

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

D25553
C/kmg

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Submitted - December 2, 2009

MARK C. DILLON, J.P.
HOWARD MILLER
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2009-04423

DECISION & ORDER

Jennifer Mizrahi, respondent, v
Neil R. Flaum, et al., appellants.

(Index No. 2385/06)

Catalano Gallardo & Petropoulos, LLP, Jericho, N.Y. (Matthew K. Flanagan of counsel), for appellants.

Natiss & Gordon, P.C., Roslyn Heights, N.Y. (Shalom A. Schwartz of counsel), for respondent.

In an action to recover damages for legal malpractice, the defendants appeal from an order of the Supreme Court, Nassau County (Marber, J.), entered April 21, 2009, which granted the motion of Kenneth P. Silverman, as Chapter 7 Trustee of the Bankruptcy Estate of Jennifer Mizrahi, to substitute Jennifer Mizrahi as the plaintiff in his place and to compel the defendants to accept service of a supplemental bill of particulars, and denied their cross motion to dismiss the action.

ORDERED that the order is affirmed, with costs.

When the Bankruptcy Trustee, Kenneth P. Silverman, abandoned the instant legal malpractice claim at the conclusion of the bankruptcy proceedings, the claim immediately vested with the debtor, Jennifer Mizrahi (*see* 11 USCA § 554; *Guiffrida v Storico Dev., LLC*, 60 AD3d 1286; *Culver v Parsons*, 7 AD3d 931). Thus, the Supreme Court providently exercised its discretion in granting that branch of Silverman's motion which was to substitute Mizrahi as the plaintiff in his place (*see* CPLR 1003; *JCD Farms v Juul-Nielsen*, 300 AD2d 446; *see also Silverman v Flaum*, 42

AD3d 447). Furthermore, under the circumstances of this case, the Supreme Court providently exercised its discretion in granting that branch of Silverman's motion which was to compel the defendants to accept service of a supplemental bill of particulars fixing the alleged amount of damages (see CPLR 3043; *Shahid v New York City Health & Hosps. Corp.*, 47 AD3d 798; *Fortunato v Personal Woman's Care, P.C.*, 31 AD3d 370; *Zenteno v Geils*, 17 AD3d 457).

The defendants' remaining contentions are without merit.

DILLON, J.P., MILLER, ENG, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court