

NY CLS CPLR R 3022

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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 3022. Remedy for defective verification

A defectively verified pleading shall be treated as an unverified pleading. Where a pleading is served without a sufficient verification in a case where the adverse party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of the adverse party that he elects so to do.

History

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

Annotations

Notes

Derivation Notes:

Earlier statutes: CPA § 253.

Commentary

PRACTICE INSIGHTS:

COURT OF CLAIMS FINALLY EMBRACES STATUTORY PROCEDURE

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INSIGHT

Verifications unsigned or unsworn, or made by someone other than a party, corporate officer, knowledgeable government officer, or an attorney for the party are defective. CPLR 3020. An attorney doing this would thereby place the party whose verification is defective in default of responding, subjecting the client to a motion to dismiss or other problems.

CPLR 3022 allows an attorney served with a defectively verified pleading to treat it as if it had not been served, so long as the attorney gives diligent notice to her adversary of her election so to do. The statute is important because it allows opposing counsel to attempt prompt correction of the defect or, if necessary, apply to the court to compel acceptance. The ability to reject a defectively verified pleading without notifying opposing counsel of the rejection in time for her to correct it arose in the Court of Claims in *Lepkowski v. State*, because of the special statutory requirements for the notice of claim in that court and the short time limits for filing one.

ANALYSIS

State and Third Department previously deemed defectively verified pleadings jurisdictionally defective.

The Court of Appeals recently weighed in — albeit unnecessarily — on an issue long vexing the Court of Claims and the Third Department, where its appeals are heard. The State, with the judiciary's concurrence, had considered unverified and defectively verified pleadings jurisdictionally defective because Court of Claims Act 11(b) requires a claim and notice of intention to file a claim to be “verified” as a complaint in Supreme Court. A verification defect was held to be noncompliance by the claimant because the verification requirement was considered a specific condition upon which the State's waiver of immunity rested. The courts, hamstrung by precedent, lamented the dismissal of claims — especially those of pro se litigants

— where the State did not raise an objection to a verification defect until the motion was made, and refused to allow a proffered cure. *Lepkowski v. State*, 302 A.D.2d 765, 776, 754 N.Y.S.2d 772 (3d Dep't 2003) dissenting opinion of Lahtinen, J.; *Price v. State of New York*, 2003 NY Slip Op 51086(U), 2003 N.Y. Misc. LEXIS 893 (Ct. Cl. 2003).

CPLR 3022 finally applies to Court of Claims Act § 11.

The Court of Appeals, affirming dismissal of claims of state employees seeking unpaid overtime compensation, held them to be jurisdictionally defective for nonconformity with substantive pleading requirements. Court of Claims Act § 11(b) dispelled the “proliferating” confusion in these cases regarding the applicability of CPLR 3022. The high court held that “a defendant who does not notify the adverse party’s attorney with due diligence waves any objection to an absent or defective verification.” Because the Court of Claims section requires a claim or notice of intention to be verified “in the same manner” as a Supreme Court complaint, the legislative intent was to require the procedure in the Court of Claims to mirror that prescribed by the CPLR for Supreme Court claims. The court concluded that Court of Claims Act § 11(b) “therefore embraces CPLR 3022’s remedy for lapses in verification.” *Lepkowski v. State*, 1 N.Y.3d 201, 210, 770 N.Y.S.2d 696, 802 N.E.2d 1094, 1100 (2003).

Subsequently, a 2005 amendment to Ct. Cl Act § 11 (c) provided that an objection or defense based upon a failure to comply with the verification requirements is waived unless raised with particularity by a motion to dismiss or in a responsive pleading. *But see Long v. State of New York*, 7 N.Y.3d 269, 276, 819 N.Y.S.2d 679, 683, 852 N.E.2d 1150, 1155 (2006) (Ct Cl. Act § 8-b verification requirements specific to unjust conviction and imprisonment claims makes no reference to the rules governing supreme court practice. “Hence, CPLR 3020(d)(3) and 3022 have no application in this case.”).

Notes to Decisions

1. Generally

2.Under former civil practice laws, generally

3.—Time for objection

4.— —Objection at trial

5.—Notice of defect

6.—Allowance of time to correct error

7.—Failure to cure defect

1. Generally

Verification requirement in N.Y. Ct. Cl. Act § 8-b(4) is specific to claims for unjust conviction and imprisonment and makes no reference to the rules governing supreme court practice; hence, N.Y. C.P.L.R. 3020(d)(3) and 3022 have no application. *Long v State of New York*, 7 N.Y.3d 269, 819 N.Y.S.2d 679, 852 N.E.2d 1150, 2006 N.Y. LEXIS 1829 (N.Y. 2006).

Respondent Supreme Court justice who failed to give notice with due diligence to petitioner's attorney that he intended to treat petitioner's Article 78 petition, which was not verified by petitioner, as a nullity thereby waived objections in point of law. *O'Neil v Kasler*, 53 A.D.2d 310, 385 N.Y.S.2d 684, 1976 N.Y. App. Div. LEXIS 13059 (N.Y. App. Div. 4th Dep't 1976).

In a breach of contract action, the court properly determined pursuant to CPLR § 3022 that plaintiff waived its objection to an allegedly defective verified answer, and the default judgment based upon this verification was properly vacated, where plaintiff delayed three days before giving notice of its rejection of the allegedly defective answer. *Air New York, Inc. v Alphonse Hotel Corp.*, 86 A.D.2d 932, 448 N.Y.S.2d 795, 1982 N.Y. App. Div. LEXIS 15615 (N.Y. App. Div. 3d Dep't 1982).

In an action on an insurance contract, plaintiffs' objection to the fact that defendant's answer was unverified was waived where the rejection thereof was not accomplished with "due

diligence.” *Meredith v Hartford Ins. Co.*, 99 A.D.2d 483, 470 N.Y.S.2d 425, 1984 N.Y. App. Div. LEXIS 16674 (N.Y. App. Div. 2d Dep't 1984).

In a proceeding pursuant to Real P Tax Law Art 7, respondents waived any objections based upon petitioner's failure to comply with the verification requirements of Real P Tax Law § 706, where respondents delayed 28 days before objecting; CPLR 3022 requires “due diligence,” and due diligence requires that notice be given immediately or within 24 hours. *Ames Dep't Stores v Assessor of Concord*, 102 A.D.2d 9, 476 N.Y.S.2d 222, 1984 N.Y. App. Div. LEXIS 18303 (N.Y. App. Div. 4th Dep't 1984).

Petition in Article 78 proceeding must be verified and, where defective in such regard, petition may be treated by opposing party as nullity. *Salahuddin v Le Fevre*, 137 A.D.2d 937, 525 N.Y.S.2d 359, 1988 N.Y. App. Div. LEXIS 1859 (N.Y. App. Div. 3d Dep't 1988).

Respondents met due diligence aspect of CLS CPLR § 3022 by returning unverified pro se Article 78 petition within one day. Court properly dismissed inmate's pro se Article 78 petition that had been sworn before fellow inmate rather than notary public, even though pro se petitions are accorded liberal construction and pleading defects may be ignored, where services of notary public were available at inmate's correctional facility, inmate was frequent litigator who was privy to judicial notice of availability of notary services that had been taken in prior proceedings, and inmate offered no viable reason for using inmate witness. *Salahuddin v Le Fevre*, 137 A.D.2d 937, 525 N.Y.S.2d 359, 1988 N.Y. App. Div. LEXIS 1859 (N.Y. App. Div. 3d Dep't 1988).

Plaintiff was not entitled to default judgment or summary judgment, despite defendant's service of unverified answer and subsequent failure to serve verified answer satisfactory to plaintiff during one-month period following service of plaintiff's summons and complaint, where plaintiff failed to show any prejudice resulting from defective verification or from short delay involved. *Freedman v Rotterdam Ventures, Inc.*, 137 A.D.2d 946, 525 N.Y.S.2d 363, 1988 N.Y. App. Div. LEXIS 2025 (N.Y. App. Div. 3d Dep't 1988).

When a political party's state officials sought, under N.Y. Elec. Law § 16-102, to invalidate so-called Wilson-Pakula certificates, under N.Y. Elec. Law § 6-120(3), and certificates of substitution issued by the party's county executive committee naming a person as a candidate for a certain office, the county executive committee waived a defective verification of the state officials' petition because the committee did not exercise due diligence in giving the state officials notice that the committee elected to treat the state officials' petition as a nullity, under N.Y. C.P.L.R. 3022. *Matter of Master v Pohanka*, 44 A.D.3d 1050, 845 N.Y.S.2d 376, 2007 N.Y. App. Div. LEXIS 11084 (N.Y. App. Div. 2d Dep't 2007).

With respect to a complaint by a decedent's nephews, alleging that he had named them as beneficiaries of a life insurance policy and then changed the beneficiary to the estate executrix (EE) due to her fraud, although the EE failed to verify her answer, that defect was waived by the beneficiaries' failure to act with "due diligence." *Larke v Moore*, 150 A.D.3d 1620, 54 N.Y.S.3d 239, 2017 N.Y. App. Div. LEXIS 3578 (N.Y. App. Div. 4th Dep't 2017).

In a breach of contract action against the State of New York arising out of a road reconstruction project, the State failed to establish its entitlement to judgment on its affirmative defense that the contractor did not fulfill the requirements of State Finance Law § 145 and the contract as the State waived any objection to the verification of the contractor's notice of claim by failing to deem the notice defective and also waived its objection to the notice under State Finance Law § 145 and the contract. The contractor filed the notice of claim simultaneously with the commencement of the litigation, and the notice of claim was explicitly identified, so the State had sufficient opportunity to deem the notice of claim defective. *Laquila Group, Inc. v State of New York*, 222 A.D.3d 738, 202 N.Y.S.3d 223, 2023 N.Y. App. Div. LEXIS 6454 (N.Y. App. Div. 2d Dep't 2023).

Where defendant's attorney affirmed rather than verified the answer, based on conversations had with defendant's officers and on personal knowledge, the defects complained of would be ignored, and plaintiff was not justified in treating the answer thus served as a nullity. *Kreiling v*

Jayne Estates, Inc., 51 Misc. 2d 895, 274 N.Y.S.2d 291, 1966 N.Y. Misc. LEXIS 1420 (N.Y. Sup. Ct. 1966).

Failure and notice of intention filed by claimant prior to expiration of statutory 90 day period to complete verification was not a jurisdictional defect where state was not misled thereby. Williams v State, 77 Misc. 2d 396, 353 N.Y.S.2d 691, 1974 N.Y. Misc. LEXIS 1148 (N.Y. Ct. Cl. 1974).

Where jurat on complaint disclosed that it was executed in New York but was sworn to before a New Jersey notary, the verification was defective and defendant was justified in treating the complaint as unverified and, hence, defendant's unverified answer could not be treated as a nullity. Even if complaint was properly verified, entry of default judgment following receipt of unverified answer was unauthorized where complainant failed to notify defendant that it elected to treat the answer as a nullity. Bambergers Div. of R. H. Macy Co. v Smith, 91 Misc. 2d 856, 398 N.Y.S.2d 945, 1977 N.Y. Misc. LEXIS 2431 (N.Y. County Ct. 1977).

Since "unity in interest" was present with respect to 51 petitioners in an Article 78 proceeding, it was not necessary that their petition be verified by all parties. In any event, where respondents noted the lack of complete verification only some two months after the petition was served, any failure by all petitioners to verify the pleading was waived. Betzler v Carey, 109 Misc. 2d 881, 441 N.Y.S.2d 206, 1981 N.Y. Misc. LEXIS 2489 (N.Y. Sup. Ct. 1981), aff'd, 91 A.D.2d 1116, 458 N.Y.S.2d 338, 1983 N.Y. App. Div. LEXIS 16455 (N.Y. App. Div. 3d Dep't 1983).

Plaintiff's rejection notice, although timely served on pro se defendant, was defective for failing to state why verified answer was required, and since answer in form of letter served by defendant was otherwise sufficient, court would deem letter to be answer properly interposed; thus, plaintiff's summary judgment motion based on defendant's default in answering would be denied. Cook v Freight Force, Inc., 139 Misc. 2d 459, 529 N.Y.S.2d 435, 1988 N.Y. Misc. LEXIS 304 (N.Y. Sup. Ct. 1988).

In tax certiorari proceeding, board of assessors failed to object to defective verification with due diligence (CLS CPLR § 3022), and thus it waived objection, where it waited more than one year to object; however, board objected with due diligence where it notified counsel, within weeks of being served with petition, of its intention to treat pleadings as nullity, given that board is served with almost 10,000 tax certiorari petitions and small claims petitions in short period of time. *Miller v Board of Assessors*, 164 Misc. 2d 62, 623 N.Y.S.2d 714, 1995 N.Y. Misc. LEXIS 66 (N.Y. Sup. Ct. 1995), *aff'd*, 236 A.D.2d 408, 654 N.Y.S.2d 571, 1997 N.Y. App. Div. LEXIS 1059 (N.Y. App. Div. 2d Dep't 1997).

In summary nonpayment proceeding wherein attorney's affidavit verifying petition failed to indicate why verification was not made by landlord as required by CLS CPLR § 3021, fact that tenant took 6 weeks to move to dismiss petition did not constitute lack of due diligence resulting in waiver of defense of defective verification under CLS CPLR § 3022, where tenant initially appeared pro se and only later retained attorney, who raised matter at his first appearance. 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).

Respondent in summary proceeding under CLS RPAPL § 741 failed to exercise due diligence in objecting to nonverification of petition, and thus effectively waived any objection on that ground where respondent did not object when it submitted answer 5 days after being served with petition and did not raise specific objection to nonverification of petition until 29 days after being served; further, even if defect were not waived, petitioner would be granted leave to amend under CLS CPLR § 3025, especially where petitioner's counsel merely neglected to annex signed verification sheet to petition that was served, and verification was subsequently provided to respondent at oral argument. Mandatory requirement that petitions in summary proceedings "shall" be verified (CLS RPAPL § 741) can be waived by operation of CLS CPLR § 3022, which provides that objection to defectively verified pleading is waived unless objecting party objects with due diligence; moreover, nonverification of petition in summary proceedings does not

deprive court of subject matter jurisdiction and may not otherwise be deemed “jurisdictional defect.” *SLG Graybar, L.L.C. v John Hannaway Law Offices*, 182 Misc. 2d 217, 696 N.Y.S.2d 645, 1999 N.Y. Misc. LEXIS 408 (N.Y. Civ. Ct. 1999).

State’s motion to dismiss a former inmate’s failure to provide medical treatment claim was denied where it had not followed the procedure set forth in CPLR 3022, which was embraced by Court of Claims Act § 11(b), and the plain language and legislative history of Court of Claims Act § 11(c) (2005) did not allow a defendant to raise a verification issue without following the CPLR 3022 procedure. *Scott v State of New York*, 848 N.Y.S.2d 811, 18 Misc. 3d 455, 2006 N.Y. Misc. LEXIS 9192 (N.Y. Ct. Cl. 2006), *aff’d*, 46 A.D.3d 664, 846 N.Y.S.2d 585, 2007 N.Y. App. Div. LEXIS 12519 (N.Y. App. Div. 2d Dep’t 2007).

Claimant was not entitled to a default in his action regarding negligence in failure to cancel an outstanding warrant against claimant for alleged nonpayment of a traffic fine as the State filed its motion to dismiss within 40 days of the service of the order finding the State’s N.Y. C.P.L.R. § 3022 notice defective and, thus, complied with N.Y. C.P.L.R § 3211(f) and N.Y. Comp. Codes R. & Regs. tit. 22, § 206.7. *Stewart v State*, 849 N.Y.S.2d 374, 18 Misc. 3d 236, 2007 N.Y. Misc. LEXIS 7449 (N.Y. Ct. Cl. 2007).

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).

N.Y. Ct. Cl. Act § 11(b) embraces N.Y. C.P.L.R. 3022’s remedy for lapses in verification, and pursuant to N.Y. C.P.L.R. 3022, a defendant who does not notify the adverse party’s attorney

with due diligence waives any objection to an absent or defective verification; where the State did not raise the issue of lack of verification of the intention to file claim until 20 months after service of the notice, the State waived any such objection. *Schneider v State of New York*, 800 N.Y.S.2d 356, 6 Misc. 3d 1006(A), 2004 N.Y. Misc. LEXIS 2882 (N.Y. Ct. Cl. 2004).

Because a 2005 amendment to N.Y. Ct. Cl. Act § 11(c), which provided that any objection to verification requirements as set forth under N.Y. C.P.L.R. 3022 had to be raised either by a motion to dismiss made before service of a responsive pleading was required or in the responsive pleading, did not specify that it had retroactive application, the State waived its objection to verification requirements regarding an inmate's claim that he was improperly placed on a restricted diet in a special housing unit based on its failure to reject the claim through a prompt return to the inmate pursuant to N.Y. C.P.L.R. 3022. *Burkett v State of New York*, 807 N.Y.S.2d 510, 11 Misc. 3d 322, 2005 N.Y. Misc. LEXIS 2982 (N.Y. Ct. Cl. 2005).

Because a town did not comply with the remedy in N.Y. C.P.L.R. 3022 in order to retain sovereign immunity from liability due to a defectively verified N.Y. Town Law § 65(3)notice of claim, the trial court properly denied the town's N.Y. C.P.L.R. § 3211(a)(2) motion to dismiss based on lack of subject matter jurisdiction. *Breco Envtl. Contrs., Inc. v Town of Smithtown*, 31 A.D.3d 357, 819 N.Y.S.2d 58, 2006 N.Y. App. Div. LEXIS 8704 (N.Y. App. Div. 2d Dep't 2006).

As trust beneficiaries had not objected to the trustee's answer being in letter format, or to the lack of verification thereof where they failed to reject the pleading under N.Y. C.P.L.R. 3022, the surrogate court erred in treating the matter as if it was uncontroverted due to the trustee's default; rather, the matter should have been treated as one that was controverted. *Matter of McDonald (Luppino)*, 100 A.D.3d 1349, 953 N.Y.S.2d 751, 2012 N.Y. App. Div. LEXIS 7439 (N.Y. App. Div. 4th Dep't 2012).

City university had waived its objection to any defect in the verification of plaintiff's claim regarding an assault by a security guard as it was required to both reject the claim as specified in N.Y. C.P.L.R. § 3022 and to assert the defect either in the answer or by a pre-answer motion to dismiss as required by N.Y. Ct. Cl. Act § 11(c); the university failed to state its defense with

particularity as required by N.Y. C.P.L.R. § 3013 as it only stated the legal conclusion that the claim was defective for failure to include a proper verification rather than stating the manner in which the verification was not proper. *Rister v City Univ. of N.Y.*, 858 N.Y.S.2d 528, 20 Misc. 3d 195, 239 N.Y.L.J. 92, 2008 N.Y. Misc. LEXIS 2883 (N.Y. Ct. Cl. 2008).

There has never been, nor should there be, a strict 24-hour deadline for determining due diligence; due diligence requires that the court examine the facts and circumstances surrounding the service and rejection of the pleading, which may include: (1) the amount of time elapsed between service of the faulty pleading and the return; (2) reasons for, and reasonableness of time elapsed; (3) whether the party rejecting the pleading already had counsel or is an attorney; (4) whether the issue was raised at the first opportunity, whether in writing or in court; (5) whether a statute of limitations or other deadline has expired during the time elapsed; and (6) the credibility of the party in its pleadings and testimony given, if any. *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).

2. Under former civil practice laws, generally

A defect in the verification of a petition to review an assessment may be corrected. *People ex rel. Denney v Clark*, 257 A.D. 905, 12 N.Y.S.2d 274, 1939 N.Y. App. Div. LEXIS 8341 (N.Y. App. Div. 1939).

Plaintiff whose signature was omitted from copy of complaint served may be compelled to accept unverified answer, though plaintiff filed with court properly verified complaint and later served a new copy properly verified. *Crimmins v Polhemus*, 68 N.Y.S.2d 819, 189 Misc. 183, 1947 N.Y. Misc. LEXIS 2158 (N.Y. Mun. Ct. 1947).

Where verified complaint charged defendants with criminal conspiracy to swindle plaintiff and with other crimes, one defendant was entitled to serve unverified answer without serving therewith affidavit showing valid reason therefor. *Sunley v Badler*, 33 N.Y.S.2d 642, 1942 N.Y. Misc. LEXIS 1409 (N.Y. Sup. Ct. 1942).

3. —Time for objection

Where respondent, served with unverified petition, retained such pleading without objection for period beyond any conception of “due diligence” as used in CPA § 253, and failed with due diligence to give statutory notice of election to treat unverified pleading as nullity, such failure was deemed waiver of defect. *In re Smith*, 2 A.D.2d 67, 153 N.Y.S.2d 131, 1956 N.Y. App. Div. LEXIS 4823 (N.Y. App. Div. 1st Dep't 1956).

Petition without verification must be returned within 24 hours, or defect is waived; such objection cannot be taken at trial. *Application of McGovern*, 44 N.Y.S.2d 132, 180 Misc. 508, 1943 N.Y. Misc. LEXIS 2399 (N.Y. Sup. Ct.), rev'd, 266 A.D. 985, 44 N.Y.S.2d 140, 1943 N.Y. App. Div. LEXIS 5605 (N.Y. App. Div. 1943).

Failure of attorney general to act promptly, and give notice of defective verification as provided in CPA § 253, waived defect. *Grant v State*, 77 N.Y.S.2d 756, 192 Misc. 45, 1948 N.Y. Misc. LEXIS 2190 (N.Y. Ct. Cl. 1948).

Where defendant has moved to dismiss a third-party complaint a contention that movant has waived his right to object to an unauthorized verification of the third-party complaint for untimeliness was without merit since CPA § 253 did not apply to such a situation. *Schiro v Catania*, 13 Misc. 2d 1033, 174 N.Y.S.2d 353, 1957 N.Y. Misc. LEXIS 2344 (N.Y. Sup. Ct. 1957).

The right to take advantage of an omission to verify is lost by long delay, for it is an irregularity which may be waived. *Wilson v Bennett*, 27 Hun 318 (N.Y. 1882).

4. — —Objection at trial

An objection that an answer is not properly verified cannot be taken at the trial. *SCHWARTZ v OPPOLD*, 74 N.Y. 307, 74 N.Y. (N.Y.S.) 307, 56 How. Pr. 156, 1878 N.Y. Misc. LEXIS 264 (N.Y. Sup. Ct. 1878).

The remedy for a defective verification is to treat the pleading as a nullity giving notice with due diligence to the attorney of the adverse party and where the attorney general has accepted notice of intention to sue and in due course proceeds to the trial of the claim without raising any objection, defects in the verification have been waived. *Wittkugel v State*, 5 Misc. 2d 886, 160 N.Y.S.2d 242, 1957 N.Y. Misc. LEXIS 3419 (N.Y. Ct. Cl. 1957), *aff'd*, 5 A.D.2d 958, 172 N.Y.S.2d 576, 1958 N.Y. App. Div. LEXIS 6641 (N.Y. App. Div. 4th Dep't 1958).

On cross-examination, a defendant testified at the trial that she did not verify her answer, which purported to be verified by her. Held, that the plaintiff could not, at the trial, have the answer stricken out. *Schwarz v Oppold* (N.Y.C.P. Apr. 2, 1877), *aff'd*, 74 N.Y. 307, 1878 N.Y. LEXIS 740 (N.Y. 1878).

5. —Notice of defect

Where an answer is returned upon the ground of irregularity, the objection must be explicitly stated and the particular defect or omission pointed out so that the defendant may understand wherein it lies. *Rosenthal v Cohn*, 105 N.Y.S. 943, 55 Misc. 533, 1907 N.Y. Misc. LEXIS 659 (N.Y. City Ct. 1907).

Notice accompanying answer returned for improper verification or lack of verification must state specifically defects relied upon, and general statement is insufficient. *Barthelmues v Ives*, 85 N.Y.S.2d 35, 194 Misc. 13, 1948 N.Y. Misc. LEXIS 3703 (N.Y. City Ct. 1948).

The remedy for a defective verification is to treat the pleading as a nullity, giving notice with due diligence to the attorney for the adverse party. When the attorney general, without giving notice of defect to attorney for claimant, accepts a notice and proceeds to trial without raising objection as to verification any objection is deemed waived. *Wittkugel v State*, 5 Misc. 2d 886, 160 N.Y.S.2d 242, 1957 N.Y. Misc. LEXIS 3419 (N.Y. Ct. Cl. 1957), *aff'd*, 5 A.D.2d 958, 172 N.Y.S.2d 576, 1958 N.Y. App. Div. LEXIS 6641 (N.Y. App. Div. 4th Dep't 1958).

Where unverified notice of intention to file claim against State was filed with Clerk of Court of Claims and Attorney General on April 6, 1955, and such notice was not returned and no notice was given or served upon claimant or her attorney that Attorney General elected to treat notice of intention to file as nullity, and by letter dated April 6, 1955, Assistant Attorney General acknowledged receipt of such unverified notice, and advised claimant's attorney that said notice had been filed on April 6, 1955, "subject to whatever legal objection may apply thereto", such letter did not comply with CPA § 253, because it failed to state that Attorney General elected to treat notice as nullity, and failure to act promptly was waiver of defect. *Melesky v State*, 2 Misc. 2d 690, 153 N.Y.S.2d 256, 1956 N.Y. Misc. LEXIS 1725 (N.Y. Ct. Cl. 1956).

Notice that answer was "not verified" was insufficient; it should have stated that "verification attached to answer had been made in advance of typing answer." *Westchester Life, Inc. v Westchester Magazine Co.*, 85 N.Y.S.2d 34, 1948 N.Y. Misc. LEXIS 3702 (N.Y. Sup. Ct. 1948).

6. —Allowance of time to correct error

Where a pleading is returned because of a defect in its verification, or notice is served of an intention to treat the pleading as a nullity, because of such defect the party who served the pleading is entitled to reasonable opportunity after the service of such notice or the return of the pleading in which to correct the error or supply the omission. *Fusco v Adam*, 11 N.Y.S. 735, 1890 N.Y. Misc. LEXIS 2335 (N.Y.C.P. 1890).

7. —Failure to cure defect

This section applies to cases where the pleading is defectively verified, and permits the party, after notice, to treat it as a nullity; if the defect is not cured, application may be made for judgment as by default. *Beglin v People's Trust Co.*, 95 N.Y.S. 910, 48 Misc. 494, 17 N.Y. Ann. Cas. 314, 1905 N.Y. Misc. LEXIS 452 (N.Y. County Ct. 1905).

Where answer of religious society was verified by ex-member of board of trustees, answer was struck out. *Wall v Mt. Calvary Baptist Church, Inc.*, 64 N.Y.S.2d 200, 188 Misc. 350, 1946 N.Y. Misc. LEXIS 2581 (N.Y. Sup. Ct. 1946).

Research References & Practice Aids

Jurisprudences:

5 NY Jur 2d Arbitration and Award § 193. .

6 NY Jur 2d Article 78 and Related Proceedings § 259. .

84 NY Jur 2d Pleading §§ 58, 59, 61.

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

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, *New York Civil Practice: CPLR Ch. 3022, Remedy for Defective Verification*.

Matthew Bender's New York Civil Practice:

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

1 Cox, Arenson, Medina, *New York Civil Practice: SCPA* ¶¶303.01, 303.06; 2 Cox, Arenson, Medina, *New York Civil Practice: SCPA* ¶¶701.05, 702.12.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 19.13. Verification.

CPLR Manual § 19.17. Bill of particulars.

Matthew Bender's New York AnswerGuides:

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

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.

Forms:

Bender's Forms for the Civil Practice 3020:1 et seq.

Bender's Forms for the Civil Practice Form No. CPLR 3022:1 et seq.

LexisNexis Forms FORM 75-CPLR 3022:1.—Notice of Nullity of Defectively Verified Document.

LexisNexis Forms FORM 75-CPLR 3022:2.—Notice of Motion to Compel Plaintiff to Accept Unverified Answer.

LexisNexis Forms FORM 75-CPLR 3022:3.—Order to Show Cause to Compel Plaintiff to Accept Unverified Answer.

LexisNexis Forms FORM 75-CPLR 3022:4.—Affidavit to Compel Plaintiff to Accept Unverified Answer Where Complaint Defectively Verified.

LexisNexis Forms FORM 75-CPLR 3022:5.—Affidavit to Compel Plaintiff to Accept Unverified Answer; Claim of Infancy.

LexisNexis Forms FORM 75-CPLR 3022:6.—Affidavit to Compel Plaintiff to Accept Unverified Answer; Claim of Privilege.

LexisNexis Forms FORM 75-CPLR 3022:7.—Order Requiring Plaintiff to Accept Unverified Answer.

LexisNexis Forms FORM 75-CPLR 3022:8.—Affidavit in Support of Motion to Strike Pleading and for Judgment Where Unverified or Defectively Verified Pleading Treated as Nullity.

LexisNexis Forms FORM 521-11-57.—Notice of Election to Treat Unverified or Defectively Verified Pleading as Nullity.

LexisNexis Forms FORM 521-11-58.—Notice of Motion to Compel Plaintiff to Accept Unverified Answer.

LexisNexis Forms FORM 521-11-59.—Order to Show Cause to Compel Plaintiff to Accept Unverified Answer.

LexisNexis Forms FORM 521-11-60.—Affidavit to Compel Plaintiff to Accept Unverified Answer Where Complaint Defectively Verified.

LexisNexis Forms FORM 521-11-61.—Order Requiring Plaintiff to Accept Unverified Answer.

LexisNexis Forms FORM 1434-19401.—CPLR 3022: Notice of Nullity of Defectively Verified Document.

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

Hierarchy Notes:

NY CLS CPLR, Art. 30

Forms

Forms

Form 1

Body of Notice of Election to Treat Unverified, or Defectively Verified, Pleading as a Nullity

PLEASE TAKE NOTICE that the annexed answer served upon me as attorney for the plaintiff on _____, 20_____, is herewith returned to you for the reason that the verification is defective in that it is made by the defendant who is not acquainted with the facts, while a verification by the defendant who is acquainted with the facts is intentionally omitted [or state any other reason why the verification is defective]. [Or, if there is no verification, substitute: “for the reason that the complaint in this action was duly verified and that said answer is not verified, as required by section 3020 of the Civil Practice Law and Rules.”]

For this reason, the plaintiff herein elects to treat said answer as a nullity, pursuant to Rule 3022 of the Civil Practice Law and Rules.

Form 2

Body of Notice Indorsed on Pleading Returned for Want of a Verification or Because of a Faulty Verification

PLEASE TAKE NOTICE that the within answer [or “reply”] is hereby returned to you on the ground that the same is not verified [or “that the verification thereof is defective because _____”], and the plaintiff elects to treat the same as a nullity.

New York Consolidated Laws Service

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