

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - June 6, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
ROBERT A. LIFSON
RUTH C. BALKIN, JJ.

2008-01981

DECISION & ORDER

Barnes Coy Architects, P.C., appellant, v David
Shamoon, et al., respondents.

(Index No. 21651/05)

Lynn & Gartner, LLP, Mineola, N.Y. (Robert P. Lynn, Jr., and Stephen W. Livingston of counsel), for appellant.

Sinnreich & Kosakoff, LLP, Central Islip, N.Y. (Timothy F. Hill of counsel), for respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County (Jones, J.), dated January 25, 2008, as denied that branch of its motion which was pursuant to CPLR 3025(b) for leave to amend the complaint to assert additional allegations and increase the ad damnum clause with respect to the cause of action to recover damages for breach of contract.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, with costs, that branch of the plaintiff's motion which was pursuant to CPLR 3025(b) for leave to amend the complaint to assert additional allegations and increase the ad damnum clause with respect to the cause of action to recover damages for breach of contract is granted, and the amended complaint attached to the motion papers is deemed served.

In the original complaint, the plaintiff asserted, inter alia, a cause of action to recover damages for breach of an "Architect Agreement." Thereafter, the plaintiff moved, among other

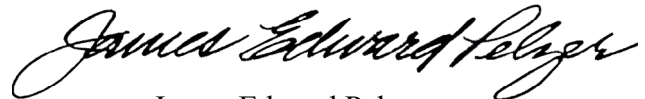
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things, pursuant to CPLR 3025(b) for leave to amend the complaint to assert additional allegations and increase the ad damnum clause with respect to that cause of action. Under the circumstances of this case, the Supreme Court improvidently exercised its discretion in denying that branch of the plaintiff's motion, as the proposed amendment was neither palpably insufficient nor patently devoid of merit, and there was no evidence that it would prejudice or surprise the defendants (*see* CPLR 3025[b]; *Lynch v Lynch*, 47 AD3d 771, 772; *see also Bennett v Long Island Jewish Med. Ctr.*, ___ AD3d ___, 2008 NY Slip Op 4823 [2d Dept 2008]; *Lucido v Mancuso*, 49 AD3d 220, *lv granted* ___ AD3d ___, 2008 NY Slip Op 68750[U][2d Dept 2008]).

MASTRO, J.P., RIVERA, LIFSON and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court