

**Sprecher v Miller**

2025 NY Slip Op 33948(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 655888/2020

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. LYLE E. FRANK **PART** **11M**

*Justice*

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BENNETT SPRECHER, PROMENADE THEATRE CORPORATION, AMY SPRECHER

Plaintiff,

**INDEX NO.** 655888/2020

**MOTION DATE** 08/18/2025

**MOTION SEQ. NO.** 018

- v -

MAX MILLER AND JACOB MILLER, CADOGAN CORPORATION, MAX MILLER,

Defendant.

**DECISION + ORDER ON MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 018) 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 320, 321, 322, 323, 324, 339, 340

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, the motion is granted in part.

**Background**

This omnibus motion arises out of a long-running dispute between two shareholders in the Promenade Theatre Corporation (“Promenade” or the “Business Plaintiff”). Plaintiffs Bennett Sprecher and Amy Sprecher (the “Individual Plaintiffs”), shareholders in Promenade, filed the underlying proceeding in 2020 against the estate of Promenade’s director William Miller<sup>1</sup>, Miller’s company Cadogan Corporation, and Miller’s son Max Miller (collectively, “Defendants”). The main thrust of Plaintiffs’ allegations center around an alleged oral agreement between Mr. Sprecher and Mr. Miller regarding the payment of management fees, alleged misuse of Promenade funds, and other mismanagement of Promenade by Mr. Miller and later the executors of Mr. Miller’s estate. Relevant for this motion, Defendants answered the amended

<sup>1</sup> The action was initially instituted against Mr. Miller, who passed away during the pendency of this action.

complaint on May 21, 2024. Additionally, Mr. Sprecher was granted control of the Promenade corporate accounts by an order from this Court dated December 9, 2024. Plaintiffs have also been ordered to provide regular bank records to Defendants for the Promenade funds.

### **Discussion**

In this motion, Defendants seek to: 1) obtain leave to file the proposed counterclaims; 2) adjourn certain discovery deadlines; 3) obtain an order requiring Mr. Sprecher to return funds transferred from Promenade's bank account to an account at JPMorgan Chase; and 4) an order requiring Mr. Sprecher to place all of Promenade's assets under his control into an escrow account pending the conclusion of this proceeding. The parties agreed by a so-ordered stipulation to extend the discovery deadlines; Plaintiffs otherwise oppose this motion. For the reasons given below, the motion to amend the answer is granted. The motion for Plaintiffs to return corporate funds and to place corporate funds in escrow is granted in part, and the motion to provide an accounting going forward is granted.

#### ***The Motion to Amend the Pleadings Will Be Granted***

Defendants seek to amend their answer in order to assert causes of action against Mr. Sprecher sounding in fraud and breach of fiduciary duty, as well as counterclaims for the removal of him as a Promenade director, an accounting, and the dissolution of Promenade. Under CPLR § 3025(b), a party may amend their pleadings at any time by leave of court, which "shall be freely given." Plaintiffs oppose this portion of the motion on the grounds that the counterclaims could have been asserted earlier. While leave to amend is generally granted, when there has been "an extended delay in moving to amend, the party seeking leave to amend must establish a reasonable excuse for the delay." *Oil Heat Inst. V. RMTS Assocs., LLC*, 4 A.D.3d 290, 293 [1st Dept. 2004]. Such a reasonable excuse should be offered when there is an "extended

period between the date they became aware of the cause of action and the date of their motion.” *Pecora v. Pecora*, 204 A.D.3d 611, 611 – 12 [1st Dept. 2022]. While many of the proposed counterclaims involve actions taken by Mr. Sprecher in the course of this litigation with regards to corporate funds, and therefore did not involve an extended delay, some of the counterclaims are based on Mr. Sprecher’s actions prior to this proceeding.

But the Court does not find that there has been such an extended delay as would necessitate a showing of a reasonable excuse by Defendants. As discovery is still ongoing, Plaintiffs’ depositions have not yet occurred, and there has been no Note of Issue filed in this matter, the Court does not find any prejudice to Plaintiffs in permitting the Defendants to amend their answer. Leave to amend is generally granted, even at the eve of trial, in the absence of prejudice or surprise. *See, e.g., Arora v. Arlee Home Fashions, Inc.*, 98 A.D.2d 655, 656 [1st Dept. 1983]. Plaintiff claims to intend to move to dismiss the counterclaims should leave to amend be granted, and they would be within their right to so move. But absent a showing that the proposed amendments are “palpably improper or insufficient as a matter of law”, leave to amend should not be denied. *McGhee v. Odell*, 96 A.D.3d 449, 450 [1st Dept. 2012].

*The Use of Promenade Funds for Attorneys’ Fees in the Florida Action is Premature*

In another portion of this motion, Defendants are seeking to obtain an order requiring Mr. Sprecher to place all of Promenade’s assets under his control into an escrow account and to return funds paid out of Promenade’s corporate accounts for a probate action in Florida for Mr. Miller’s estate. Plaintiffs stated in oral argument on this motion that they are using corporate funds to cover their legal fees for their derivative claims in the related Florida probate action. Mr. Sprecher also provided a sworn affidavit stating that he caused Promenade to issue a payment for a valuation of a leasehold interest in order to aid this current litigation. Under BCL § 626(e), if a

derivative action taken on behalf of a corporation is successful, a court “may” award the plaintiff reasonable expenses and attorneys’ fees from the corporate funds. But Plaintiffs have provided no legal backing for the position that a shareholder may fund their derivative action from the corporate account while such an action is ongoing, before it is even resolved in their favor. Therefore, the portion of this motion that requests that the funds taken from the Promenade accounts to cover the Florida litigation costs and the valuation for this proceeding be returned is granted. Furthermore, given the contentious nature and history of this action, requiring Plaintiffs to provide an accounting of corporate expenditures alongside the court-ordered bank account records would be equitable and proper.

*While Some of the Other Corporate Expenditures Are Proper, Others are Disputed and Should  
Be Placed in Escrow*

Regarding the remaining contested expenditures that form the basis of the financial part of Defendants’ motion, Plaintiffs have provided an affidavit from Mr. Sprecher pointing out that many of those expenditures went to satisfy outstanding tax liabilities for Promenade and pay corporate accounts. These would clearly be proper corporate expenditures. But other expenditures made by Mr. Sprecher on behalf of Promenade involve contested funds. Mr. Sprecher made a transfer to him and his wife, claiming that this was the repayment of loans the Individual Plaintiffs had made to the Corporate Plaintiff. Defendants contest this loan and point to the previous orders of this Court that required Defendants, who also attempted to transfer Promenade assets to themselves in satisfaction of an alleged loan, to place the contested amount in escrow. It would be in the interests of equity and fairness to place the same requirements on Plaintiffs. Accordingly, it is hereby

ADJUDGED that the motion is granted in part; and it is further

ORDERED that leave to amend the answer to assert the proposed counterclaims is granted, and the proposed counterclaims at NYSCEF umber 306 shall be deemed served upon service of the instant Decision and Order with notice of entry; and it is further

ORDERED that the plaintiffs are directed to serve an answer to the amended answer with counterclaims within 20 days after such service; and it is further

ORDERED that the funds paid from the Promenade account to Manice Budd & Baggett LLP for representation in the Florida probate matter and paid to BBG to prepare a valuation of the leasehold interest be returned to the Promenade account within 30 days of service of a copy of this order with notice of entry; and it is further

ORDERED that the funds paid from the Promenade account to Bennett Sprecher and Amy Sprecher be placed in a separate escrow account within 30 days of service of a copy of this order with notice of entry, pending resolution of this matter; and it is further

ORDERED that beginning with the month of November 2025, along with providing monthly bank account statements to Defendants pursuant to a previous Order of this Court, Plaintiffs provide an accounting of the corporate expenditures to Defendants.

  
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10/10/2025  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE