

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D11021
O/cf/mv

_____AD3d_____

Argued - December 13, 2005

ANITA R. FLORIO, J.P.
DAVID S. RITTER
PETER B. SKELOS
ROBERT A. LIFSON, JJ.

2005-01212

DECISION & ORDER

Isabel DeOliviera, etc., appellant, v Robert
M. Manners, respondent, et al., defendant.

(Index No. 11903/03)

Michael C. Manniello, P.C., Syosset, N.Y., for appellant.

Manners & Associates, P.C., Westbury, N.Y. (Carlo M. Fusco of counsel), for
respondent.

In an action to recover on two promissory notes, the plaintiff appeals from so much of an order of the Supreme Court, Nassau County (Feinman, J.), entered October 27, 2004, as granted the motion of the defendant Robert M. Manners pursuant to CPLR 3211(a)(2) and (7) to dismiss the complaint insofar as asserted against him.

ORDERED that the order is modified, on the law and in the exercise of discretion, by deleting the provision thereof granting the motion to dismiss the complaint insofar as asserted against the defendant Robert M. Manners and substituting therefor a provision granting the motion on condition that the United Pentecostal Church in Oyster Bay accepts this matter for determination of the claims and defenses asserted herein, and in the event the matter is not accepted by the United Pentecostal Church in Oyster Bay for determination, the motion to dismiss the complaint insofar as asserted against the defendant Robert M. Manners is denied; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

Under the unique circumstances of this case, where the appellant and the respondent agreed to submit this matter to the United Pentecostal Church in Oyster Bay for a determination, a

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conditional dismissal is appropriate (*see Serbian Eastern Orthodox Diocese for the USA and Canada v Milvojevich*, 426 US 696; *Maryland and Virginia Eldership of the Churches of God v Church of God at Sharpsburg*, 396 US 367; *Lightman v Flaum*, 97 NY2d 128, *cert denied* 535 US 1096; *Park Slope Jewish Ctr. v Congregation B'nai Jacob*, 90 NY2d 517; *Mandel v Silber*, 304 AD2d 538).

The parties' remaining contentions have been rendered academic in light of our determination, and in any event, are without merit.

FLORIO, J.P., RITTER, SKELOS and LIFSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court