

NY CLS CPLR R 3021

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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 3021. Form of affidavit of verification

The affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. If it is made by a person other than the party, he must set forth in the affidavit the grounds of his belief as to all matters not stated upon his knowledge and the reason why it is not made by the party.

History

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

Annotations

Notes

Prior Law:

Earlier statutes and rules: RCP 100; CCP § 526; Code Proc § 157.

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1. Generally

The trial court erred in dismissing a proceeding to validate a petition designating certain candidates in a party primary election for certain party positions on the asserted ground that the fact that the petition was verified by petitioners' attorney pursuant to CPLR § 3020(d)(3), rather than by a party to the proceedings, did not comply with Elec Law § 16-116, since nothing in the latter statute precludes verification by an attorney in accordance with the CPLR; the trial court additionally erred in its determination that the attorney's verification did not comply with CPLR § 3021 where the attorney attested to the fact that he had had an office in a county other than the one in which the petitioners resided, as required by CPLR § 3020(d)(3), and stated that all of the contents of the petition were true to his own knowledge except as to matters alleged on information and belief, and that, as to those matters which dealt solely with respondents' actions in filing objections with the Board of Elections, that he "believed them to be true." *Tenneriello v Board of Elections*, 104 A.D.2d 467, 479 N.Y.S.2d 72, 1984 N.Y. App. Div. LEXIS 19921 (N.Y. App. Div. 2d Dep't), *aff'd*, 63 N.Y.2d 700, 479 N.Y.S.2d 978, 468 N.E.2d 1115, 1984 N.Y. LEXIS 4548 (N.Y. 1984).

Verification by petitioners' counsel of petition challenging assessment under CLS RPTL Art 7 was not defective under CLS RPTL § 706(2), even though verification might have been inartfully drafted, where it adequately set forth grounds of counsel's belief as to all matters not stated on

his knowledge, and gave reasons why verification was not made by petitioners. *Barron v Town of Esopus*, 246 A.D.2d 707, 667 N.Y.S.2d 482, 1998 N.Y. App. Div. LEXIS 109 (N.Y. App. Div. 3d Dep't 1998).

A complaint, defectively verified, will not be dismissed if a substantial right of a party is not prejudiced. In action for permanent injunction where complaint was defectively verified in that the attorney verifying it did not have actual knowledge of the allegations, court disregarded the defect in view of the nature of the action, the need for quick decision, and the lack of prejudice to defendants. *Capital Newspapers Div.-- Hearst Corp. v Vanderbilt*, 44 Misc. 2d 542, 254 N.Y.S.2d 309, 1964 N.Y. Misc. LEXIS 1245 (N.Y. Sup. Ct. 1964).

Although, in nonpayment summary proceeding brought by landlord's attorney, the petition's verification, which made allegations "upon information and belief," was insufficient for the entry of a judgment by default, it was sufficient to commence summary proceedings. *Fitzgerald v Washington*, 80 Misc. 2d 861, 365 N.Y.S.2d 598, 1975 N.Y. Misc. LEXIS 2277 (N.Y. Civ. Ct. 1975).

A motion to dismiss a paternity petition filed by a county commissioner of social services on the ground that the petition is improperly verified is denied, the petition having been verified by the commissioner upon information and belief as to all allegations, except as to the commissioner's status in the matter, since CPLR 3021 provides that the verification must be to the effect that the pleading is true to the deponent's knowledge except as to those matters alleged on information and belief, and that as to those matters he believes them to be true; if verification is made by a party, it need not elaborate the grounds for belief of those items not averred on knowledge. *O'Connor on behalf of Schwartz v Fedak*, 99 Misc. 2d 403, 416 N.Y.S.2d 200, 1979 N.Y. Misc. LEXIS 2300 (N.Y. Fam. Ct. 1979).

In a proceeding to recover possession of real property in which petitioner's attorney verified the petition in such a proceeding but failed to state the reason why petitioner himself had not executed the verification, the petition would be dismissed, since, notwithstanding that Real P Actions & Pr Law § 741 permits an attorney, rather than the petitioner, to verify a petition in a

proceeding to recover possession of real property notwithstanding the fact that petitioner is in the county where the attorney has his office, CPLR § 3021 requires that such verification set forth the reason why it is not made by the petitioner. *S.P.S.G., Inc. v Collado*, 113 Misc. 2d 167, 448 N.Y.S.2d 385, 1982 N.Y. Misc. LEXIS 3265 (N.Y. Civ. Ct. 1982).

In a landlord-tenant summary proceeding the petition would be dismissed with leave to the landlord to serve a duly verified amended petition in order to permit the landlord to cure a defect and yet avoid undue delay that would result from a termination of the proceeding, where the landlord's attorney failed to comply with the requirements of CPLR §§ 3020(d), 3021 by failing to set forth in his affidavit the "grounds of his belief as to all matters not stated upon his knowledge" and the reason why the party had not made the affidavit. *Lefrak v Robinson*, 115 Misc. 2d 256, 454 N.Y.S.2d 571, 1982 N.Y. Misc. LEXIS 3669 (N.Y. City Ct. 1982).

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).

Verification of petition in nonpayment summary proceeding was not defective due to absence of statement as to why it was not made by petitioner in accordance with CLS CPLR § 3021, for although verification should incorporate reference to CLS RPAPL § 741 authorizing verification by attorney, absence of such reference was at most amendable irregularity which could be disregarded. *Cucinotta v Saljon Enterprises, Ltd.*, 140 Misc. 2d 681, 532 N.Y.S.2d 39, 1988 N.Y. Misc. LEXIS 508 (N.Y. Civ. Ct. 1988).

Landlord's attorney may verify petition in summary proceeding pursuant to CLS RPAPL § 741 without having to state reason why verification was not made by landlord; CLS CPLR § 3021 requirement of statement as to reason why pleading was not made by party is inapplicable to petition in summary proceeding. *Zirinsky v Violet Mills, Inc.*, 152 Misc. 2d 538, 578 N.Y.S.2d 88, 1991 N.Y. Misc. LEXIS 680 (N.Y. Civ. Ct. 1991).

In summary nonpayment proceeding, fact that attorney's verification of petition failed to indicate why verification was not made by landlord did not constitute sufficient basis for dismissal. *Oceana Apartments v Spielman*, 164 Misc. 2d 98, 623 N.Y.S.2d 724, 1995 N.Y. Misc. LEXIS 64 (N.Y. Civ. Ct. 1995).

State's motion to dismiss an inmate's negligence suit was denied because, although the inmate's counsel failed to provide information required in order to permit her to make the verification instead of the inmate, and the notice of claim was thus improperly verified and defective, the State's rejection letter, which stated only that the claim did not contain the required verification language, did not specify the defect with sufficient specificity, and thus the claim was not properly rejected; since the rejection was insufficient, it had no effect. It was as if the claim had not been returned, and as the claim was otherwise timely, the State's purported rejection was of no effect. *Matter of Steele v State of New York*, 855 N.Y.S.2d 329, 19 Misc. 3d 766, 2008 N.Y. Misc. LEXIS 1727 (N.Y. Ct. Cl. 2008).

In a judgment creditor's special proceeding under N.Y. C.P.L.R. §§ 5225 and 5227 to obtain funds from a bank in joint account held by the judgment debtor and a joint tenant, the bank was only required to turn over one half of the funds, despite a default by both, as no verification was provided under N.Y. C.P.L.R. §§ 3021 and 3215(f) to override the presumption of the debtor being limited to a one-half interest under N.Y. Banking Law § 675. *Velocity Invs., LLC v Kawski*, 864 N.Y.S.2d 734, 21 Misc. 3d 276, 2008 N.Y. Misc. LEXIS 6575 (N.Y. City Ct. 2008).

Election Law § 16-116 petition was procedurally defective as: (1) it was not verified or notarized; (2) it was not signed by petitioner; (3) the attorney signed the petition without explaining why the statements in the petition were made by him, rather than petitioner, and his attempt to justify his

signature in his reply failed as the verification requirement was jurisdictional and could not be cured by amendment; and (4) without the initial verification signed by the petitioner, or at least a valid attorney verification, the floodgates were wide open for shortcuts, fraud, and chicanery in an area of the law that needed to assure that such possibilities were limited. *Rodriguez v Westchester County Bd. of Elections*, 47 Misc. 3d 956, 5 N.Y.S.3d 826, 2015 N.Y. Misc. LEXIS 552 (N.Y. Sup. Ct. 2015).

Petition to invalidate a nomination was properly verified because the verification alleged that as to those matters alleged based on information and belief, the objector's counsel believed them to be true; because the candidate had not established that she objected within the 24 hour time frame, her objections in that regard were waived. *Matter of Jacobi v Murray*, 58 Misc. 3d 319, 66 N.Y.S.3d 809, 2017 N.Y. Misc. LEXIS 3970 (N.Y. Sup. Ct. 2017).

Whether or not a nunc pro tunc amendment to a notice of intention to file a claim might have been available to correct a defective verification by an attorney, it was denied as futile because causes of action premised upon intentional tort were untimely served and other tort claims lacked particularity. An application, in the alternative, for late claim relief was unavailing because negligence-based claims and intentional tort claims were outside their respective statutes of limitations. *Valverde v State of New York*, 83 Misc. 3d 283, 206 N.Y.S.3d 860, 2023 N.Y. Misc. LEXIS 24347 (N.Y. Ct. Cl. 2023).

2. Under former civil practice laws, generally

The verification prescribed in § 29 of the old Liquor Tax Law, to revoke a certificate was required to be verified as prescribed by RCP 100. *People ex rel. Smaw v McGowan*, 44 A.D. 30, 60 N.Y.S. 407, 1899 N.Y. App. Div. LEXIS 2171 (N.Y. App. Div. 1899).

A substantial compliance with RCP 100 prescribing the form for the verification of pleadings, should have been enforced. *Morris v Fowler*, 99 A.D. 245, 90 N.Y.S. 918, 1904 N.Y. App. Div. LEXIS 3051 (N.Y. App. Div. 1904).

Petition under Village Law, § 348, as amended by Laws 1915, ch. 257, for extension of boundaries, was insufficient to require action by trustees, though verified as provided by this rule, where it did not state that signers represented a majority in value of property assessed. *People ex rel. Underwood v Board of Trustees*, 171 A.D. 347, 156 N.Y.S. 1096, 1916 N.Y. App. Div. LEXIS 9473 (N.Y. App. Div.), *aff'd*, 217 N.Y. 466, 112 N.E. 169, 217 N.Y. (N.Y.S.) 466, 1916 N.Y. LEXIS 1331 (N.Y. 1916).

Conventional affidavit of verification in form prescribed by RCP 100 was not required of written notice under Pub Hous L § 157. *Schorr v New York City Housing Authority*, 270 A.D. 339, 59 N.Y.S.2d 700, 1946 N.Y. App. Div. LEXIS 3686 (N.Y. App. Div.), *reh'g denied*, 270 A.D. 834, 61 N.Y.S.2d 606, 1946 N.Y. App. Div. LEXIS 4173 (N.Y. App. Div. 1946), *aff'd*, 296 N.Y. 524, 68 N.E.2d 603, 296 N.Y. (N.Y.S.) 524, 1946 N.Y. LEXIS 1140 (N.Y. 1946).

Motion to strike out answer of contestants to probate of a will, granted, because not verified as required by RCP 99 (CPLR § 3020(d)) and 100, and surrogate's court act, §§ 49, 50. *In re Schlemmer's Will*, 238 N.Y.S. 117, 135 Misc. 296, 1929 N.Y. Misc. LEXIS 999 (N.Y. Sur. Ct. 1929).

The language used had to be to the effect that the pleading was true to the knowledge of the affiant although the precise language of RCP 100 need not have been followed. .

The verification of a pleading is only required to be appropriate to the mode of allegation contained in the pleading. If all the allegations be absolute, the verification should be absolute, and if all the allegations be qualified the verification should be qualified, and it is not necessary to employ the twofold form of verification for a pleading which contains but one mode of statement. *Orvis v Lambeau*, 2 Civ Proc (Browne) 314, 64 How. Pr. 71.

And in general as to everything material the form prescribed must be strictly followed, *Waggoner v Brown*, 8 How Pr 212; although it need not be literally followed if substantially complied with. *Radway v Mather*, 7 Super Ct (5 Sandf) 654; *Harnes v Tripp*, 4 Abb. Pr. 232, 1857 N.Y. Misc. LEXIS 248 (N.Y. Sup. Ct. Feb. 1, 1857).

3. —Claim against city or town

Verification of a claim against a city for damages not subscribed by the claimant, was insufficient. *Ponsrok v Yonkers*, 254 N.Y. 91, 171 N.E. 917, 254 N.Y. (N.Y.S.) 91, 1930 N.Y. LEXIS 1009 (N.Y. 1930).

Notice of claim against town for damages from change of grade in town highway need not be verified in form prescribed for pleading, but is sufficient if in form of affidavit sworn to before notary public. *In re Levine*, 287 N.Y. 243, 39 N.E.2d 223, 287 N.Y. (N.Y.S.) 243, 1942 N.Y. LEXIS 1102 (N.Y. 1942).

Notice of claim against town for personal injuries did not need to follow form of verification required by RCP 100, and where notice of claim was headed "State of New York, County of Herkimer," signed by claimant, and his signature was followed by "Sworn to and subscribed before me" on stated date, which in turn was followed by signature of attorney acting as notary public, such notice was properly verified. *Evans v Bridgewater*, 33 N.Y.S.2d 807, 178 Misc. 250, 1942 N.Y. Misc. LEXIS 1435 (N.Y. Sup. Ct.), *aff'd*, 264 A.D. 827, 35 N.Y.S.2d 600, 1942 N.Y. App. Div. LEXIS 4868 (N.Y. App. Div. 1942).

4. —Verification by agent or attorney

An affidavit in support of an attachment which makes a positive averment of facts which it is apparent could not be within the knowledge of the affiant and such affiant does not claim personal knowledge, is insufficient to support the attachment. *Hoormann v Climax Cycle Co.*, 9 A.D. 579, 41 N.Y.S. 710, 1896 N.Y. App. Div. LEXIS 2611 (N.Y. App. Div. 1896).

Verification by agent merely to effect that allegations were within his personal knowledge was defective where several paragraphs of complaint were alleged upon information and belief. *Bowery Sav. Bank v Ward*, 188 A.D. 593, 177 N.Y.S. 219, 1919 N.Y. App. Div. LEXIS 7788 (N.Y. App. Div. 1919).

In a justice's court a complaint verified by an attorney is a sufficient verification by plaintiff's agent, such agent being the agent of the plaintiff. Where the affidavit of verification states that the deponent is the attorney for the plaintiff this is sufficient evidence of the authority of such attorney to appear for the plaintiff. *Barnes v Sutliff*, 53 N.Y.S. 974, 24 Misc. 526, 1898 N.Y. Misc. LEXIS 564 (N.Y. County Ct. 1898).

An officer of a foreign corporation was an agent for a party within RCP 99 (CPLR § 3020(d)) and might verify a pleading of the corporation but had to comply with the requirements of RCP 100. *Robinson v Ecuador Development Co.*, 65 N.Y.S. 427, 32 Misc. 106, 1900 N.Y. Misc. LEXIS 633 (N.Y. Sup. Ct. 1900).

The application in a summary proceeding to dispossess for nonpayment of rent might be made by the agent of the landlord under CPA § 1414 (Real Prop Actions & Proc L § 721) and the requirement of CPA § 1415 (Real Prop Actions & Proc L § 741), that the petition be verified as a verified complaint in an action, referred only to the form of verification. *Reserve Finance Corp. v Rosen*, 216 N.Y.S. 153, 127 Misc. 591, 1926 N.Y. Misc. LEXIS 990 (N.Y. Sup. Ct.), *aff'd*, 218 A.D. 811, 218 N.Y.S. 879, 1926 N.Y. App. Div. LEXIS 7145 (N.Y. App. Div. 1926).

Where it was not alleged in petition that attorney appeared or was authorized to appear for petitioner, such attorney may not verify petition, especially where he does not state reason why verification is not made by party. *Becker v Power*, 134 N.Y.S.2d 76, 207 Misc. 53, 207 Misc. 55, 1954 N.Y. Misc. LEXIS 2480 (N.Y. Sup. Ct. 1954).

RCP 100 which permitted a person not a party to the action to verify the pleadings on stating his reasons why it was not made by the party, was extended to pleadings in justice's court by ch 414 of L 1881, § 1; so in an action in justice's court, brought by a domestic corporation located in another county, the complaint might be verified by plaintiff's attorney. *Syracuse Moulding Co. v Squires*, 13 N.Y.S. 547, 1890 N.Y. Misc. LEXIS 3234 (N.Y. County Ct. 1890), *rev'd*, 15 N.Y.S. 321, 61 Hun 48, 1891 N.Y. Misc. LEXIS 3210 (N.Y. Sup. Ct. 1891).

5. — —Reasons for agent's or attorney's verification

An attorney's verification is bad if the reasons why it is not verified by the party are not stated. *Embalmers' Supply Co. v Rowe*, 180 A.D. 920, 166 N.Y.S. 1045, 166 N.Y.S. 1047, 1917 N.Y. App. Div. LEXIS 7439 (N.Y. App. Div.), reh'g denied, 181 A.D. 919, 167 N.Y.S. 1098, 1917 N.Y. App. Div. LEXIS 8432 (N.Y. App. Div. 1917).

Verification to a pleading by a foreign corporation must state grounds of belief, but need not allege why verification is not made by the party instead of an officer. *Treen Motors Corp. v Van Pelt*, 174 N.Y.S. 500, 106 Misc. 357, 1919 N.Y. Misc. LEXIS 900 (N.Y. Sup. Ct. 1919).

A verification of a complaint by an attorney on a claim for goods sold and delivered is not on a written instrument for the payment of money only, and, the verification failing to state that plaintiff was not present in the county, the defendant was entitled to treat it as improperly verified and to serve an unverified answer without incurring risk of default being entered against him. *Geo. H. Storm & Co. v G. Migliore & Sons, Inc.*, 224 N.Y.S. 271, 130 Misc. 654, 1927 N.Y. Misc. LEXIS 1090 (N.Y. City Ct. 1927).

Mere statement by attorney that sources of his information and grounds of his belief "are based upon information furnished by said plaintiff to deponent" lacks probative force, when viewed in connection with items of bill of particulars wherein plaintiff states lack of knowledge or claims he is not in possession of records which presumptively should be in his files. *Lipsky v Commerce-Pacific, Inc.*, 134 N.Y.S.2d 147, 1954 N.Y. Misc. LEXIS 2495 (N.Y. Sup. Ct. 1954).

An answer denying knowledge or information sufficient to form a belief, cannot be stricken out as sham, where it is verified by the defendant's attorney, who gives as a reason why it is made by him that his client is not a resident of the county where the attorney resides, and as the grounds of his belief, statements made by his client. *Neuberger v Webb*, 24 Hun 347 (N.Y.).

A statement that the written instrument, etc., is in the possession of the attorney, gives a sufficient reason for verification by the attorney. *Hyde v Salg*, 27 Hun 369 (N.Y.).

A verification by an attorney is practically sufficient, though not formal, that says that the reason why the verification is not made by the plaintiffs is that they are not residents of the county where deponent resides. *Duparquet v Fairchild*, 2 N.Y.S. 264, 49 Hun 471 (1888).

Applying the principles of CPA §§ 248, 276 (CPLR § 3020), and RCP 99, 100 (CPLR § 3020, R 3021) to the verification of a petition or other paper in a special proceeding in a surrogate's court or before a surrogate, an affidavit made by the attorney of record of a petitioner, to the effect that the petition is true, etc., stating as a reason why he makes it, that the petitioner is absent from the state, and designating as the grounds of his belief the records of the court and letters of and conversations with the parties, was a sufficient verification. *Moorhouse v Hutchinson*.

An agent's verification is sufficient without assigning any reason why it was not made by the party, when it states that all the material allegations are within his personal knowledge, *Betts v Kridell*, 12 NYSR 163; and it is so of course where the averment is that it is within the agent's knowledge and not that of the defendant. *Ross v Longmuir*, 24 How. Pr. 49, 15 Abb. Pr. 326.

A pleading verified by the attorney stating, as the reason for his verification, that he could not find the party in the city, and that it was his last day to reply, is not good, as it states no legal reason why the verification is not made by the party. *Lyons v Murat*, 54 How. Pr. 23, 1877 N.Y. Misc. LEXIS 295 (N.Y. Sup. Ct. Oct. 1, 1877), limited, *RANDELL v ABRISQUETA*, 20 Abb. N. Cas. 292, 1886 N.Y. Misc. LEXIS 73 (N.Y. City Ct. Oct. 1, 1886).

6. —Information and belief

In view of RCP 100 a party might deny a material allegation of a complaint upon information and belief although he verified his answer. *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).

A general or specific denial under CPA §§ 241, 261, might 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).

Affidavit of officer of bank that he knew contents of complaint and of his own knowledge knew that allegations thereof were true except as to matters alleged upon information and belief, held insufficient verification, and plaintiff was never entitled to file a *lis pendens*. *Bowery Sav. Bank v Ward*, 180 N.Y.S. 166, 109 Misc. 540, 1919 N.Y. Misc. LEXIS 1180 (N.Y. Sup. Ct. 1919).

A verification which omits the words "to his knowledge" or any words to that effect is insufficient.

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Where all the allegations in a complaint are upon information and belief a verification is sufficient which states simply that it is true as affiant is informed and believes. *Orvis v Goldschmidt*, 64 How Pr 71, 2 Civ Proc (Browne) 314.

The verification did not need to be in the precise language of RCP 100 and if nothing was stated to be alleged in the pleading on information and belief, the clause relating to information and belief might be omitted. 53 How. Pr. 485, 1877 N.Y. Misc. LEXIS 221.

Where none of the allegations of the complaint are "therein stated to be made" upon information and belief, they are regarded as made of the party's knowledge, in which case the clause of the affidavit of verification relating to information and belief may be omitted. 54 How. Pr. 160, 1877 N.Y. Misc. LEXIS 278.

Where nothing is stated on information and belief the verification that the answer is true to affiant's own knowledge is sufficient without adding the words, except as to the matters therein stated upon information and belief and as to those matters he believes to be true, *Kinkaid v Kipp*, 8 Super Ct (1 Duer) 692. See also *Ross v Longmuir*, 15 Abb Pr 326, 24 How Pr 49; but it is also sufficient if that phrase be included. 54 How. Pr. 160, 1877 N.Y. Misc. LEXIS 278; 53 How. Pr. 485, 1877 N.Y. Misc. LEXIS 221; *Kinkaid v Kipp*, 8 Super Ct (1 Duer) 692.

Verifications are good which substitute "facts" for matters, *Whelpley v Van Epps*, 9 Paige 332; which state that a petitioner in the surrogate's court "knows the contents thereof and that the same are true," *Re MacAulay* (1884) 94 NY 574; that a notice of mechanic's lien was "in all respects true to the best of his knowledge and belief," *Grey v Vorhis*, 8 Hun 612; and that the

affiant “believes it to be true, all the allegations therein being made on information and belief.”
Harnes v Tripp, 4 Abb. Pr. 232, 1857 N.Y. Misc. LEXIS 248 (N.Y. Sup. Ct. Feb. 1, 1857).

7. — —Grounds for belief and sources of information

Where the averments of a complaint are stated positively, not being alleged upon information and belief, but the verification made by plaintiff’s attorney, stated that the sources of deponent’s information as to the facts alleged were conversations with the plaintiff, it was held that the verification contradicted itself and entitled the defendant to treat the pleading as an unverified one. Moran v Helf, 52 A.D. 481, 65 N.Y.S. 113, 1900 N.Y. App. Div. LEXIS 1628 (N.Y. App. Div. 1900).

Where plaintiff’s attorney verifies complaint he must set forth the ground for his belief as to all the matters not stated upon his knowledge. Embalmers' Supply Co. v Rowe, 180 A.D. 920, 166 N.Y.S. 1045, 166 N.Y.S. 1047, 1917 N.Y. App. Div. LEXIS 7439 (N.Y. App. Div.), reh'g denied, 181 A.D. 919, 167 N.Y.S. 1098, 1917 N.Y. App. Div. LEXIS 8432 (N.Y. App. Div. 1917).

A verification of a pleading by one who is not a party to the action should show that the affiant derived his information, which he states as the grounds of his belief, from some person who had knowledge of the facts. Nelson v Baruch, 113 N.Y.S. 449, 60 Misc. 357, 1908 N.Y. Misc. LEXIS 699 (N.Y. Sup. Ct. 1908).

An answer denying knowledge or information sufficient to form a belief cannot be stricken out as sham, where it is verified by the defendant’s attorney, who gives as a reason why it is made by him that his client is not the resident of the county where the attorney resides, and as the grounds of his belief, statements made by his client. Neuberger v Webb, 24 Hun 347 (N.Y.).

Where in a petition in summary proceedings for the recovery of real property, none of the allegations were stated to be on information and belief, a verification by an agent of the landlord stating that all the material allegations of the petition were within his personal knowledge, for which reason he made the verification, and that the contents of the petition were true to his

knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believed it to be true, was sufficient, being a positive oath to the truth of the whole petition upon personal knowledge, and containing all the particulars required by RCP 100. *Holzderber v Forrestal* (N.Y.C.P. Jan. 16, 1885).

The guardian of an infant verifying need not set forth the ground of his belief. *Clay v Baker*, 41 Hun 58, 2 N.Y. St. 275 (N.Y.).

A verification by an attorney is practically sufficient, though not formal, that says that deponent's information as to all matters stated upon information and belief is derived from admissions of defendant to him and from others received from plaintiffs, and a copy of the letters or a full narrative of the conversations with defendant specifying in detail the sources of information are not necessary. *Duparquet v Fairchild*, 2 N.Y.S. 264, 49 Hun 471 (1888).

An affidavit made by the attorney of record of a petitioner designating as the grounds of his belief the records of the court and letters of and conversations with the parties is a sufficient verification. *Moorhouse v Hutchinson*.

And the agent, so far as he speaks from knowledge, must state what knowledge he has and the grounds of his belief, when he speaks from belief. *Treadwell v Fassett*, 10 How. Pr. 184.

While an answer verified by an agent in which he did not state the reason why he made the verification or the grounds of his information and belief, is not good, the objection to it should point out particularly wherein it is defective. *Rude v Crandell*.

And where an attorney omits to state the grounds as to any allegations essential to recovery, the verification is defective. *The Bank of the State of Maine agt. Warren W. Buel*, 14 How. Pr. 311, 1857 N.Y. Misc. LEXIS 378 (N.Y. Sup. Ct. Mar. 1, 1857).

The court must look to it that the attorney obtains his information from defendant, or someone who knows the facts better than he, if the attorney makes a defense, such as the defendant could not if he swore to the pleading. *Stedeker v Taft*, 4 Month L Bull 88.

8. — —Where corporation or association is party

An officer of a domestic corporation, for the purpose of verifying a pleading interposed by it, was to be deemed a party within RCP 99, subd. 1 (CPLR § 3020(d)(1)), and therefore did not need to state in his affidavit of verification the grounds of his belief as to all matters not stated upon his knowledge. *Henry v Brooklyn H. R. Co.*, 89 N.Y.S. 525, 43 Misc. 589, 1904 N.Y. Misc. LEXIS 207 (N.Y. County Ct.), *aff'd*, 97 A.D. 631, 89 N.Y.S. 1106, 1904 N.Y. App. Div. LEXIS 2714 (N.Y. App. Div. 1904).

Since the statutes authorize a treasurer of an unincorporated association to bring action in its name as plaintiff, in verifying complaint he verifies as a party; hence is not required to state the sources of his information and the grounds of his belief as required by this rule in the case of verification by officers of a corporation. *Johnson v Case*, 162 N.Y.S. 841, 97 Misc. 247, 1916 N.Y. Misc. LEXIS 929 (N.Y. County Ct. 1916), *aff'd*, 179 A.D. 948, 165 N.Y.S. 1093, 1917 N.Y. App. Div. LEXIS 6898 (N.Y. App. Div. 1917).

Where treasurer of an unincorporated association brought action as sole plaintiff, he could verify his complaint on information and belief without setting forth the sources of information. *Dessar v Gunther*, 162 N.Y.S. 794, 98 Misc. 319, 1917 N.Y. Misc. LEXIS 689 (N.Y. Sup. Ct. 1917).

Verification to a pleading by foreign corporation must state grounds of belief. *Treen Motors Corp. v Van Pelt*, 174 N.Y.S. 500, 106 Misc. 357, 1919 N.Y. Misc. LEXIS 900 (N.Y. Sup. Ct. 1919).

Affidavit of one making verification for corporation that his sources of information were books and records of the corporation was sufficient. *Davidson v Penn-Virginia Coal & Coke Corp.*, 178 N.Y.S. 205, 109 Misc. 130, 1919 N.Y. Misc. LEXIS 1146 (N.Y. Sup. Ct. 1919).

Where answer of a foreign corporation states nothing to be upon information and belief, the verification by an agent or attorney need not state reasons or grounds of belief and an affidavit is unnecessary. *Williamson Law Book Co. v Midland Nat'l Holding Corp.*, 240 N.Y.S. 731, 136 Misc. 288, 1930 N.Y. Misc. LEXIS 1130 (N.Y. Sup. Ct. 1930).

Where a motion by a foreign corporation to amend its complaint in a material respect is based upon the affidavit of its attorney, such affidavit must state the sources of his information in making the statement that the allegation in question is erroneous. *Goodwin Preserving Co. v Holton*, 167 N.Y.S. 46 (N.Y. Sup. Ct. 1917).

The form of verification by a corporation is that of a party to the action, and need not state grounds of belief, although necessarily made by an officer of the corporation. *American Insulator CXo. v Bankers & Merchants' Tel. Co.*, 2 How. Pr. (n.s.) 120 (N.Y.C.P. June 1, 1885).

Research References & Practice Aids

Federal Aspects:

Signing of pleadings, USCS Court Rules, Federal Rules of Civil Procedure, Rule 11.

Jurisprudences:

1 NY Jur 2d Acknowledgements, Affidavits, Oaths, Notaries, and Commissioners § 53. .

84 NY Jur 2d Pleading §§ 53, 55. .

89 NY Jur 2d Real Property–Possessory and Related Actions § 157., 158. .

61A Am Jur 2d, Pleading §§ 614.– 616.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3021, Form of Affidavit of Verification.

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

2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 19.06.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶¶303.01, 303.03, 303.04.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 19.13. Verification.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 1.12. Determining if Initial Pleading Should Be Verified.

LexisNexis AnswerGuide New York Negligence § 2.16. Preparing Summons and Complaint.

LexisNexis AnswerGuide New York Negligence § 5.28. Verifying 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.

Checklist for Serving Notice Requiring Physical or Mental Examination of Party LexisNexis AnswerGuide New York Civil Litigation § 6.37.

Forms:

LexisNexis Forms FORM 75-CPLR 3020:1.—Verification of Pleading by Individual Party.

LexisNexis Forms FORM 75-CPLR 3020:10.—Verification by Officer of Foreign Corporation.

LexisNexis Forms FORM 75-CPLR 3020:11.—Verification by Attorney Where Party Is Foreign Corporation.

LexisNexis Forms FORM 75-CPLR 3020:12.—Verification by a Party's Attorney; Official Form 21.

LexisNexis Forms FORM 75-CPLR 3020:13.—Verification by a Party's Attorney; Proposed Official Form 23.

LexisNexis Forms FORM 75-CPLR 3020:13A.—Verification by Attorney.

LexisNexis Forms FORM 75-CPLR 3020:14.—Verification by Attorney Where Party Not in County of Attorney's Office.

LexisNexis Forms FORM 75-CPLR 3020:15.—Verification by Attorney Where Several Parties United in Interest and Pleading Together and None Acquainted With the Facts Is in County of Attorney's Office.

LexisNexis Forms FORM 75-CPLR 3020:16.—Verification by Attorney or Agent Where Action or Defense Founded on Instrument for Payment of Money Only.

LexisNexis Forms FORM 75-CPLR 3020:17.—Verification by Attorney or Agent Where All Material Allegations Are Within Personal Knowledge of Attorney or Agent.

LexisNexis Forms FORM 75-CPLR 3020:2.—Verification by a Party; Official Form 20.

LexisNexis Forms FORM 75-CPLR 3020:3.—Verification by a Party; Proposed Official Form 22.

LexisNexis Forms FORM 75-CPLR 3020:4.—Verification of Counterclaim.

LexisNexis Forms FORM 75-CPLR 3020:5.—Verification by Infant Party's Representative.

LexisNexis Forms FORM 75-CPLR 3020:6.—Verification by One of Several Parties United in Interest and Pleading Together.

LexisNexis Forms FORM 75-CPLR 3020:7.—Verification by Two Parties Not United in Interest But Pleading Together.

LexisNexis Forms FORM 75-CPLR 3020:8.—Verification by Officer of Domestic Corporation.

LexisNexis Forms FORM 75-CPLR 3020:9.—Verification by State or Public Officer in Its Behalf.

LexisNexis Forms FORM 1434-19400.—CPLR 3020, 3021: Verification By Attorney.

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

Texts:

Warren's Negligence in the New York Courts § 6.01. Serving summons.

Hierarchy Notes:

NY CLS CPLR, Art. 30

New York Consolidated Laws Service

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