

CPLR 2104: Oral Settlement Made in Chambers and Entered into Record by Court Reporter Held Made in Open Court

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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).

even in the form of the judge's own notes, the open court exception has been applied, and the stipulation enforced.⁴⁴

In *In re Estate of Meister*,⁴⁵ a committee for an incompetent sued on her behalf as a third-party beneficiary under a separation agreement executed by her deceased parents. An executor of the estate sought to compel the committee to comply with the terms of an oral settlement made in chambers and recorded by the official court reporter. In holding the agreement "operative and effectual," the Surrogate's Court, New York County, stated that "[t]he business of this court is transacted with equal force in chambers. Moving the parties into the courtroom which adjoins my chambers for the purpose of dictating the stipulation would give the stipulation no greater weight."⁴⁶

The court distinguished *In re Dolgin Eldert Corp.*,⁴⁷ where the Court of Appeals held that an oral settlement made in chambers was not within the open court exception. In *Dolgin*, there was no written evidence of the disputed terms of the alleged agreement, and the Court suggested that the result might be different if the facts of the agreement are undisputed and all the elements for an estoppel are present.⁴⁸

In *Meister*, the committee conceded the existence of the stipulation and agreement as to its terms, but sought to avoid it on the ground that subsequent investigation revealed that the amount agreed to would be inadequate to support the incompetent. The court refused to grant such relief, emphasizing the interest of disposing of litigation through settlement and compromise.⁴⁹ The decision indicates that CPLR 2104 will not be strictly construed to the detriment of that interest, particularly when the terms of the settlement are clear, uncontested, and supported by a written record.

ARTICLE 31 — DISCLOSURE

CPLR 3101(a): Courts continue to differ as to whether plaintiff is entitled to discovery and inspection of defendant's automobile liability insurance policy.

CPLR 3101(a) requires "full disclosure of all evidence material

⁴⁴ See *Golden Arrow Films, Inc. v. Standard Club of Cal., Inc.*, 38 App. Div. 2d 813, 328 N.Y.S.2d 901 (1st Dep't) (mem.), *motion for leave to appeal granted*, 30 N.Y.2d 486, 286 N.E.2d 926, 335 N.Y.S.2d 1025 (1972), *discussed in The Quarterly Survey*, 47 ST. JOHN'S L. REV. 148, 164 (1972); *Gass v. Arons*, 131 Misc. 502, 227 N.Y.S. 282 (N.Y. City Ct. Bronx County 1923).

⁴⁵ 72 Misc. 2d 459, 339 N.Y.S.2d 575 (Sup. Ct. N.Y. County 1972).

⁴⁶ *Id.* at 462, 339 N.Y.S.2d at 578.

⁴⁷ 31 N.Y.2d 1, 286 N.E.2d 228, 334 N.Y.S.2d 833 (1972).

⁴⁸ *Id.* at 11, 286 N.E.2d at 234, 334 N.Y.S.2d at 841.

⁴⁹ 72 Misc. 2d at 464, 339 N.Y.S.2d at 580.