

CPLR 3025(b): Second Department Reverses Order Denying Leave To Amend Answer Where No Prejudice Was Shown

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succinctly applied its new discretion to decline to exercise its jurisdiction. On the facts, New York was an inconvenient forum, and another forum was available where "the ends of justice and the convenience of the parties"⁵³ could better be served.

The *Hubbell* decision epitomizes the flexibility and simplicity of the *Silver* doctrine and its codification, CPLR 327.

ARTICLE 30 — REMEDIES AND PLEADING

CPLR 3025(b): Second Department reverses order denying leave to amend answer where no prejudice was shown.

CPLR 3025(b) provides that "[l]eave [to amend pleadings] shall be freely given upon such terms as may be just. . . ." Accordingly, amendments are freely allowed in the absence of prejudice to the opposing party.⁵⁴ This permits "the full litigation of a controversy."⁵⁵

In *Lermit Plastics Co. v. C. W. Lauman & Co.*,⁵⁶ the Appellate Division, Second Department, held that the denial of a co-defendant's motion for leave to serve an amended answer raising certain affirmative defenses, including the statute of limitations, was "an improvident exercise of discretion absent a showing of prejudice to plaintiffs."⁵⁷ Therefore, the order was unanimously reversed, and the motion was granted.

If the plaintiff's attorney proceeds to prepare for trial when the defendant's answer contains no statute of limitations defense, the plaintiff will be in a position to show prejudice should the defendant seek to amend his answer.

CPLR 3041: Bill of particulars may not contain reservation of right to file supplemental bill.

The bill of particulars serves to amplify the pleadings, limit the proof, and prevent surprise at trial, "by enabling the adverse party to know definitely the claim which he is called upon to meet."⁵⁸ When one party is unable to furnish all the information demanded by the adverse party, he cannot serve a bill of particulars and reserve the right

⁵³ 40 App. Div. 2d at 696, 336 N.Y.S.2d at 312.

⁵⁴ See, e.g., *Petrozzi v. Passamonte*, 32 App. Div. 2d 716, 300 N.Y.S.2d 183 (3d Dep't 1969) (mem.); *Stillwell v. Giant Supply Corp.*, 47 Misc. 2d 568, 262 N.Y.S.2d 833 (Sup. Ct. Nassau County 1965); *Leutloff v. Leutloff*, 47 Misc. 2d 458, 262 N.Y.S.2d 736 (Sup. Ct. Onondaga County 1965) (amendment of pleadings freely allowed in absence of laches, undue prejudice, and unfair advantage). See also 3 WK&M ¶ 3025.11.

⁵⁵ 3 WK&M ¶ 3025.11.

⁵⁶ 40 App. Div. 2d 680, 336 N.Y.S.2d 187 (2d Dep't 1972) (mem.).

⁵⁷ *Id.*, 336 N.Y.S.2d at 188.

⁵⁸ *Elman v. Ziegfeld*, 200 App. Div. 494, 497, 193 N.Y.S. 133, 136 (1st Dep't 1922).