

IN THE UNITED STATES COURT FOR THE
DISTRICT OF PUERTO RICO

WILLIAM ANTHONY COLON)	CASE NO: 07-1380 (JA)
)	
Plaintiff,)	Hon. Magistrate Justo
)	Arenas
v.)	
)	
RUBÉN BLADES,)	
ROBERTO MORGALO)	
MARTÍNEZ, MORGALO & ASSOCIATES)	
Defendants)	
_____)	
RUBÉN BLADES)	
Cross-Plaintiff)	
v.)	
)	
ROBERT MORGALO in his personal)	
capacity and as owner and member of)	
MARTÍNEZ, MORGALO & ASSOCIATES, LLC;)	
MARTÍNEZ, MORGALO & ASSOCIATES, LLC.)	
)	
Cross-Defendants)	
_____)	
ROBERT J. MORGALO)	
Plaintiff)	Consolidated with
v.)	CASE NO: 07-1380 (JA)
)	
RUBEN BLADES,)	
RUBEN BLADES PRODUCTIONS, INC.)	
Defendants.)	
_____)	

**MOTION TO STRIKE THIRD PARTY COMPLAINT, AMENDED
THIRD PARTY COMPLAINT AND INFORMATIVE MOTION
PURSUANT TO RULE 14(A) and RULE 12(f)**

Defendant and Crossplaintiff, Ruben Blades ("Blades"), by and through his attorney, moves the Court for an order striking out defendant Robert J. Morgalo's ("Morgalo") third party claim [Docket Nos. 156 and 157] filed against Ariel Rivas, Arturo Martinez, Dissar Records, Cesar Sainz, and Rompeolas, Inc., and

for an order striking Informative Motion [Docket No. 159] on the following grounds:

1. On April 5, 2010, during the course of default judgment hearing in this action, Morgalo filed a Third Party Complaint [Docket No. 156] and an Amended Third Party Complaint [Docket No. 157], without leave of Court and without notice to Blades.

2. On April 6, 2010, Morgalo filed an "Informative Motion Regarding Third Party Complaint" [Docket No. 159] purporting to state reasons why such third party claim was filed.

3. Rule 14(a)(1) of the Federal Rules of Civil Procedure states in pertinent part that: "the third party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer." Fed. R. Civ. Pro. 14(a)(1). The answer to Blades' Amended Crossclaim [Docket No. 56] was filed by Morgalo on September 2, 2008 [Docket No. 67].

4. Furthermore, the said third party complaint (and amended third-party complaint), is insufficient on its face. The filing does not state any facts upon which the named third-party defendants are or may be liable to Morgalo for all or part of Blades' claim against Morgalo, other than to state mere empty and unsupported conclusions as to parties already determined not to be indispensable¹. [See Docket No. 90, Opinion and Order entered January 21, 2009 denying Morgalo's motion to dismiss for failure to join the same third parties, Docket No. 80].

5. The Court has discretion, at little more than one month before the scheduled trial in this matter, to strike the third party complaint if it is obviously unmeritorious and can only delay or prejudice the proceedings.

¹ Note: With respect to Arturo Martínez, his testimony at the April 5th hearing is that he is a resident of the State of New York, and as such, his joinder would defeat jurisdiction.

6. The informative motion [Docket No. 159] should be stricken pursuant to Rule 12(f) insofar as it contains counsel's personal characterization of evidence introduced at the April 5th hearing, additional facts not in evidence, improper conclusions of law, and otherwise redundant and immaterial matter. See Fed. R. Civ. Pro. 12(f)(West 2010). Morgalo unsuccessfully attempted to bring these same third parties through a Rule12(b)(7) motion in November of 2008 and now pretends to re-litigate the issue through an untimely and different procedural mechanism².

7. Neither the Third Party Complaint, nor the informative motion, raise any new matters that Morgalo did not know of or should have known at the time he was served with Blades' original Crossclaim and the Amended Crossclaim. The eleventh hour filing of the Third Party Complaint has been done with the sole purpose of delaying the proceedings, and as one more desperate attempt to abuse the system and evade responsibility. Consequently, it should be stricken.

WHEREFORE, Defendant and Crossplaintiff Ruben Blades, moves to strike the Third Party Complaint, the Amended Third Party Complaint and the referenced Informative Motion [Docket Nos. 156, 157 and 159] for failure to comply with the Rules of Civil Procedure as to form and timing, and for failure to state a claim upon which relief can be granted, and because such filings constitute an improper attempt to re-litigate the same issues brought by Morgalo in his Motion to Dismiss filed on November 17, 2008 and denied by this Court in Docket No. 90.

² Reference is made to Colón's Opposition to Morgalo's motion to dismiss, where he stated that "*In any event, the Court should not join these parties. Plaintiff William Colón did not enter into a contractual relationship with either of these parties. Therefore, they are not indispensable parties.*" [Docket 84, at page 2 of 3] To the extent Morgalo may have a good faith basis, which is entirely denied, to bring any derivative extracontractual indemnity or contribution claim against the parties he now seeks to implead, there is nothing that would require him to do so within the purview of this lawsuit which has been scheduled for trial since December of 2009.

Dated: April 7, 2010.

s/ Pamela D. González Robinson
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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2010 I electronically filed the foregoing Motion using the CM/ECF system which will send notification of such filing to the following: Jose A. Hernandez-Mayoral and Juan H. Saavedra-Castro (attorneys for Plaintiff) and to Juan M. Frontera Suau and Israel O. Alicea Luciano (attorneys for Robert Morgalo).

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