

CPLR 2001: Amendment of Ad Damnum Clause Permitted When Verdict Exceeded Demand Due to Clerical Error

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ARTICLE 20 — MISTAKES, DEFECTS, IRREGULARITIES
AND EXTENSIONS OF TIME

CPLR 2001: Amendment of ad damnum clause permitted when verdict exceeded demand due to clerical error.

Under CPLR 2001, the court may permit a mistake, omission, defect, or irregularity to be corrected at any stage of an action in the interest of justice. In *Fullem v. Syracuse Transit Corp.*,³⁹ the Syracuse City Court denied the defendant's motion to reduce a \$1,000 verdict to the \$600 sought in the complaint, holding that there was sufficient evidence to support the plaintiff's contention that a clerical error had been made in the preparation of his papers.⁴⁰ The court acknowledged that ordinarily a plaintiff is bound by his ad damnum clause,⁴¹ but permitted the recovery of the entire verdict, invoking its inherent power to correct mistakes under CPLR 2001.⁴²

ARTICLE 21 — PAPERS

CPLR 2104: Oral settlement made in chambers and entered into record by court reporter held made in open court.

CPLR 2104 requires that an agreement between parties or their attorneys regarding any matter in an action must either be in writing and signed by the parties themselves or their attorneys, or made between counsel in open court. Oral settlements reached during informal proceedings in a judge's chambers have been held not made in open court.⁴³ Where there has been a writing evidencing the settlement terms,

³⁹ 72 Misc. 2d 309, 338 N.Y.S.2d 989 (Syracuse City Ct. 1972).

⁴⁰ The plaintiff's affidavits stated that his attorney had intended to demand \$6,000, the jurisdictional limit of the court, as he had always done in his many prior suits before the court, but that the amount had been mistakenly typed by his secretary. The proof at trial indicated that the plaintiff's medical expenses exceeded \$400.

⁴¹ *Id.* at 310, 338 N.Y.S.2d at 990, citing *Michalowski v. Ey*, 7 N.Y.2d 71, 163 N.E.2d 742, 195 N.Y.S.2d 633 (1959); *George v. County of Erie*, 66 Misc. 2d 871, 322 N.Y.S.2d 278 (Sup. Ct. Erie County 1971). Recent cases indicate a conflict as to whether post-verdict amendment of the ad damnum clause under CPLR 3025(b) and (c) should be permitted, since CPLR 3017(a) allows the court to grant any type of just relief within its jurisdiction whether or not demanded. See *Wyman v. Morone*, 33 App. Div. 2d 168, 306 N.Y.S.2d 115 (3d Dep't 1969) (amendment not permitted); *George v. County of Erie*, 66 Misc. 2d 871, 332 N.Y.S.2d 278 (Sup. Ct. Erie County 1971) (amendment not permitted); *Douglas v. Latona*, 61 Misc. 2d 859, 306 N.Y.S.2d 992 (Sup. Ct. Erie County 1970), discussed in *The Quarterly Survey*, 45 ST. JOHN'S L. REV. 145, 155 (1970) (amendment permitted). See 7B MCKINNEY'S CPLR 3017, supp. commentary at 182 (1970).

⁴² 72 Misc. 2d at 310, 338 N.Y.S.2d at 990. See *Herpe v. Herpe*, 225 N.Y. 323, 122 N.E. 883 (1919); *Nye v. Dawes*, 20 App. Div. 2d 680, 246 N.Y.S.2d 282 (4th Dep't 1964).

⁴³ See *In re Dolgin Eldert Corp.*, 31 N.Y.2d 1, 286 N.E.2d 228, 334 N.Y.S.2d 833 (1972), discussed in *The Quarterly Survey*, 47 ST. JOHN'S L. REV. 530, 541 (1973); *People ex rel. Putziger v. Putziger*, 22 App. Div. 2d 821, 254 N.Y.S.2d 916 (2d Dep't 1964) (mem.); *Accarino v. Hirsch*, 6 App. Div. 2d 795, 175 N.Y.S.2d 435 (2d Dep't 1958) (mem.). But see *Gass v. Arons*, 131 Misc. 502, 227 N.Y.S. 282 (N.Y. City Ct. Bronx County 1928).