

# NY CLS CPLR R 3023

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*New York*

*Consolidated Laws Service* >  
*Civil Practice Law And Rules (Arts. 1 — 100)* >  
*Article 30 Remedies and Pleading (§§ 3001 — 3045)*

## **R 3023. Construction of verified pleading**

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The allegations or denials in a verified pleading must, in form, be stated to be made by the party pleading. Unless they are stated to be made upon the information and belief of the party, they must be regarded for all purposes, including a criminal prosecution, as having been made upon the knowledge of the person verifying the pleading. An allegation that the party has not sufficient knowledge or information to form a belief with respect to a matter, must, for the same purposes, be regarded as an allegation that the person verifying the pleading has not such knowledge or information.

## **History**

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Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

## **Notes**

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### **Prior Law:**

Earlier statutes: CPA § 276; CCP § 524.

## **Notes to Decisions**

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**1. Under former civil practice laws, generally**

**2.—Allegations on information and belief**

**3.—Grounds of belief**

**4.—General or specific denial**

**5.—Allegation of corporate existence**

**1. Under former civil practice laws, generally**

CPA § 276 applied to all pleadings, the answer as well as the complaint, and to denials in the answer as well as to affirmative defenses or counterclaims. It assumed that when a party had no personal knowledge an averment or denial may have been made upon information and belief, and treated every positive averment or denial as having been made on personal knowledge, and declared in substance that it was to be so regarded in criminal prosecutions. *Bennett v Leeds Mfg. Co.*, 110 N.Y. 150, 17 N.E. 669, 110 N.Y. (N.Y.S.) 150, 16 N.Y. St. 841, 1888 N.Y. LEXIS 864 (N.Y. 1888).

There is no presumption that agreement alleged in complaint was oral. *Feinsod v Berkowitz*, 108 N.Y.S.2d 802, 1951 N.Y. Misc. LEXIS 2596 (N.Y. Sup. Ct. 1951).

**2. —Allegations on information and belief**

Defendant's positive knowledge may not be sufficient to make a positive denial, but he may have sufficient information to satisfy him and fairly put the plaintiff upon his proof. *Bennett v Leeds Mfg. Co.*, 110 N.Y. 150, 17 N.E. 669, 110 N.Y. (N.Y.S.) 150, 16 N.Y. St. 841, 1888 N.Y. LEXIS 864 (N.Y. 1888).

Allegation that party is "informed and believes" certain statement is bad pleading. *Hauger v Earl*, 275 A.D. 437, 90 N.Y.S.2d 637, 1949 N.Y. App. Div. LEXIS 3789 (N.Y. App. Div. 1949).

A denial in a verified answer of a material allegation in the complaint, upon information and belief, is good. *Taylor v Smith*, 8 N.Y.S. 519, 55 Hun 608, 1890 N.Y. Misc. LEXIS 1651 (N.Y. Sup. Ct. 1890).

Plaintiff alleged in his complaint “that as plaintiff is informed and verily believes, only a small portion of said stock has been paid off,” held a sufficient allegation that the capital stock of the corporation had not been paid off in full, within this section. The plaintiff does not allege his belief, but the fact “as he is informed and believes.” It is an allegation upon information and belief, and such a pleading is permissible. *Woodard v Holland Medicine Co.*, 15 N.Y.S. 128, 1891 N.Y. Misc. LEXIS 3079 (N.Y. Super. Ct. 1891).

Town attorney answering on behalf of town in taxpayers’ action to enjoin erection of incinerator could not have personal knowledge and, therefore, could properly deny on information and belief. *Olin v North Hempstead*, 194 N.Y.S.2d 979, 1959 N.Y. Misc. LEXIS 4681 (N.Y. Sup. Ct. 1959).

Where a person has no positive knowledge, but information enough to form a belief, he is not only permitted, but bound at his peril, to deny on information and belief. *Brotherton v Downey*, 21 Hun 436, 59 How. Pr. 206, 1880 N.Y. Misc. LEXIS 208 (N.Y. Sup. Ct. June 1, 1880).

A defendant may deny the allegations of the complaint upon information and belief, when he has such information and belief and has not positive knowledge. *Wood v Raydure*, 39 Hun 144 (N.Y.).

A denial in an answer by a corporation upon information and belief is not to be struck out as frivolous. *Macauley v Bromell & Barkley Printing Co.* 14 Abb NC 316, *Macauley v Bromell & Barkley Printing Co.*, 67 How. Pr. 252, 1884 N.Y. Misc. LEXIS 132 (N.Y. Sup. Ct. July 1, 1884).

A defendant who has information sufficient to form a belief as to facts alleged in the complaint, and desires to deny the same, may without perjury make such denial upon information and belief. *Ledgerwood Mfg. Co. v Baird*, 14 Abb NC 318, .

### **3. —Grounds of belief**

An answer denying “knowledge or information sufficient to form a belief” as to paragraphs of the complaint and verified by the attorney for a nonresident corporate defendant, held sufficient and that it was not necessary for the attorney to state in the verification the grounds of his belief. *American Audit Co. v Industrial Federation of America*, 84 A.D. 304, 82 N.Y.S. 642, 1903 N.Y. App. Div. LEXIS 1763 (N.Y. App. Div. 1903).

### **4. —General or specific denial**

A general or specific denial under CPA §§ 241, 261 (CPLR § 3018(a)), could be upon information and belief. *Lazarus v Wiernicki*, 195 A.D. 830, 187 N.Y.S. 194, 1921 N.Y. App. Div. LEXIS 4843 (N.Y. App. Div. 1921).

### **5. —Allegation of corporate existence**

RCP Rule 93 (CPLR § 3015(b)) was to be read in connection with this section and the special allegation of corporate existence required by said rule could be made upon information and belief. *Joint-Stock Co. of Volgakama Oil & Chemical Factory v National City Bank*, 240 N.Y. 368, 148 N.E. 552, 240 N.Y. (N.Y.S.) 368, 1925 N.Y. LEXIS 742 (N.Y.), reh'g denied, 241 N.Y. 509, 150 N.E. 532, 241 N.Y. (N.Y.S.) 509, 1925 N.Y. LEXIS 575 (N.Y. 1925).

## **Research References & Practice Aids**

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### **Federal Aspects:**

Construction of pleadings, USCS Court Rules, Federal Rules of Civil Procedure, Rule 8(f).

Administration of oaths and acknowledgements, 28 USCS § 459.

### **Jurisprudences:**

84 NY Jur 2d Pleading §§ 33, 34, 43, 53, 56, 134.

## **Treatises**

### **Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3023, Construction of Verified Pleading.

3 Rohan, New York Civil Practice: EPTL ¶5-4.1.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶303.01, 303.03.

### **Matthew Bender's New York AnswerGuides:**

LexisNexis AnswerGuide New York Civil Litigation § 1.11. Meeting Signing Requirement for Pleadings.

### **Matthew Bender's New York Checklists:**

Checklist for Preparing Initial Pleadings LexisNexis AnswerGuide New York Civil Litigation § 1.08.

Checklist for Answering Complaint LexisNexis AnswerGuide New York Civil Litigation § 3.04.

### **Hierarchy Notes:**

NY CLS CPLR, Art. 30

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