

**Mandel v Flanzer**

2009 NY Slip Op 30085(U)

January 13, 2009

Supreme Court, New York County

Docket Number: 602952/06

Judge: Shirley Werner Kornreich

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

PRESENT: **HON. SHIRLEY WERNER KORNREICH**  
*Justice*

PART 54

Index Number : 602952/2006

**MANDEL, ELLEN**

vs.

**FLANZER, RICHARD**

SEQUENCE NUMBER : 004

AMEND

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

n this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1-2

3

4

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

**FILED**  
JAN 16 2009

COUNTY CLERK'S OFFICE  
NEW YORK

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION AND ORDER.**

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

Dated: 1/13/09

**HON. SHIRLEY WERNER KORNREICH**  
*[Signature]*  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 54

-----X  
ELLEN MANDEL & STEVEN J. MANDEL,

Plaintiffs,

Index No.: 602952/06

DECISION  
and ORDER

-against-

RICHARD FLANZER,

Defendant.

-----X  
KORNREICH, SHIRLEY WERNER, J.:

This action arises out of a series of loans allegedly made by plaintiffs Ellen and Steven Mandel to defendant Richard Flanzer. Plaintiffs now move, pursuant to CPLR § 3025(b), to amend their complaint: for additional damages of \$15,000 pursuant to a loan they allegedly made to Mr. Flanzer on or about September 15, 2005; and to change the due date for the loans outlined in their original complaint from August 10, 2006 to December 31, 2006. Defendant opposes and cross-moves for an order dismissing the complaint and for sanctions on the ground that plaintiffs have perpetuated a fraud on the court.

*I. Background*

In their original complaint, plaintiffs allege that Mr. Flanzer is indebted to them in the amount of \$114,319.75, plus interest, pursuant to a series of loans made in 2005 and 2006. According to the plaintiffs, back in 2005 and 2006 a close personal relationship existed between themselves and Mr. Flanzer. During this time, Mr. Flanzer was allegedly going through a very difficult period and needed money to take care of his basic needs including paying bills and support of his children. Plaintiffs contend that they could never say “no to a friend” and made loans, in cash, to Mr. Flanzer. Ms. Mandel would meet Mr. Flanzer at the Metro North train

station in Hartsdale, New York and give him envelopes of cash. Mr. Flanzer claims that he never signed any of the loan documents, that the signature purporting to be his is a forgery and that the alleged loan agreements arose out of his business relationship with Mr. Mandel via a company they created called Flanzer and Mandel Entertainment, Inc. (FAME).

On or about December 5, 2006, plaintiffs commenced this action by moving for summary judgment in lieu of complaint. The court denied plaintiffs motion. In its decision, the court noted, *inter alia*, that Mr. Flanzer's "promise to pay is subject to a condition and requires proof of facts outside of the instrument itself." Enforcement of the loan agreement necessitated proof of extraneous facts, including whether or not money given to Mr. Flanzer was a loan or business arrangement. In addition, the court stated that "there are questions of fact regarding the notes that preclude summary judgment. It is unclear whether Flanzer in fact signed and initialed the loan agreement presented in Exhibit A, since the signatures on the agreements-- both of which allegedly belong to Flanzer--appear significantly different at first blush. Moreover, the agreements lack certificates of notarization or any witness signatures."

Plaintiffs now seek to amend their complaint to add an additional \$15,000 in damages pursuant to an alleged promissory note dated September 27, 2005. Plaintiffs allege that this particular transaction occurred on September 15, 2005 and that Mr. Flanzer was to pay this loan back in full by January 26, 2006. The document provided by plaintiffs in support of this contention has a signature purporting to be that of Mr. Flanzer. The document is not notarized or witnessed. In addition, neither plaintiff signed the document. Plaintiff Ellen Mandel states that she found the document during the discovery phase of this proceeding while she was searching through her files. Plaintiffs also seek to amend the complaint to reflect the due date for the loans to be December 31, 2006.

## II. *Conclusions of Law*

Generally, a motion for leave to amend a pleading will be granted, “in the absence of prejudice or surprise to the opposing party[.]” *Oil Heat Inst. v. RMTS Assocs., LLC*, 4 A.D.3d 290, 772 N.Y.S.2d 313, 316 (1st Dept. 2004); *see also* CPLR 3025(b) (“[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court . . . . Leave shall be freely given upon such terms as may be just”); *St. Paul Fire & Marine Ins. Co. v. Town of Hempstead*, 291 A.D.2d 488, 489 (2nd Dept. 2002) (prejudice to adverse party is “main barrier” to granting leave to amend pleading).

Here, plaintiffs’ have met their burden. They have submitted a promissory note outlining the purported terms of the loan which appears to have been signed by the defendant. In opposition, Mr. Flanzer argues that the addition of the \$15,000 is an attempt to double count an amount that is already listed. Mr. Flanzer also reiterates his main contention that all of the alleged loan agreements are inauthentic and that his signature was forged. Each contention is an issue of fact which will be addressed at trial. However, in allowing the complaint to be amended, the issues of fact remain the same. Evidence outside of the four corners of the alleged loan agreements will be necessary to prove whether all of the alleged payments were loans or whether they were made, as Mr. Flanzer contends, to compensate him for work he performed in association with the business FAME. Also, issues of fact remain as to the validity of these agreements, including the authenticity of Mr. Flanzer’s signature. With all of these issues in mind, at this stage, Mr. Flanzer will suffer no prejudice through the addition of an additional \$15,000 in damages. He will have ample time and opportunity to address all of his concerns at trial.

Along these same lines, Mr. Flanzer’s cross motion for dismissal of this action and for sanctions is denied. In sum, Mr. Flanzer contends that plaintiffs’ have perpetuated a massive

fraud on this court by commencing this action. Included in this alleged fraud, once again, is Mr. Flanzer's contention that his signature has been forged and none of the loan documents are authentic. He claims that plaintiffs deliberately mixed and matched different loan documents to come up with their theory of the case and that none of these agreements accurately set forth his business agreement with Mr. Mandel. He contends that Ms. Mandel has misled the court during every stage of this proceeding and insinuates that she lied under oath. Ms. Mandel denies all of these allegations. These contentions are issues of fact to be resolved at trial. Accordingly, it is

ORDERED that plaintiffs' motion for leave to amend its complaint is granted, and that the proposed amended complaint annexed to the motion shall be deemed served; and it is further

ORDERED that defendant shall answer the amended complaint within twenty (20) days of service of this order with notice of entry; and it is further

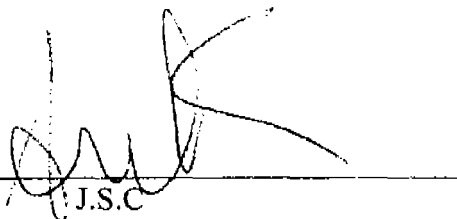
ORDERED that plaintiffs' shall serve a copy of this order with notice of entry upon both the Trial Support Office (Room 158) and the County Clerk; and it further

ORDERED that defendant's cross-motion is denied; and it is further

ORDERED that all parties are to appear before the Court for a status conference, as scheduled at 9:30 a.m. on February 19, 2009 at 111 Centre Street, Room 1227, New York, NY 10013.

**FILED**  
JAN 16 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

ENTER:

  
J.S.C

Date: January 13, 2009  
New York, New York