc., 2004 U.S. Dist. LEXIS 26994 (S.D.N.Y., Dec. 13, 2004)

DISPOSITION: [*1] Plaintiffs' motion for leave to amend complaint denied.

COUNSEL: For Robert James, Samuel Anderson, Robert James and Samuel Anderson doing business as Rob and Tha Soul Brother Productions, Plaintiffs: Lori Nevias, Lynbrook, NY.

For Universal Motown Records, Inc. divisions of Universal Music Group, Inc., Universal Music International, Inc. division of Universal Music Group, Inc., Defendants: Ilene Susan Farkas, Pryor Cashman Sherman & Flynn LLP, New York, NY.

For Universal Music Group, Inc., Hogland Records, P1 Music, Defendants: Ilene Susan Farkas, Andrew Harrison Bart, Pryor Cashman Sherman & Flynn LLP, New York, NY.

For Jelly's Jams LLC, Hogland Records, P1 Music, Defendant: Eric Vaughn-Flam, Rubin Bailin Ortoli Mayer & Baker, LLP, New York, NY; Ilene Susan Farkas, Andrew Harrison Bart, Pryor Cashman Sherman & Flynn LLP, New York, NY.

JUDGES: Lewis A. Kaplan, United States District Judge.

OPINION BY: Lewis A. Kaplan

OPINION:

ORDER

LEWIS A. KAPLAN, *District Judge.*

Plaintiffs are the proprietors of the copyrights in two musical works. They brought this action principally against defendant Universal Motown Records, Inc. ("Universal") for copyright infringement (first cause of action, misappropriation [*2] (third cause of action) and unjust enrichment (fifth cause of action) on the theory that Universal was distributing in the United States and elsewhere an infringing album entitled *Four* by a group called Proyetco Uno. The complaint also contained, among other things, claims for contributory infringement (second cause of action), misappropriation (fourth cause of action), and unjust enrichment (fifth cause of action) against Jelly's Jams, LLC ("Jelly's").

Early in the litigation, the Court entered a scheduling order on consent pursuant to which the last date for the joinder of any additional parties was set at September 30, 2003, the last date for amendment of the pleadings at October 30, 2003, the date for completion of discovery at April 15, 2004, and the last date for filing the joint pretrial order and any motions for summary judgment at May 15, 2004. (Docket item 10) The discovery cutoff date was extended by 28 days by order dated March 26, 2004 with the caveat that no further extensions would be granted. n1 (Docket item 16)

n1 Although not material here, the deadline for

submission of the joint pretrial order eventually was extended until September 9, 2004. (Docket items 51, 52)

[*3]

In due course, Jelly's and Universal both moved for judgment on the pleadings and summary judgment, respectively. By order dated December 10, 2004, the Court granted Jelly's motion to the extent that it dismiss the misappropriation and unjust enrichment claims but denied it as to the contributory infringement claim, essentially on the ground that the complaint stated a legally sufficient claim on the theory that Jelly's granted rights to Motown (i.e., Universal) which led to infringement by Motown. (Docket item 80) A few days later, it granted Universal's motion for summary judgment. (Docket item 86)

Following a pretrial conference with respect to the little that remained of the case, plaintiffs moved for leave to amend the complaint against Jelly's, a motion that was granted on default. (Docket items 87, 89) The amended complaint asserts a single claim, against Jelly's alone, which claims, for the first time, that Jelly's is liable as a primary infringer. Indeed, it alleges that John Jellybean Benitez, Jelly's principal, was personally responsible for the alleged use of plaintiffs' copyrighted works in the album in question. Am. Cpt. P17. Jelly's thereupon moved to dismiss the amended [*4] complaint for lack of subject matter jurisdiction.

Faced with Jelly's motion, plaintiffs move by order

to show cause, on the very eve of trial (jury selection being tomorrow) for leave to amend yet again to add Mr. Benitez, Mr. Jelly Inc. and HOLA Recordings LLC as defendants.

Ordinarily, leave to amend should be granted freely. Granting leave in this case, however, would be inappropriate. Mr. Benitez's alleged role in whatever went on here has been known to plaintiffs for months, probably for years. The deadline for joinder of additional parties came and went on September 30, 2003. Notwithstanding that the deadline for amendments of the pleadings also had expired long before the Court granted leave to amend earlier this year in light of the fact that the dismissal of Universal altered the structure of the case and the defendants did not object. Plaintiffs surely could have sought to have added Mr., Benitez and the other two proposed defendants at that time but failed to do so. They have offered no meritorious explanation for that failure. Moreover, the prejudice to the defendant of adding new parties literally on the eve of trial is patent.

Accordingly, the motion for leave to [*5] amend is denied.

SO ORDERED.

Dated: March 22, 2005

Lewis A. Kaplan

United States District Judge