

NY CLS CPLR R 3032

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)

R 3032. Contents of statement

The statement required when an action is commenced without summons, or continued after the service of a summons without pleadings, shall set forth plainly and concisely the claims and defenses in dispute between the parties and the relief sought, including the amount of money demanded, if any. With the permission of the court, amended or supplemental statements may be served and filed at any time.

History

Add, L 1962, ch 308, eff Sept 1, 1963; amd, L 1964, ch 388, § 13, eff Sept 1, 1964.

Annotations

Notes

Prior Law:

Earlier rules: RCP 304.

Notes to Decisions

1. In general

Where there was no statement under this rule but no objection was made, service of statement was waived and proceedings properly were not dismissed because of absence of statement. *Stell Mfg. Corp. v Century Industries, Inc.*, 23 A.D.2d 281, 260 N.Y.S.2d 547, 1965 N.Y. App. Div. LEXIS 3969 (N.Y. App. Div. 1st Dep't), *aff'd*, 16 N.Y.2d 1020, 265 N.Y.S.2d 902, 213 N.E.2d 313, 1965 N.Y. LEXIS 1009 (N.Y. 1965).

Research References & Practice Aids

Cross References:

This rule referred to in § 3036.; CLS NYC Civil Ct Act § 910.; CLS UCCA § 910.; CLS UDCA § 910.; CLS UJCA § 910.

Simplified procedure for court determination of disputes; action without pleadings, CLS NYC Civil Ct Act § 910.; UCCA § 910.; UDCA § 910.; UJCA § 910.

Jurisprudences:

86 NY Jur 2d Process and Papers § 8. .

92 NY Jur 2d References § 2. .

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, *New York Civil Practice: CPLR Ch. 3032, Contents of Statement.*

Matthew Bender's New York CPLR Manual:

CPLR Manual § 21.14. Action on submitted facts.

CPLR Manual § 31.01. Arbitration in general.

CPLR Manual § 31.16. An alternative to arbitration: simplified procedure for judicial determination of disputes.

Forms:

LexisNexis Forms FORM 75-CPLR 3031:1.— Statement of Claims and Defenses Under Simplified Procedure for Court Determination of Disputes.

LexisNexis Forms FORM 75-CPLR 3031:2.— Statement Commencing Action Under CPLR 3031; Official Form 28.

LexisNexis Forms FORM 75-CPLR 3031:3.— Statement Commencing Action Under CPLR 3031; Proposed Official Form 32.

Hierarchy Notes:

NY CLS CPLR, Art. 30

Forms

Forms

Joint Statement Commencing Contract Action Under the New York Simplified Procedure for Court Determination of Disputes

[Caption]

1. Plaintiff, _____, Inc., was and is now a domestic corporation organized under and existing to and pursuant to the laws of the State of New York.
2. Plaintiff was and is now engaged in, among other things, the resale of chemical compounds.
3. Defendant, _____, Inc., was and is now a corporation organized under and existing pursuant to the laws of the State of _____.

4. On or about _____, 20_____, the parties hereto entered into a contract of sale whereby plaintiff agreed to sell and defendant agreed to buy 1000 MT high density polyethylene at \$510 USD per net MT, CNF Calcutta or \$500 USD per net MT, CNP Bombay (Buyer's option) for delivery in late _____, 20_____.
5. Defendant was and is now engaged in, among other things, the resale of chemical compounds.
6. Plaintiff confirmed said purchase and sale agreement by Written Sales Contract Confirmation No. _____ dated _____, 20_____.
7. On or about _____, 20_____, defendant accepted plaintiff's offer to purchase of an additional 1,000 MT of the same product for a later delivery date.
8. Thereafter, the parties agreed to amend the contract to include a second lot of approximately 1,000 MT of high density polyethylene on the same price terms and to move the delivery date to _____, 20_____. A copy of the Sales Contract Confirmation dated _____, 20_____ is annexed hereto as Exhibit A.
9. Defendant's written Purchase Order dated _____, 20_____ contains a provision whereby the parties are bound to submit all disputes arising thereunder to the New York Simplified Procedure for Court Determination of Disputes ("SPCDD") and that the contract of sale shall be governed and construed by New York law. A copy of said Purchase Order containing the SPCDD provision at paragraph 14 therein is annexed hereto as Exhibit B.

Plaintiff's Statement

10. A material term of the parties' contract was the requirement that defendant present to plaintiff an irrevocable confirmed letter of credit payable thirty (30) days from the bill of lading date against presentation of usual shipping documents drawn on a first class New York Bank and payable at New York Bank counters.

11. Despite repeated requests by plaintiff, defendant did not submit a proposed letter of credit for approval by plaintiff until on or about _____, 20_____. That letter of credit provided for payment covering 1,000 MT/CNF Bombay.

12. On or about _____, 20_____ the letter of credit was amended to provide payment for 1,010 MT/CNF Bombay.

13. On or about _____, 20_____ plaintiff notified defendant that the proposed letter of credit was partially illegible. Defendant was notified that plaintiff denied liability in the event that a nonconformance in presentment for payment arose as a result of said illegibility.

14. The parties entered into an agreement whereby it was agreed that defendant would notify its confirming bank that the parties had agreed to allow the product to be delivered with a transshipment and that a late shipment would be acceptable. In addition, defendant represented to plaintiff that defendant would instruct its confirming bank to waive strict compliance with the letter of credit terms.

15. On or about _____, 20_____, plaintiff advised defendant of the estimated time of arrival for the first lot of 1,010 MT of product would be on or about _____, 20_____, Bombay, on the vessel _____.

16. On or about _____, 20_____, defendant requested plaintiff to hold product at the transshipment point for an additional two weeks inasmuch as it had not completely negotiated its required letter of credit.

17. On or about _____, 20_____, plaintiff notified defendant that it was not possible to delay product at the transshipment point.

18. On or about _____, 20_____, plaintiff notified defendant that plaintiff would not be liable for any demurrage or losses as a result of defendant's failure to present clean letter of credit.

19. On or about _____, 20_____, plaintiff delivered 1,010 MT of high density polyethylene at \$500 USD per net MT/CNF Bombay and said delivery was received and accepted by defendant and/or its agents.

20. On or about _____, 20_____, plaintiff made a presentment to defendant's confirming bank, _____ Bank, New York, New York for payment under to the terms of the letter of credit.

21. Upon information and belief defendant failed to notify its confirming bank of the agreement between the parties referred to in paragraph 14 herein.

22. On or about _____, 20_____, _____ Bank advised plaintiff that its presentment was rejected. Upon information and belief, defendant instructed the _____ Bank to reject plaintiff _____'s presentment of the documents and payment would be handled "outside of the L/C terms" per the advice of defendant. A copy of the Bank's written rejection is annexed hereto as Exhibit C.

23. Despite repeated demands by plaintiff, defendant refused to pay plaintiff the contract price for goods sold and delivered on or about _____, 20_____.

24. Defendant was duly notified by plaintiff that a second lot of 1,000 MT prime high density polyethylene would be stopped in transitu where defendant failed and refused to make payment for the first shipment.

25. The terms of the amended purchase raised the cargo quantity from about 1000 MT to about 2000/2000 MT, deleted the letter of credit requirement in the original agreement, and altered the shipment period from _____, 20_____ to _____, 20_____.

26. The amended agreement made no provision for severability of the contract or for payment upon part shipment. The terms clearly stated that about 2000/2000 MT of prime high density polyethylene were to be shipped at \$510 per net metric ton CNF Calcutta and \$500 per net metric ton, CNF Bombay.

27. Plaintiff apparently delivered part of the contracted quantity or about 1000 MT of said goods, and thereafter demanded pay merit for said part shipment.

28. Plaintiff failed or refused to ship the remaining 900/1000 MT cargo under the contract, despite repeated demands.

Defendant's Affirmative Defenses

29. As a first affirmative defense, defendant alleges that plaintiff has failed to state any claim or legally cognizable right to relief against defendant.

30. As a second affirmative defense, any alleged oral agreement referred to by plaintiff is barred by the Statute of Frauds, and clause 1 of the terms and conditions set forth in the Purchase Order (Exhibit B).

31. As a third affirmative defense, plaintiff's alleged claim for payment on the first lot is barred by clause 3 of said Purchase Order. Moreover plaintiff agreed that any rendering of services or delivery of goods by installments shall not be construed as making plaintiff's obligations severable. It is further provided that time was of the essence in delivery.

32. As the contract was not severable and a full delivery of the contracted quantity of 2000/2000 MT was required, plaintiff has no claim for part delivery of the total shipment.

33. As a forth affirmative defense, plaintiff's alleged claim, if any, is barred by plaintiff's own culpable conduct in breaching the contract by failing or refusing to ship the second lot of about 1000 MT.

34. Under clauses 3 and 5 of the Purchase Order, plaintiff agreed to make prompt delivery of the entire contracted quantity, as time was of the essence. Plaintiff further recognized that the

contracted goods were being purchased by defendant for resale and plaintiff agreed to be liable in the event of its late or nondelivery for all of defendant's damages resulting therefrom.

35. Plaintiff therefore recognized that defendant was purchasing about 2000 MT of the subject goods, only for resale purposes to defendant's customers, and that defendant thus had contractual obligations of timely delivery to its own customers.

36. By demanding payment by installment knowing full well that this was not an installment contract, plaintiff breached the terms and conditions of the contract, and exposed defendant to serious liability for damages to its customers caused by plaintiff's refusal to perform the balance of the contract.

37. As a fifth affirmative defense, any alleged difficulties encountered by plaintiff in encashing the letter of credit covering payment of the first lot were caused solely by plaintiff's own negligent and/or culpable conduct in not timely presenting documents conforming to the letter of credit requirements.

38. Plaintiff furthermore breached its obligation to courier original documents to defendant within ten (10) days after shipment, thereby causing defendant even further damages and liability to its customers.

39. As a sixth affirmative defense, plaintiff perpetrated an apparent fraud upon defendant by consistently representing that it had the second lot available and that it had the ability to ship the second lot and complete the contract.

40. On information and belief these misrepresentations were made to induce defendant and did induce defendant not to cancel the contract and sue for damages, knowing that defendant would rely on same, and plaintiff also knowing full well that it in fact did not have the second lot available and could not obtain the second lot because plaintiff's own representative who had negotiated the subject contract with defendant left plaintiff and apparently took the cargo constituting the second lot over to his new company, where he purportedly sold it elsewhere.

41. Plaintiff nonetheless continued its perpetration of this fraud upon defendant, all the while promising delivery of the second lot when it no longer even had access to, or control over the second lot.

42. Plaintiff is therefore estopped by its own fraudulent conduct and nonperformance of the contract from asserting any alleged claim herein.

43. As a seventh affirmative defense, the contract provided for net payment thirty (30) days from Bill of Lading date and specifically deleted the letter of credit provision (Exhibit 1 hereto). When defendant was ready and able to proceed with its performance, plaintiff, in violation of the contract, insisted on a letter of credit.

44. Eventually, as a compromise so as not to have to cancel the entire contract, defendant agreed to a letter of credit only as to the first lot, and no letter of credit as to the second lot. The letter of credit for the first lot was issued by _____ Bank or or about _____, 20_____, and required, inter alia, strict conformity with its terms, failing which the credit would not be honored.

45. Plaintiff thereafter further attempted to coerce defendant into opening a letter of credit for the second lot, or face the consequence of nondelivery (plaintiff's telex demand for second letter of credit and copy of _____ Bank's letter of credit attached collectively hereto as Exhibit 2).

46. Defendant did not submit to such coercion and did not request a second letter of credit to be opened, but insisted instead on plaintiff's performance of the contract as was plaintiff's duty.

47. After _____ Bank dishonored the letter of credit due to plaintiff's failure to comply with the letter of credit's requirements, defendant had no obligation to pay on the first lot but was instead bound only to pay upon shipment of the entire contracted quantity as per the terms and conditions of the contract which by its very wording prohibited severability.

48. The second lot was never shipped due plaintiff's total breach of contract, and thus no claim is set forth against defendant.

49. As an eighth affirmative defense, no evidence whatsoever has been presented or alleged to establish a so-called "oral agreement" asserted by plaintiff wherein defendant supposedly agreed to instruct _____ Bank not to demand strict compliance with the letter of credit terms.

50. The letter of credit by its own terms was governed by the Uniform Customs and Practice for Documentary Credits under which an issuing bank has discretion to reject nonconforming documents regardless of any alleged instructions from the account party to the contrary.

51. Whatever defendant allegedly did or did not do under so-called "oral agreement" would not affect _____ Bank's right to dishonor the credit on its own election if the presentment plaintiff was defective.

52. Defendant has no liability to plaintiff for plaintiff's own deficient presentment and/or _____ Bank's independent decision to dishonor the credit.

Defendant's Counterclaims

53. As a first counterclaim, defendant has sustained substantial damages due to plaintiff's wrongful breach of contract in refusing to supply about 1000 MT of the contracted goods.

54. Pursuant to clause 5 of the Purchase Order, plaintiff agreed to be responsible to defendant for all losses sustained by plaintiff's failure to "make timely delivery or otherwise," plaintiff being aware under clause 5 that defendant purchased the goods for resale. Under said clause, plaintiff expressly agreed to be liable for all such losses including "special damage loss of profits and loss of anticipated profits".

55. By virtue of plaintiff's material breach of contract, defendant was exposed to serious liability to its customers for delivery of the product, and substantial claims were lodged against

defendant by its customers for non-delivery of the product, and substantial claims were lodged against defendant by said customers as a result thereof.

56. To mitigate damages, defendant in good faith, tried to reasonably cover the shipment in the market, but the market price had already multiplied by about several times over the contract price.

57. Faced with claims of customers, and being unable to arrange identical cover, defendant endeavored to negotiate settlements with some of its customers, and succeeded in reaching settlements whereby certain customers accepted alternative products in lieu of the product wrongfully withheld by plaintiff.

58. The costs of obtaining such cover by alternative products, including without limitation, procurement, freight, shipment, and so forth, together with the claims still existing by customers who refused any alternative arrangements and are demanding delivery of the original product, are not presently quantifiable with certainty, but in no event are less than a total of \$500,000.00.

59. Due notice and demand was made upon plaintiff which wrongfully refuses to settle this claim in whole or in part.

60. Plaintiff is liable to defendant on this first counterclaim in the minimal amount of \$500,000.00, to be amended if necessary, for which claim is hereby made.

61. As a second counterclaim, defendant has suffered a loss of additional business in the minimal amount of 5000 to 6000 metric tons of the product caused by plaintiff's refusal to supply the 1000 MT under contract.

62. Defendant's customers have refused to do such further business with defendant because of said nondelivery by plaintiff which resulted in defendant's failure to perform its own contracts of resale with its customers, through no fault of defendant.

63. Defendant expected to realize a minimum profit of about \$20.00 per metric ton on the approximately 6000 additional metric tons of product it could have shipped had plaintiff not breach the contract, thus eliminating defendant's intended future business.

64. Defendant has therefore sustained a loss of profit and loss of anticipated profit, all recoverable under clause 5 of said Purchase Order, in the minimal amount of \$120,000.00 for which claim is hereby made.

65. For a third counterclaim, by defendant's failure to deliver the contracted 1000 MT of goods to its customers caused solely by plaintiff's wrongful material breach of contract, and fraudulent actions in misrepresenting that plaintiff had the goods available when plaintiff knew or should have known, that plaintiff, in fact, did not have the cargo, defendant's reputation in the trade has been damaged.

66. Defendant's reputation has been seriously affected in that potential customers are now hesitant to do business with defendant, that doubts are raised, where none should have been as to whether defendant can fulfill its contractual obligation of delivery, that defendant has lost business and been unable to find new business as a result of this incident, that defendant's established name, image, and confidence attached to it for performance and reliability have been wrongfully tarnished, all the direct cause of plaintiff' wrongful actions and fraudulent maneuverings.

67. By virtue of plaintiff's improper conduct, and breach of contract as established above, plaintiff is liable for damages sustained to defendant's reputation in the minimal amount of \$1,000,000.00 for which demand is hereby made.

68. As and for a fourth counterclaim which fully incorporates and makes a part thereof, the preceding three counterclaims, defendant demands exemplary and punitive damages in an amount to be determined by the Court, but in no event less than \$1,000,000.00.

69. Such damages are warranted by the wanton and malicious conduct of plaintiff which purposefully entered an unseverable contract acknowledging defendant's purchase for resale

purposes, knowing of defendant's obligations to its customers, then falsely representing the availability of 1000 MT of goods when plaintiff did not even have possession of same, and continuing its false representations, while trying to coerce and extort defendant into changing the contract into a letter of credit transaction in violation of the agreed terms of the contract, demanding installment payments when none were called for, and then wrongfully refusing to ship about half the contracted quantity knowing full well the damages and liability which defendant would sustain.

70. This type of coercion and bad faith dealing can best be dealt with by an award of exemplary damages to discourage plaintiff _____ from similar conduct in the future, and as an example to others who might be tempted to imitate plaintiff's conduct.

Plaintiff's Responses to Defendant's Affirmative Defenses and
Counterclaims

71. Plaintiff _____ denies the allegations made in defendant's counterclaims contained in paragraphs 51 through 68 herein in their entirety.

72. As a first affirmative defense, plaintiff alleges that defendant fails to state any claim or legally cognizable right to relief against plaintiff.

73. As a second affirmative defense, defendant's reliance on clause 5 of its Purchase Order is without basis in that defendant repudiated the parties' contract by failing to proffer assurance of due performance within a reasonable time after demand for same was made by plaintiff.

74. Defendant's failure to make payment for the first lot delivered on or about _____, 20_____, after plaintiff seasonably notified defendant that its letter of credit covering the first delivery was dishonored by the confirming bank and further that _____ Bank was instructed by defendant to notify plaintiff that payment would be made outside the letter of credit terms constituted reasonable grounds for insecurity by plaintiff.

75. Plaintiff was entitled to suspend performance and demand reasonable assurances of due performance by defendant in accord with commercial standards.

76. Defendant's failure to provide, within a reasonable time, assurances of due performance constituted a repudiation of the parties' contract.

77. Plaintiff was damaged in the amount of \$500,000, the price of the first delivered and accepted lot of product, and in an amount not yet determined, but in no event less than \$200,000, representing lost profits and incidental and consequential damages attributable to defendant's repudiation of the contract's second lot.

78. As a third affirmative defense, defendant breached the parties' agreement by failing to seasonably furnish to plaintiff a letter of credit for the second lot scheduled for delivery in _____, 20_____.

79. Despite repeated demands for same made by plaintiff, defendant failed and refused to furnish a letter of credit covering the cargo scheduled for shipment as a second lot on or after _____, 20_____.

80. The letter of credit term was a material term of the parties contract dated _____, 20_____ and as amended on _____, 20_____. At no time did the parties agree to delete that material term.

81. Defendant's failure and refusal to provide a letter of credit covering the second lot scheduled for delivery on or about constituted a material breach of contract.

82. As a fourth affirmative defense, defendant's allegations contained in paragraphs 42 through 45 herein are barred by the Statute of Frauds.

83. The parties' contract and amended contract clearly state letter of credit terms. At no time was that material term deleted or waived by plaintiff.

84. Defendant breached the parties' contract by its failure and refusal to secure a letter of credit to cover the second lot of cargo scheduled for later shipment.

85. As a fifth affirmative defense, defendant waived its right to argue that time was of the essence where delays were caused by defendant's own conduct.

86. As a sixth affirmative defense, defendant's counterclaim at paragraphs 59 through 68 herein for impairment of reputation and punitive damages are beyond the scope of the "loss including special damages, loss of profits and loss of anticipated profits" language in clause 5 of its Purchase Order and is otherwise without basis at law or in equity.

87. As a seventh affirmative defense, where the delivery of cargo was scheduled to occur in two separate lots and the contract called for letter of credit terms to cover the price to defendant of each such delivery, plaintiff was entitled to demand payment of the price for each lot.

88. Simultaneous delivery of all product designated for sale under the contract was not contemplated by either party.

89. Defendant specifically requested that delivery of the cargo be made in two separate lots to accommodate its prospective customers needs and had begun, although it never finalized, arrangements to provide a letter of credit covering' the price of the second lot.

90. As an eighth affirmative defense, plaintiff was entitled to stop delivery of the second lot then in the possession of a commercial carrier/bailee when it discovered that defendant failed and refused to make payment for the first lot and announced that it would not secure a letter of credit for the second lot.

91. Plaintiff incurred costs when it was forced by repudiation of the contract to stop delivery in transitu for which defendant is liable.

92. As a ninth affirmative defense, defendant's counterclaims are barred by the doctrine of unclean hands.

93. Defendant denies each and every allegation of plaintiff in paragraphs 77, 91, et seq., herein above with respect to plaintiff's alleged claim that it sustained alleged lost profits, incidental and consequential damages and costs in stopping the second lot in transit, and denies that plaintiff is entitled to the claimed \$200,000 or any other amount in connection with said alleged damages.

94. As plaintiff did not have custody or control over the second lot, as said lot had been sold to another account by Plaintiff's former employee who left with the cargo and perhaps other cargoes to set up a new business, plaintiff has sustained no damages whatsoever for "lost profits", stoppage in transit costs, consequential damages, etc. relating to a cargo which it never even had.

95. As a first affirmative defense, by virtue of the fact that plaintiff did not have the second lot, any alleged claims of plaintiff related to the second lot state no claim or cause of action whatsoever against defendant and are wholly illusory.

96. As a second affirmative defense, any alleged claim of plaintiff with respect to the second lot is in any event barred by plaintiff's own culpable conduct as described hereinabove.

97. As a third affirmative defense, plaintiff, as late as _____, 20_____, advised defendant that the second lot was expected to be scheduled for shipment by plaintiff's Yugoslavian suppliers by _____, 20_____ when, on information and belief, the said suppliers had already shipped out the lot in and about _____, 20_____ to a third party, canceling plaintiff's order of said lot.

98. Therefore plaintiff well knew, or should have known, that the second lot would never be available, yet consistently misrepresented otherwise to defendant.

99. By reason of such fraudulent actions, plaintiff is estopped from asserting any alleged claim with respect to the second lot.

100. As a fourth affirmative defense, notwithstanding and without prejudice to defendant's denial of any right to claim such damages or that any damages occurred, if in fact any such damages were sustained, they are outside and beyond the scope of reasonable and foreseeable damages for which recovery may be sought.

PARTIES' DEMANDS

101. Plaintiff demands judgment against defendants defendant in the amount of \$710,000.00, plus interest, and costs and disbursements. Plaintiff further demands dismissal of defendant's counterclaims in their entirety.

102. Defendant demands judgment dismissing each and every alleged claim with prejudice and further demands judgment against plaintiff on its first counterclaim in the amount of \$500,000.00, on its second counterclaim in the amount of \$120,000.00, on its third counterclaim in the amount of \$1,000,000.00, and on its fourth counterclaim in the amount of at least \$1,000,000.00, and further demands all costs, disbursements, reasonable attorneys' fees, and other proper relief.

Dated: _____, New York

_____, 20_____

_____, _____, _____

& _____, P.C.

Attorneys for Plaintiff

[Office address and

_____, _____, _____

& _____, P.C.

Attorneys for Plaintiff

[Office address and

phone number]

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