

NY CLS CPLR § 3044

Current through 2025 released Chapters 1-207

New York

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

§ 3044. Verification of bill of particulars

If a pleading is verified, a subsequent bill of particulars shall also be verified. A bill of particulars of any pleading with respect to a cause of action for negligence shall be verified whether such pleading be verified or not.

History

Add, L 1962, ch 308; amd, L 1964, ch 291, § 1; L 1994, ch 562, § 3, eff Jan 1, 1995.

Annotations

Notes

Prior Law:

Earlier rules: RCP 117.

Editor's Notes:

Laws 1994, ch 562, § 4, eff Jan 1, 1995, provides as follows:

§ 4. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, it shall apply only to actions commenced on or

after the effective date of this act. Actions commenced prior to the effective date of this act shall be governed by the provisions of rule 3042 of the civil practice law and rules then in effect.

Notes to Decisions

I.Under CPLR

1.Generally

2.Verification

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4.Generally

I. Under CPLR

1. Generally

Omission of names of affiant and notary public in copy of verification of bill of particulars vitiates purported verification, even if such names appear in original. *Macri v St. Agnes Cemetery, Inc.*, 44 Misc. 2d 702, 255 N.Y.S.2d 278, 1965 N.Y. Misc. LEXIS 2392 (N.Y. Sup. Ct. 1965).

2. Verification

Because an administrator failed to comply with N.Y. C.P.L.R. 3044, 3121(a), 3122, 3126(3) by failing to verify the bill of particulars, refusing to submit letters of administration verifying the administrator's authority to act on behalf of the decedent's estate, and by failing to provide discovery after a conditional order issued—or any excuse for noncompliance—the administrator's complaint was properly dismissed. *Congleton v United Health Servs. Hosps.*, 67 A.D.3d 1148, 889 N.Y.S.2d 701, 2009 N.Y. App. Div. LEXIS 7964 (N.Y. App. Div. 3d Dep't 2009).

A verification of a bill of particulars was insufficient where the affidavit failed to contain the affiant's and Notary Public's names. *Macri v St. Agnes Cemetery, Inc.*, 44 Misc. 2d 702, 255 N.Y.S.2d 278, 1965 N.Y. Misc. LEXIS 2392 (N.Y. Sup. Ct. 1965).

Where bill of particulars was signed by plaintiff's attorney and not by plaintiff, excuse that plaintiff was a traveling salesman and not within the county at the time of the verification did not meet requirement laid down in CPLR 3020. *Baldwin v Tinker*, 48 Misc. 2d 362, 264 N.Y.S.2d 855, 1965 N.Y. Misc. LEXIS 1358 (N.Y. Sup. Ct. 1965).

Where insured, who sought recovery from insurer for personal injuries sustained in automobile accident, suffered from a total amnesia and was unable to assist attorney in preparing to meet insurer's affirmative defense that insured was intoxicated, and insured's counsel had made independent investigation and failed to uncover any evidence of intoxication on part of insured which would cause exclusionary clause of policy regarding intoxication to become effective, unusual circumstances existed which entitled insured to demand verified bill of particulars from insurer disclosing its information in regard to such defense of intoxication. *Hornacek v Zurich Ins. Co.*, 86 Misc. 2d 64, 381 N.Y.S.2d 954, 1976 N.Y. Misc. LEXIS 2392 (N.Y. Sup. Ct. 1976).

In tort action against state, it is not required that bill of particulars in state's verified answer be sworn to by person with actual knowledge of facts, since CLS CPLR § 3020 requires only that verification be made by person acquainted with facts when party is state, and requirement may be met by particular Assistant Attorney General assigned to claim when he deposes, on information and belief, that contents of verified answer are true, and that his sources are "records and statements of officers, agents and employees" of state; pleader may become "acquainted" with facts through secondary sources, provided he identifies them. *Blake v State*, 134 Misc. 2d 892, 513 N.Y.S.2d 337, 1987 N.Y. Misc. LEXIS 2125 (N.Y. Ct. Cl. 1987), *aff'd*, 150 A.D.2d 992, 543 N.Y.S.2d 602, 1989 N.Y. App. Div. LEXIS 7835 (N.Y. App. Div. 1st Dep't 1989).

Rules applicable to verification of pleadings should be utilized in case of bill of particulars. *Blake v State*, 134 Misc. 2d 892, 513 N.Y.S.2d 337, 1987 N.Y. Misc. LEXIS 2125 (N.Y. Ct. Cl. 1987),

aff'd, 150 A.D.2d 992, 543 N.Y.S.2d 602, 1989 N.Y. App. Div. LEXIS 7835 (N.Y. App. Div. 1st Dep't 1989).

Although an aggrieved candidate failed to verify her bill of particulars with respect to her fraud allegations in an election dispute, such was not a fatal defect that required preclusion of her fraud allegations because the "bill of particulars" required by the special election part rules was not a bill of particulars subject to the requirements of the regular civil procedure rules. *Thomas v Eugene*, 973 N.Y.S.2d 529, 41 Misc. 3d 418, 2013 N.Y. Misc. LEXIS 3529 (N.Y. Sup. Ct. 2013).

Although an aggrieved candidate failed to verify her bill of particulars with respect to her fraud allegations in an election dispute, preclusion was not required because the verification requirement relating to a bill of particulars was not jurisdictional. *Thomas v Eugene*, 973 N.Y.S.2d 529, 41 Misc. 3d 418, 2013 N.Y. Misc. LEXIS 3529 (N.Y. Sup. Ct. 2013).

3. Applicability

The authority and procedure for furnishing bills of particulars are contained in Civil Practice Law and Rules §§ 3041 and 3044 and are applicable to every type of civil action. *Jesmer v Beyma*, 66 Misc. 2d 323, 321 N.Y.S.2d 173, 1971 N.Y. Misc. LEXIS 1659 (N.Y. Fam. Ct. 1971).

II. Under Former Civil Practice Laws

4. Generally

Where claim against estate was not verified, bill of particulars need not be verified. *In re Bird's Estate*, 240 A.D. 747, 265 N.Y.S. 218, 1933 N.Y. App. Div. LEXIS 5819 (N.Y. App. Div. 1933).

The provision of RCP 117 meant that if a pleading be verified a bill of particulars thereof, or a copy of the items of an account stated therein, also must be verified. *Buckley v Franklin Sav. Bank*, 258 A.D. 53, 15 N.Y.S.2d 477, 1939 N.Y. App. Div. LEXIS 6356 (N.Y. App. Div. 1939).

Service of bill of particulars, verified by party's attorney, but not by party personally, was treated as failure to comply with order. *Wilker v Wilker*, 276 A.D. 950, 94 N.Y.S.2d 660, 1950 N.Y. App. Div. LEXIS 5264 (N.Y. App. Div. 1950).

Attorney's statement that his information and belief are based on his representation of plaintiff in suit was insufficient, especially where attorney was in no position to state plaintiff's lack of knowledge as to particular items. *Wilker v Wilker*, 276 A.D. 950, 94 N.Y.S.2d 660, 1950 N.Y. App. Div. LEXIS 5264 (N.Y. App. Div. 1950).

A bill of particulars supplementing an unverified complaint need not be verified although the answer is verified. *Walker v Esposito*, 296 N.Y.S. 943, 163 Misc. 473, 1937 N.Y. Misc. LEXIS 1344 (N.Y. Sup. Ct. 1937); *Loprieno v Rudich*, 14 N.Y.S.2d 587, 172 Misc. 116, 1939 N.Y. Misc. LEXIS 2273 (N.Y. City Ct. 1939); *Buckley v Franklin Sav. Bank*, 258 A.D. 53, 15 N.Y.S.2d 477, 1939 N.Y. App. Div. LEXIS 6356 (N.Y. App. Div. 1939).

Attorney may verify bill of particulars where he states basis of knowledge and grounds of belief. *Emspak v Conroy*, 81 N.Y.S.2d 555, 192 Misc. 637, 1948 N.Y. Misc. LEXIS 2865 (N.Y. Sup. Ct. 1948).

Research References & Practice Aids

Federal Aspects:

Administration of oaths and acknowledgments, 28 USCS § 459.

Jurisprudences:

6A NY Jur 2d Article 78 and Related Proceedings § 323. .

84 NY Jur 2d Pleading §§ 42, 49, 288, 307.

5A Am Jur Pl & Pr Forms (Rev), Captions, Prayers, and Formal Parts, Forms 609 et seq.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3044, Verification of Bill of Particulars.

2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 19.08.

5 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 2103.12, 2104.08.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 19.17. Bill of particulars.

Matthew Bender's New York Practice Guides:

LexisNexis Practice Guide New York e-Discovery and Evidence § 8.15. CHECKLIST: Responding to Interrogatories, Notices to Admit, Demand for Bills of Particulars and Notice of EBT Involving Electronically Stored Information.

LexisNexis Practice Guide New York e-Discovery and Evidence § 8.16. Answering Interrogatories.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 6.08. Determining if Verification of Bill of Particulars Is Required.

LexisNexis AnswerGuide New York Civil Litigation § 8.06. Seeking a Trial Preference.

LexisNexis AnswerGuide New York Negligence § 5.27. Drafting Bill of Particulars.

Matthew Bender's New York Checklists:

Checklist for Bill of Particulars LexisNexis AnswerGuide New York Civil Litigation § 6.02.

Checklist for Moving for Trial Preference LexisNexis AnswerGuide New York Civil Litigation § 8.05.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 3044:1.

LexisNexis Forms FORM 75-CPLR 3044:1.—Verification By Party of Bill of Particulars.

LexisNexis Forms FORM 521-15-10.—Bill of Particulars in Negligence Action; Injury to Infant Guest of Tenant.

LexisNexis Forms FORM 521-15-8.—Plaintiff's Bill of Particulars in Action for Death Caused by Negligence.

LexisNexis Forms FORM 521-15-9.—Demand for Bill of Particulars in Negligence Action; Injury to Infant Guest of Tenant.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 14:101 et seq .(remedies and pleadings).

Hierarchy Notes:

NY CLS CPLR, Art. 30

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