

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **BARBARA R. KAPNICK**

PART 39

Index Number : 101535/2009

GELMAN, GEOFFREY

vs
BUEHLER, ANTONIO

Sequence Number : 002

DISMISS ACTION

INDEX NO. 101535/09

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

RECEIVED

MAR 17 2010

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

Dated: 3/16/10


BARBARA R. KAPNICK J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Handwritten initials

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IA PART 39

-----X
GEOFFREY GELMAN,

Plaintiff,

-against-

ANTONIO BUEHLER,

Defendant.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 101535/09
Mot. Seq. No. 002

Plaintiff Geoffrey Gelman and defendant Antonio Buehler formed Crimson Capital, LLC (the "LLC") (referred to in the Amended Complaint as a 'partnership') pursuant to an oral agreement allegedly entered into by the parties on or about September 16, 2007, for the purpose of starting a company that would research and purchase a single business to later be sold at a profit.

Plaintiff claims in his Amended Complaint that they agreed to "operate the business until the liquidity event could be achieved, or, if the liquidity event could not be achieved earlier, they would operate the business for a period of approximately [emphasis supplied] 4 to 7 years in an attempt to increase the value of the business and achieve the liquidity event."

Plaintiff further claims that defendant demanded on February 25, 2008 that plaintiff give him a majority ownership of the

business and that defendant quit after plaintiff refused the request.

By Decision/Order dated July 27, 2009 on defendant's motion to dismiss the original Complaint, this Court, *inter alia*, (i) dismissed plaintiff's claim for tortious interference with business relations with leave to replead with greater specificity as to the business relations which were allegedly interfered with; and (ii) dismissed plaintiff's claim for breach of the 'partnership' agreement with leave to replead to set forth the relevant provisions of the agreement which were allegedly breached.

In the Amended Complaint, plaintiff seeks to recover damages against defendant:

(i) in the amount of \$100,000.00, claiming that defendant breached their agreement by refusing to share in the expenses equally and by leaving the partnership prior to the 'termination event', i.e., prior to selling the business and paying back the investors (first cause of action); and

(ii) in the amount of \$600,000.00, claiming that defendant interfered between the partnership and its investors (and breached defendant's contract with plaintiff) by telling the investors that he was "abandoning the partnership and that the Plaintiff was a liar, [which] resulted in the investors retracting their promises

to invest, and also not investing with Plaintiff" (second cause of action).

Defendant now moves for an order pursuant to CPLR § 3211(a)(7) dismissing the Amended Complaint with prejudice.

Specifically, defendant argues that the first cause of action for 'breach of contract' must be dismissed on the grounds that: (i) the alleged partnership was terminable at will; or (ii) in the alternative, plaintiff's claim is barred by the Statute of Frauds since there is no written agreement and the alleged undertaking was incapable of being performed within a year.

"It is well settled that when a partnership has no definite term or particular objective to be achieved, it may be dissolved at any time by the express will of one or more of the partners (see, Partnership Law § 62[1][b]; additional citations omitted)." *Harshman v Pantaleoni*, 294 AD2d 687 (3rd Dep't 2002). See also, *Sanley Co. v Louis*, 197 AD2d 412 (1st Dep't 1993).

Although it appears that the parties discussed various business plans and scenarios, plaintiff has failed to allege sufficient facts or submit any evidence to support a finding that

the partnership was for a definite term or a particular defined objective.


Accordingly, based on the papers submitted and the oral argument held on the record on January 25, 2010, this Court finds that the alleged partnership was a partnership "at will subject to dissolution at any time by any partner (citation omitted)." *Sanley Co. v Louis, supra* at 413. The first cause of action must, therefore, be dismissed.

This Court further finds that the second cause of action must also be dismissed, since the Amended Complaint fails to, *inter alia*, identify any persons or entities with whom plaintiff or the LLC had a business relationship, or to allege specific facts regarding the nature of the relationship allegedly interfered with.

Defendant's motion is, therefore, granted in its entirety. The Clerk may enter judgment dismissing plaintiff's Amended Complaint with prejudice and without costs or disbursements.

This constitutes the decision and order of this Court.

Dated: March 16, 2010



BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK
J.S.C.