NY CLS CPLR § 3013, Part 1 of 3

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Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 30 Remedies and Pleading (§§ 3001 — 3045)

§ 3013. Particularity of statements generally

Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.

History

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

Annotations

Notes

Derivation Notes:

Earlier statutes: CPA § 255(1); CCP § 481; Code Proc § 142.

Advisory Committee Notes:

This section is the heart of the pleading requirement and represents an attempt to set up a realistic requirement of pleading. The viewpoint that has been taken is one of particularity of description. The former requirement of CPA § 241 that a pleading state “material facts” as well as the prohibition of § 241 against pleading “evidence” have been abandoned.

It has been amply demonstrated that it is difficult, if not impossible, to make distinctions among “evidence,” “facts” and “conclusions.” Further, where it is found that “conclusions” are alleged, the result is seldom serious; at worst the court allows free amendment or repleader. It is only where the court is satisfied that no cause of action can be stated because none exists that failing to state the “material facts” has serious consequences. Moreover, no case has been reported in the past five years when pleading “evidence” was fatal. At best, the objectionable allegations were stricken and the residue was sufficient to withstand attack. When characterizing specific language, the courts are correctly concerned only with the right of the adverse party to be advised of the pleader’s contentions and whether he has any cause of action or defense. Accordingly, the basic requirement of this section is that the pleadings identify the transaction and indicate the theory of recovery with sufficient precision to enable the court to control the case and the opponent to prepare. Normally—as formerly—the theory will be revealed by implication from a reading of the statement of facts. There is no objection under this section, however, to stating legal theories explicitly if the facts upon which the pleader relies are also stated.

Commentary

PRACTICE INSIGHTS:

DEGREE OF PARTICULARITY IN PLEADING DEPENDS ON CIRCUMSTANCES

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INSIGHT

CPLR 3013 only requires that a pleading's statements be sufficiently particular to give notice of the circumstances of the claim so that the opposing party is able to prepare a defense and the court to supervise disclosure. The four corners of the pleading must contain a factual basis for each of the legal elements of the claim or defense. Including more than that is superfluous, but

the standard varies with the cause of action. The practitioner is cautioned to plead facts, not conclusions. The practitioner should err on the side of factual particularity — a sparse complaint is not necessarily a good one. On a motion to dismiss a pleaded claim as defined, the court will assume the truth of all facts asserted and draw all appropriate inferences in favor of the pleader. If the facts fit a legal claim or defense, the pleading is sufficient, regardless of whether or not the pleader specifically identifies it as such.

ANALYSIS

Minimally, breach of contract claim requires an allegation of the contract and its breach.

The Second Department affirmed dismissal of a complaint grounded in contract, breach of warranty, and violation of Gen. Bus. Law § 349. The plaintiff on his own behalf sought damages for having purchased a Ford F-150 pickup with an advertised towing package, delivered without a specified radiator upgrade. The plaintiff sought class action status to represent all like purchasers of Ford pickups similarly ill-equipped, between 1999 and 2001. Following dismissal of plaintiff's complaint against it, Ford announced a customer-satisfaction program for some of the proposed class, offering, *inter alia*, a free radiator upgrade. The plaintiff's subsequent motion to renew — even in the face of what plaintiff asked the court to construe as Ford's admission of liability — was denied.

The appellate court noted the CPLR 3013 requirement and observed:

In particular, the plaintiff failed to allege that he understood that the Ford advertisements, stating certain specifications that were ultimately not met, were part of the bargain or that he even was aware of any of these advertisements before his purchase. Accordingly he failed to allege an essential element of the formation of an express warranty …. Moreover, by failing to plead or even identify the seller of his Ford vehicle, the plaintiff failed to properly plead the necessary provisions of the contract …. The plaintiff also did not adequately plead a cause of action alleging a violation of Gen. Bus. Law § 349, since he failed to allege that the deceptive acts complained of took place within the State.

Murrin v. Ford Motor Co., 303 A.D.2d 475, 477, 756 N.Y.S.2d 596, 597 (2d Dep't 2003). *See also Hicksville Dry Cleaners, Inc. v. Stanley Fastening System, L.P.*, 37 A.D.3d 218, 830 N.Y.S.2d 530 (1st Dep't 2007); *Wojcik v. Empire Forklift, Inc.*, 14 A.D.3d 63, 783 N.Y.S.2d 698 (3d Dep't 2004); *Gale v. IBM Corp.*, 9 A.D.3d 446, 781 N.Y.S.2d 45 (2d Dep't 2004).

Malpractice plaintiff may allege injuries and defendants' acts in lay terms.

A dental malpractice complaint was deemed sufficient and its dismissal denied and affirmed where the First Department determined that the plaintiff's lay description of her treatment and injuries gave fair notice of the alleged malpractice. *Chico v. Nadler*, 300 A.D.2d 105, 750 N.Y.S.2d 846 (1st Dep't 2002).

Complaint insufficiently particular under CPLR 3013 may suffice to avoid sanctions for frivolous commencement of lawsuit.

A complaint insufficiently particular under CPLR 3013 nevertheless may suffice to avoid sanctions for frivolous commencement of a lawsuit. The First Department held that the more specific allegations that the plaintiffs made against the defendant, “although perhaps insufficient to give CPLR 3013 notice, do suffice to show that the lawsuit was not frivolously commenced as against him.” *Korean United Methodist Church & Inst., Inc. v. Sone*, 2 A.D.3d 118, 767 N.Y.S.2d 601 (1st Dep't 2003).

There are circumstances which require more detailed particularity.

Practitioners should be aware of provisions in the CPLR (for example, CPLR 3015 and 3016) and elsewhere (*e.g.*, Ct. Cl. Act 11(b)) *see* discussion *below* in Practice Insight “Unique Particularity Requirements of Court of Claims Act Have Jurisdictional Consequences”) that require more detailed particularity.

Notes to Decisions

I.Under CPLR

21.—Insurance

22.—Libel and slander

23.—Malicious prosecution

24.—Matrimonial actions

25.—Personal injury and death

26.—Complaint dismissed

27.—Prima facie tort

28.—Professional malpractice

29.— —Legal

30.— —Medical

31.—Real property

32.— —Landlord-tenant

33.— —Mechanic’s lien

34.— —Sale of property

35.—Stockholders’ derivative suits and other actions against corporations

36.— —Fraud

37.— —Complaint dismissed

38.—Unfair competition

39.—Warranty

40.—Other actions

I. Under CPLR

1. In general

The CPLR may be applied to a pleading served prior to its effective date. Roberts v Grandview Dairy, Inc., 20 A.D.2d 574, 245 N.Y.S.2d 877, 1963 N.Y. App. Div. LEXIS 2646 (N.Y. App. Div. 2d Dep't 1963).

Notwithstanding that the CPLR is less exacting in its requirements for pleading than was the CPA, it is still essential that a complaint enable a defendant to determine the nature of plaintiff's grievances and the relief he seeks in consequence of the alleged wrongs. Shapolsky v Shapolsky, 22 A.D.2d 91, 253 N.Y.S.2d 816, 1964 N.Y. App. Div. LEXIS 2751 (N.Y. App. Div. 1st Dep't 1964).

The purpose of CPLR § 3013 is to prevent surprise. Pittsford Gravel Corp. v Zoning Bd. of Perinton, 43 A.D.2d 811, 350 N.Y.S.2d 480, 1973 N.Y. App. Div. LEXIS 2915 (N.Y. App. Div. 4th Dep't 1973), app. denied, 34 N.Y.2d 618, 355 N.Y.S.2d 365, 311 N.E.2d 501, 1974 N.Y. LEXIS 1840 (N.Y. 1974).

The CPLR eliminates the obscure distinctions inherent in such words as "conclusions", "ultimate facts" and similar others. Hewitt v Maass, 41 Misc. 2d 894, 246 N.Y.S.2d 670, 1964 N.Y. Misc. LEXIS 2096 (N.Y. Sup. Ct. 1964).

It is not the title of the action, nor the prayer for judgment, but the facts set out in the complaint which determine the kind and character of the action. Rubinfeld v Mappa, 42 Misc. 2d 464, 248 N.Y.S.2d 276, 1964 N.Y. Misc. LEXIS 2027 (N.Y. Sup. Ct. 1964), aff'd, 24 A.D.2d 489, 261 N.Y.S.2d 274, 1965 N.Y. App. Div. LEXIS 3956 (N.Y. App. Div. 2d Dep't 1965).

In divorce action alleging constructive abandonment and cruel and inhuman treatment, husband could not claim unreasonable surprise based on wife's untimely service of answer where she had previously served her own divorce complaint on him, which notified him of her claims and defenses (namely, violence and abuse); likewise, cross-examination of husband as to his acts of

cruelty and violence against wife was permitted although her belated answer did not interpose such defenses. Sullivan v Sullivan, 180 Misc. 2d 433, 689 N.Y.S.2d 378, 1999 N.Y. Misc. LEXIS 143 (N.Y. Sup. Ct. 1999).

2. Construction

CPLR 3013 is to be liberally construed, and technical defects in the complaint may be ignored where a substantial right of the defendant is not prejudiced. Severino v Salisbury Point Cooperatives, Inc., 21 A.D.2d 813, 250 N.Y.S.2d 896, 1964 N.Y. App. Div. LEXIS 3542 (N.Y. App. Div. 2d Dep't 1964).

Under CPLR 3013, the rules of pleadings are broad and under CPLR 3026 pleadings must be liberally construed and defects ignored if a substantial right is not prejudiced. CPLR 3013 is not a reformulation of former practice and the requirements that a pleading state “material facts” as well as the former prohibition against pleading “evidence” has been abandoned. Card v Budini, 29 A.D.2d 35, 285 N.Y.S.2d 734, 1967 N.Y. App. Div. LEXIS 2741 (N.Y. App. Div. 3d Dep't 1967).

3. Sufficiency of pleadings, generally

Under CPLR the sufficiency of a pleading to state a cause of action or defense will depend upon whether or not, considered as a whole, and construed liberally, it is sufficiently particular in its statement of facts to give notice to the court and litigants of the transactions intended to be proved, and the material elements of each cause of action or defense. Foley v D'Agostino, 21 A.D.2d 60, 248 N.Y.S.2d 121, 1964 N.Y. App. Div. LEXIS 4213 (N.Y. App. Div. 1st Dep't 1964).

Where a complaint, although inartfully drawn, is sufficiently particular to give notice of the occurrences intended to be proved and the material elements of the cause of action, and it does not appear that the defendant’s rights are prejudiced by the defects in the pleading, it will not be

dismissed under CPLR 3211 subd (a) ¶ 7. Holzer v Feinstein, 23 A.D.2d 771, 258 N.Y.S.2d 546, 1965 N.Y. App. Div. LEXIS 4456 (N.Y. App. Div. 2d Dep't 1965).

Though normally Appellate Division would do no more than affirm or reverse order appealed from, where amended complaint by pro se plaintiffs had been dismissed for failure to state a cause of action with leave to file a new complaint and where complaint contained both elements of a cause of action and unrelated and irrelevant matters and plaintiffs might not be capable of writing a lawyer-like complaint, interests of justice were better served by leaving in the complaint what had substance and affirming order striking so much of the complaint as was legally unrelated, irrelevant or plainly insufficient. Cooper v Van Cortlandt Associates, 54 A.D.2d 545, 387 N.Y.S.2d 127, 1976 N.Y. App. Div. LEXIS 13841 (N.Y. App. Div. 1st Dep't 1976).

Where the sole issue is the sufficiency of a complaint, its factual allegations are accepted as true; it should be liberally construed, and, if any cause of action can be discerned from the facts alleged, it should not be dismissed. Drago v Buonagurio, 61 A.D.2d 282, 402 N.Y.S.2d 250, 1978 N.Y. App. Div. LEXIS 9735 (N.Y. App. Div. 3d Dep't), rev'd, 46 N.Y.2d 778, 413 N.Y.S.2d 910, 386 N.E.2d 821, 1978 N.Y. LEXIS 2467 (N.Y. 1978), limited, Gifford v Harley, 62 A.D.2d 5, 404 N.Y.S.2d 405, 1978 N.Y. App. Div. LEXIS 10409 (N.Y. App. Div. 3d Dep't 1978).

Pleadings under CPLR generally need not be amenable to pro forma characterization as one or another distinctly outlined concept, complete with label and absolutely essential allegations. Friendly Babylon Corp. v Locust at Ralph Corp., 44 Misc. 2d 563, 254 N.Y.S.2d 250, 1964 N.Y. Misc. LEXIS 1257 (N.Y. Sup. Ct. 1964).

A pleading must afford notice, not just a label if it is to conform with the provisions of CPLR § 3013. Huntington Utilities Fuel Corp. v McLoughlin, 45 Misc. 2d 79, 255 N.Y.S.2d 679, 1965 N.Y. Misc. LEXIS 2370 (N.Y. Sup. Ct. 1965).

Pleadings are to be liberally construed, but it is necessary that pleading include essential elements of cause of action, and if there is failure to do so, pleading is subject to dismissal. Kutik v Taylor, 80 Misc. 2d 839, 364 N.Y.S.2d 387, 1975 N.Y. Misc. LEXIS 2274 (N.Y. Sup. Ct. 1975).

While pleading for many purposes is deemed to allege all facts which may reasonably be inferred from allegations, fact essential to cause of action is not deemed alleged when it is only to be inferred from other facts specifically alleged which are not inconsistent with opposite fact. Kutik v Taylor, 80 Misc. 2d 839, 364 N.Y.S.2d 387, 1975 N.Y. Misc. LEXIS 2274 (N.Y. Sup. Ct. 1975).

4. —Pleadings held sufficient

Personal injury plaintiffs were not precluded from prosecuting alternate theory of recovery, which was asserted in opposition to defendant's summary judgment motion, on ground that such theory was not pleaded in their complaint or detailed in their bill of particulars since pleadings had given notice of transactions or occurrences intended to be proved, and defendant had not shown that he had been in any way prejudiced. Fried v Seippel, 80 N.Y.2d 32, 587 N.Y.S.2d 247, 599 N.E.2d 651, 1992 N.Y. LEXIS 1538 (N.Y. 1992).

The County Court properly exercised jurisdiction over an action to enjoin defendants from interferring with plaintiffs' use of a 30-foot right-of-way under Real P Actions & Pr § 1501, since the complaint adequately, if inartfully, stated a cause of action under Article 15, and plaintiffs' failure to refer to the article or to use the language of the statute was not a fatal defect. Miles v De Sapio, 96 A.D.2d 970, 466 N.Y.S.2d 848, 1983 N.Y. App. Div. LEXIS 19593 (N.Y. App. Div. 3d Dep't 1983).

Complaint, although long and somewhat inartfully drawn, should not have been dismissed since it complied with requirements of CLS CPLR §§ 3013 and 3014, 8 of 12 defendants answered complaint, and none of defendants moved under CLS CPLR § 3024 to correct pleadings. Estate of Unterweiser v Town of Hempstead, 235 A.D.2d 453, 652 N.Y.S.2d 1007, 1997 N.Y. App. Div. LEXIS 410 (N.Y. App. Div. 2d Dep't 1997).

Trial court properly denied a motion by defendants to dismiss malpractice claims by plaintiffs, as the amended complaint, as supplemented by affidavits, identify the alleged acts of malpractice with sufficient precision to enable the court to control the case and defendants to prepare, and

otherwise satisfied the particularity requirements of N.Y. C.P.L.R. 3013. Healthcare Capital Mgmt. LLC v Abrahams, 300 A.D.2d 108, 751 N.Y.S.2d 460, 2002 N.Y. App. Div. LEXIS 12193 (N.Y. App. Div. 1st Dep't 2002).

Because the child victims' complaint set forth the material elements of each alleged claim with sufficient particularity to put a police officer on notice as to the specifics of the claims against the officer in accordance with N.Y. C.P.L.R. 3013, the victims were entitled to summary judgment. Robin BB. v Kotzen, 62 A.D.3d 1187, 880 N.Y.S.2d 713, 2009 N.Y. App. Div. LEXIS 3854 (N.Y. App. Div. 3d Dep't 2009).

Trial court properly denied a hospital's motion to dismiss an employee's putative class action because the causes of action were sufficiently particular to give the court and parties notice where the employee alleged that his wages were determined on the basis of time and that portions of his wages and overtime compensation were improperly withheld by the hospital. Ackerman v New York Hosp. Med. Ctr. of Queens, 127 A.D.3d 794, 7 N.Y.S.3d 327, 2015 N.Y. App. Div. LEXIS 2888 (N.Y. App. Div. 2d Dep't 2015).

Administrator's complaint survived because negligence and wrongful death claims gave defendants contractors, manufacturers, and operators notice of claims and occurrences. Archer-Vail v LHV Precast Inc., 168 A.D.3d 1257, 92 N.Y.S.3d 434, 2019 N.Y. App. Div. LEXIS 357 (N.Y. App. Div. 3d Dep't 2019).

Where the defendant based a motion to dismiss on the allegation that he was being sued only as an individual and not "as trustee", it was held that there was no ground for dismissal, particularly since the body of the complaint adequately notified him of claims against him in both his individual and fiduciary capacity and thus satisfied the requirements of CPLR § 3013. O'Hayer v De St. Aubin, 44 Misc. 2d 786, 255 N.Y.S.2d 101, 1964 N.Y. Misc. LEXIS 1197 (N.Y. Sup. Ct. 1964), aff'd, 24 A.D.2d 604, 262 N.Y.S.2d 225, 1965 N.Y. App. Div. LEXIS 3594 (N.Y. App. Div. 2d Dep't 1965).

Pleadings shall contain a plain and concise statement of facts sufficiently particular to give the court and parties notice of the transactions and occurrences intended to be proved and the material elements of each cause of action, but a photograph of the sidewalk upon which plaintiff allegedly fell may not be included as part of the complaint. English v Genovese, 49 Misc. 2d 321, 267 N.Y.S.2d 283, 1966 N.Y. Misc. LEXIS 2168 (N.Y. Sup. Ct. 1966).

The affirmative defense of lack of personal jurisdiction was raised with sufficient "particularity" (see, CPLR 3103) to alert claimants to the claimed defect in service. Charbonneau v State, 148 Misc. 2d 891, 561 N.Y.S.2d 876, 1990 N.Y. Misc. LEXIS 552 (N.Y. Ct. Cl. 1990), aff'd, 178 A.D.2d 815, 577 N.Y.S.2d 534, 1991 N.Y. App. Div. LEXIS 16600 (N.Y. App. Div. 3d Dep't 1991).

Affirmative defense of untimeliness was raised with sufficient particularity to meet requirements of CLS Ct C Act § 11(c) where State of New York, as defendant, answered: "Claimant served neither a notice of intention nor the claim on the State within ninety (90) days of the claim's alleged accrual, as required by Court of Claims Act § 10(3). The Court, therefore, lacks personal jurisdiction over the State and subject matter jurisdiction over the claim." Ramirez v State, 171 Misc. 2d 677, 655 N.Y.S.2d 791, 1997 N.Y. Misc. LEXIS 49 (N.Y. Ct. Cl. 1997).

Complaint by an insurer, alleging breach of contract against parties affiliated with a mortgage trust, withstood a sufficiency challenge, as it provided notice of the transactions or occurrences underlying the claim pursuant to N.Y. C.P.L.R. 3013; particularity was not required. MBIA Ins. Corp. v Credit Suisse Sec. (USA) LLC, 927 N.Y.S.2d 517, 32 Misc. 3d 758, 2011 N.Y. Misc. LEXIS 2548 (N.Y. Sup. Ct.), different results reached on reconsid., 939 N.Y.S.2d 742, 33 Misc. 3d 1208(A), 2011 N.Y. Misc. LEXIS 4787 (N.Y. Sup. Ct. 2011).

Unpublished decision: In defendant's move to dismiss the claim for breach of contract, the motion was denied because plaintiff's allegations that there was a binding contract that plaintiff performed and that defendant breached when it failed to pay plaintiff the balance due provided defendant sufficient notice, under the Civil Practice Law and Rules, of the transactions and

claims that plaintiff intended to prove at trial. Cutone & Co. Consultants, LLC v Riverbay Corp., 76 Misc. 3d 781, 174 N.Y.S.3d 187, 2022 N.Y. Misc. LEXIS 4002 (N.Y. Sup. Ct. 2022).

5. —Test for sufficiency

While pleadings will be given a liberal construction, it is still necessary for a complaint to comply with the requirements of CPLR 3013 that a pleading shall be sufficiently particular to give the court and parties notice of the material elements of a cause of action. Woolridge v Rosen, 35 A.D.2d 714, 315 N.Y.S.2d 45, 1970 N.Y. App. Div. LEXIS 3675 (N.Y. App. Div. 1st Dep't 1970).

Test of pleading is simply whether the pleading gives notice of transactions relied on and the material elements of cause of action; the form of complaint and label attached by pleader to cause of action are not controlling. Jerry v Borden Co., 45 A.D.2d 344, 358 N.Y.S.2d 426, 1974 N.Y. App. Div. LEXIS 4538 (N.Y. App. Div. 2d Dep't 1974).

Pleadings are to be liberally construed and are sufficient if they notify the court and the parties of the transactions and occurrences intended to be proved and the material elements of each cause of action. Murphy v General Motors Corp., 55 A.D.2d 486, 391 N.Y.S.2d 24, 1977 N.Y. App. Div. LEXIS 10007 (N.Y. App. Div. 3d Dep't 1977).

Repetitiveness in complaint is not ground for dismissal, absent a showing of prejudice to a substantial right. Hewitt v Maass, 41 Misc. 2d 894, 246 N.Y.S.2d 670, 1964 N.Y. Misc. LEXIS 2096 (N.Y. Sup. Ct. 1964).

The necessity that sufficient facts must be set forth in the complaint to show that the plaintiff had a good cause of action was not eliminated by the provisions of CPLR § 3013. Gross v Eannace, 44 Misc. 2d 797, 255 N.Y.S.2d 625, 1964 N.Y. Misc. LEXIS 1168 (N.Y. Sup. Ct. 1964).

A pleading must enable the adversary to determine the nature of the claim and the relief sought. Barocas v Schweikart & Co., 63 Misc. 2d 131, 311 N.Y.S.2d 445, 1970 N.Y. Misc. LEXIS 1739 (N.Y. Civ. Ct. 1970).

Pleading must give the court, as well as the opposing party, sufficient notice of the transaction or incidents on which the plaintiff relies, despite liberalization of pleading requirements pursuant to the CPLR. Glick v Glick, 63 Misc. 2d 944, 311 N.Y.S.2d 623, 1970 N.Y. Misc. LEXIS 1517 (N.Y. Sup. Ct. 1970).

6. Effect of insufficiency; dismissal

An action shall not fail solely because it is not brought in the proper form or under the precise pleading. Dittmar Explosives, Inc. v A. E. Ottaviano, Inc., 20 N.Y.2d 498, 285 N.Y.S.2d 55, 231 N.E.2d 756, 1967 N.Y. LEXIS 1124 (N.Y. 1967).

Since CPLR allows greater liberty in pleading ultimate facts, motions to dismiss for insufficiency should be discouraged, unless the complaint is so barren of facts that it is impossible to determine the transaction relied on, and will admit only of a perfunctory and possibly incorrect answer. Kramer v Carl M. Loeb, Rhoades & Co., 20 A.D.2d 634, 246 N.Y.S.2d 243, 1964 N.Y. App. Div. LEXIS 4488 (N.Y. App. Div. 1st Dep't 1964).

The primary function of a pleading under the CPLR is to advise the adverse party adequately of the pleader’s claim or defense so as to facilitate a proper decision on the merits, and should not be dismissed or ordered amended unless the allegations are not sufficiently particular to apprise the Court and parties of the subject matter. Lane v Mercury Record Corp., 21 A.D.2d 602, 252 N.Y.S.2d 1011, 1964 N.Y. App. Div. LEXIS 3101 (N.Y. App. Div. 1st Dep't 1964), aff'd, 18 N.Y.2d 889, 276 N.Y.S.2d 626, 223 N.E.2d 35, 1966 N.Y. LEXIS 1006 (N.Y. 1966).

The motion to dismiss should not be granted unless it is clear that there can be no relief under any of the facts alleged in the pleading for the relief requested or for other relief. Richardson v Coy, 28 A.D.2d 640, 280 N.Y.S.2d 623, 1967 N.Y. App. Div. LEXIS 4156 (N.Y. App. Div. 4th Dep't 1967).

Defendant’s motion dismissing a complaint for failure to state facts with sufficient particularity and on the ground that indispensable parties were not joined was denied, where the motion was

made when trial was imminent, years after the complaint was served. Dowdell v Brown, 54 Misc. 2d 44, 281 N.Y.S.2d 390, 1967 N.Y. Misc. LEXIS 1471 (N.Y. Sup. Ct. 1967).

7. —Complaint dismissed

Motion to dismiss should have been granted where complaint did not adhere to requirements that pleadings be set out in plain and concise statements in consecutively numbered paragraphs and be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and the material elements of each cause of action or defense and even liberal construction of the pleadings could not sustain them. Joffe v Rubenstein, 24 A.D.2d 752, 263 N.Y.S.2d 867, 1965 N.Y. App. Div. LEXIS 3168 (N.Y. App. Div. 1st Dep't 1965), app. dismissed, 21 N.Y.2d 721, 287 N.Y.S.2d 685, 234 N.E.2d 706, 1968 N.Y. LEXIS 1686 (N.Y. 1968).

In an action by a former tenant of a rent controlled apartment against a city and the owner of a nursing home business, in which the tenant alleged that she was harassed in order to force her to vacate a premises to make room for a proposed extension of the nursing home business, the city’s motion to dismiss the complaint would be granted where the complaint failed to allege what the city did or threatened to do that was a violation of the tenant’s rights; the motion of defendants other than the city to dismiss the complaint for failure to comply with the statutory requirements of pleadings would be granted where the complaint contained many obviously irrelevant and prejudicial allegations as well as much trivia and where, after 19 pages of allegations, the complaint for the first time referred to 11 separate causes of action without any indication of which allegations of the 19 preceding pages related to any particular cause of action. Barsella v New York, 82 A.D.2d 747, 440 N.Y.S.2d 12, 1981 N.Y. App. Div. LEXIS 14378 (N.Y. App. Div. 1st Dep't 1981).

In an action alleging various deprivations of civil rights arising out of plaintiff’s serving of a sentence in another county jail due to unavailability of local jail accommodations, the complaint was properly dismissed where, giving plaintiffs’ complaint the benefit of every favorable

inference, there did not appear to be any factual averment that the alleged conduct of various officials was pursuant to any policy or custom, in that under the rules of procedure conclusory averments of wrongdoing are insufficient to sustain a complaint unless supported by allegations of ultimate facts, and therefore merely alleging in conclusory fashion that such policy or custom existed did not suffice. Muka v Greene County, 101 A.D.2d 965, 477 N.Y.S.2d 444, 1984 N.Y. App. Div. LEXIS 18687 (N.Y. App. Div. 3d Dep't), app. denied, 63 N.Y.2d 610, 1984 N.Y. LEXIS 5489 (N.Y. 1984), app. dismissed, 64 N.Y.2d 645, 1984 N.Y. LEXIS 6487 (N.Y. 1984).

Manufacturer of allegedly defective film stock was entitled to dismissal of negligence and breach of warranty claims made by insurer of film production company since insurer pleaded only bare allegations which failed to give manufacturer notice of any occurrence or transaction possibly constituting negligence or of any particular defect on which claim of breach of warranty was based; factual inadequacy is not excused by liberal pleading provision of CLS CPLR § 3013. Travelers Ins. Co. v Ferco, Inc., 122 A.D.2d 718, 511 N.Y.S.2d 594, 1986 N.Y. App. Div. LEXIS 59257 (N.Y. App. Div. 1st Dep't 1986).

Court properly declined to dismiss cause of action purported to be stockholders' derivative action, although plaintiffs were not entitled to maintain such action, where action was pleaded in plaintiffs' individual capacity and sufficient facts were stated to make out cause of action for breach of contract; it did not matter that plaintiffs had mislabeled their cause of action. Pullin v Feinsod, 142 A.D.2d 561, 530 N.Y.S.2d 226, 1988 N.Y. App. Div. LEXIS 7304 (N.Y. App. Div. 2d Dep't 1988).

Supreme court properly dismissed a complaint pursuant to N.Y. C.P.L.R. 3211(a)(7) for failure to state a cause of action as the plaintiff (1) failed to plead the cause of action to recover damages for breach of an express warranty with the requisite specificity; (2) failed to properly plead the necessary provisions of the contract upon which the breach of contract claim was based, and failed to plead the very existence of that contract; and (3) did not adequately plead a cause of action alleging a violation of N.Y. Gen. Bus. Law § 349, since the plaintiff failed to allege that the deceptive acts complained of took place within the State of New York. Murrin v Ford Motor Co.,

303 A.D.2d 475, 756 N.Y.S.2d 596, 2003 N.Y. App. Div. LEXIS 2352 (N.Y. App. Div. 2d Dep't 2003).

When the executors of the estate of a deceased shareholder in a cooperative sued the cooperative for, inter alia, denying the executors access to a list of the cooperative's shareholders, this claim was properly dismissed because the executors did not allege when, where, and by whom they were denied access to the list. Simon v 160 W. End Ave. Corp., 7 A.D.3d 318, 775 N.Y.S.2d 851, 2004 N.Y. App. Div. LEXIS 6678 (N.Y. App. Div. 1st Dep't 2004).

When the executors of the estate of a deceased shareholder in a cooperative sued the cooperative for, inter alia, denying the executors access to a list of the cooperative's shareholders, this claim was properly dismissed because the executors did not allege when, where, and by whom they were denied access to the list. Simon v 160 W. End Ave. Corp., 7 A.D.3d 318, 775 N.Y.S.2d 851, 2004 N.Y. App. Div. LEXIS 6678 (N.Y. App. Div. 1st Dep't 2004).

8. —Burden of proof

Although pleadings must be liberally construed, prejudicial defects may not be ignored, and the complete failure of a complaint to comply with CPLR 3013 is fatal to a cause of action. Meltzer v Klein, 29 A.D.2d 548, 285 N.Y.S.2d 920, 1967 N.Y. App. Div. LEXIS 2805 (N.Y. App. Div. 2d Dep't 1967).

Complaint which failed to comply with the minimal statutory requirement to state essential facts constituting material elements of a cause of action was legally insufficient. Prof'l Health Servs. v City of New York, 34 A.D.2d 918, 311 N.Y.S.2d 342, 1970 N.Y. App. Div. LEXIS 8440 (N.Y. App. Div. 1st Dep't 1970).

9. —Remedy

In action by excess insurer as subrogee in its own right alleging bad faith, breach of contract, and malpractice against primary insurer and its house counsel, trial court erred in denying

defendants' motions for an order directing plaintiff to state and number separately each cause of action, where the complaint consisted of 42 pages and 104 paragraphs and was a prime example of a loosely drawn, verbose and poorly organized pleading, and where the first four causes of action were pleaded against all defendants collectively without any specification as to the precise tortious conduct charged to a particular defendant. Aetna Casualty & Surety Co. v Merchants Mut. Ins. Co., 84 A.D.2d 736, 444 N.Y.S.2d 79, 1981 N.Y. App. Div. LEXIS 15898 (N.Y. App. Div. 1st Dep't 1981).

An amended complaint based on defendant's alleged breach of an oral agreement to pay plaintiff a finder's fee was properly dismissed, where it was ambiguous and indefinite in that it referred to an "undated document" which purportedly embodied the parties' agreement but did not indicate whether any or all of the provisions in the document were absorbed into the parties' alleged oral agreement. However, since plaintiff had good ground to support a cause of action based on breach of an oral agreement or upon a related theory, he would be granted leave to replead. Bomser v Moyle, 89 A.D.2d 202, 455 N.Y.S.2d 12, 1982 N.Y. App. Div. LEXIS 18133 (N.Y. App. Div. 1st Dep't 1982).

Appellate court affirmed the trial court's order denying a corporation's motion to dismiss plaintiff's complaint seeking damages for personal injury on grounds that plaintiff's allegations were not sufficiently particular to give notice of the location and nature of the incident, and also properly granted plaintiff leave to amend her complaint within 30 days after the date of its order. Leitner v Jasa Hous. Mgmt. Servs. for the Aged, Inc., 6 A.D.3d 667, 776 N.Y.S.2d 588, 2004 N.Y. App. Div. LEXIS 4968 (N.Y. App. Div. 2d Dep't 2004).

10. Correction, augmentation, and amplification of pleadings

An order was modified compelling plaintiff to separately state and number all causes of action alleged in three causes of action to the extent that plaintiffs were directed to serve a further amended complaint making the third cause of action more definite and certain by stating the amount of loans made to plaintiff by defendants which he claims were usurious, when loans

were made, the respect in which the loans were usurious and the amount of principal and interest repaid on the loans. Lence v Sheldon, 34 A.D.2d 966, 312 N.Y.S.2d 725, 1970 N.Y. App. Div. LEXIS 4589 (N.Y. App. Div. 2d Dep't 1970).

Where complaints were wholly uninformative and failed to meet elementary requirement of providing notice of matters intended to be proved, court was proper in granting in entirety defendant’s demand for extremely detailed bill of particulars and in requiring plaintiff to furnish supplemental bill of particulars subsequent to pretrial discovery. Nelson v New York University Medical Center, 51 A.D.2d 352, 381 N.Y.S.2d 491, 1976 N.Y. App. Div. LEXIS 11079 (N.Y. App. Div. 1st Dep't 1976).

Amended pleading in which plaintiff, who sought in original complaint to recover property damages allegedly due to negligent pipe installation, would be allowed to allege cause of action for breach of contract, should state elements of action for breach of contract; that, however, would not be accomplished by inserting words “and breach of contract” in paragraph of complaint stating cause of action in negligence. Genovese Drug Stores, Inc. v L. A. Wenger Contracting Co., 56 A.D.2d 908, 393 N.Y.S.2d 42, 1977 N.Y. App. Div. LEXIS 11308 (N.Y. App. Div. 2d Dep't 1977).

Third-party complaint alleging that if plaintiff in main action recovers then damages were caused by negligence of third-party defendant and in that event defendant third-party plaintiff was entitled to indemnity from third-party defendant or to an apportionment of responsibility failed to state material elements of a cause of action, since in no way was it indicated what defendant third-party plaintiff intended to prove respecting how third-party defendant was negligent. De Luca v Itek Corp., 59 A.D.2d 885, 399 N.Y.S.2d 35, 1977 N.Y. App. Div. LEXIS 14070 (N.Y. App. Div. 2d Dep't 1977).

Dismissal of defenses with subsequent requirement of repleading for alleged lack of particularity is disapproved since bills of particulars can be had to amplify defense. Schmidt's Wholesale, Inc. v Miller & Lehman Constr., Inc., 173 A.D.2d 1004, 569 N.Y.S.2d 836, 1991 N.Y. App. Div. LEXIS 6701 (N.Y. App. Div. 3d Dep't 1991).

In action to foreclose mortgage securing repayment of note executed by defendant, failure to plead affirmative defense of offset did not preclude defendant from establishing payment through application of money payable under another contract between parties pursuant to which he and his company provided construction services to plaintiff, as assertion of affirmative defense of payment in answer was sufficient to put plaintiff on notice of defense of offset asserted at trial where plaintiff obtained discovery regarding construction contract prior to trial, details of offset defense were disclosed and issue was discussed at pretrial conference, construction contract expressly referenced defendant's prior indebtedness to plaintiff and provided for application of portion of payments for construction work to existing debt, and plaintiff's counsel did not claim surprise or prejudice in objecting to such proof of payment of mortgage debt. Cammarota v Drake, 285 A.D.2d 919, 727 N.Y.S.2d 809, 2001 N.Y. App. Div. LEXIS 7619 (N.Y. App. Div. 3d Dep't 2001).

The court will not entertain a corrective motion made under the guise of an application pursuant to this section, and it is to be noted that pursuant to CPLR 3024, a motion to correct a pleading must be made within 20 days after service of the challenged pleading. Dowdell v Brown, 54 Misc. 2d 44, 281 N.Y.S.2d 390, 1967 N.Y. Misc. LEXIS 1471 (N.Y. Sup. Ct. 1967).

11. Particular actions and proceedings, generally

In action for rescission, third party complaint failed to state cognizable claim for breach of fiduciary duty where it did not allege existence of fiduciary obligation on part of third party defendants. Masada Universal Corp. v Goodman System Co., 121 A.D.2d 518, 503 N.Y.S.2d 835, 1986 N.Y. App. Div. LEXIS 58494 (N.Y. App. Div. 2d Dep't 1986).

Because there was no evidence of the borrower's liquidity, and because the shareholders purportedly possessed their own promissory note upon which they had commenced a separate action, the legal issues and facts relevant to their claims were not common with those asserted by a lender; therefore, their N.Y. C.P.L.R. 1013 motion to intervene was properly denied. Ocelot

Capital Mgt., LLC v Hershkovitz, 90 A.D.3d 464, 934 N.Y.S.2d 146, 2011 N.Y. App. Div. LEXIS 8651 (N.Y. App. Div. 1st Dep't 2011).

Complaint failed to meet requirements of CPLR 3013 and was properly dismissed to extent that it sought to review Mental Hygiene Legal Service's (MHLS) failure to provide legal representation to plaintiff in any specific instance because complaint did not contain sufficient factual allegations to give court and parties notice of transactions and occurrences to be proven and material elements of each cause. Horowitz v Fallon, 204 A.D.3d 1177, 167 N.Y.S.3d 188, 2022 N.Y. App. Div. LEXIS 2362 (N.Y. App. Div. 3d Dep't 2022).

12. —Article 78 proceedings

A petition under CPLR 7801 to review and annul the approval by the superintendent of insurance of a merger of two insurance companies was properly dismissed, with the petitioner properly required to apply to special term for leave to replead, where the petition gave no factual support for the allegations of fraud therein, and did not show that such claims of fraud would furnish a basis for an attack upon the Superintendent of Insurance in a proceeding under Article 78. Willcox v Stern, 18 N.Y.2d 195, 273 N.Y.S.2d 38, 219 N.E.2d 401, 1966 N.Y. LEXIS 1184 (N.Y. 1966).

A petition in an Article 78 proceeding must comply with the rules for a complaint in an action, which require generally that statements be sufficiently particular to give the court and the parties notice of the material elements of each cause of action or defense. Oliver v Donovan, 32 A.D.2d 1036, 303 N.Y.S.2d 779, 1969 N.Y. App. Div. LEXIS 3286 (N.Y. App. Div. 3d Dep't 1969).

In Article 78 proceeding challenging determination of respondent which found petitioner guilty of more than 100 separate specifications of misconduct following 11-day administrative hearing conducted pursuant to CLS Civ S § 75, so much of petition as alleged in conclusory fashion that respondent's determination was unsupported by substantial evidence, without stating any evidentiary facts, did not fail to state cause of action and was therefore incorrectly dismissed.

Spry v Delaware County, 253 A.D.2d 178, 687 N.Y.S.2d 801, 1999 N.Y. App. Div. LEXIS 3683 (N.Y. App. Div. 3d Dep't 1999).

Article 78 proceeding was dismissed for petitioner’s failure to follow dictates of CLS CPLR §§ 3013 and 3014, where amended petition consisted of 7 pages of single-spaced, unnumbered paragraphs, import of which was unascertainable. Sibersky v New York City, 270 A.D.2d 209, 706 N.Y.S.2d 323, 2000 N.Y. App. Div. LEXIS 3312 (N.Y. App. Div. 1st Dep't 2000).

In an action between a condominium association, its board, and its managing agent filed by various unit owners and alleging various torts including a breach of fiduciary duty, negligence on the part of the managing agent, and intentional infliction of emotional distress, only the first two claims were improperly dismissed as untimely, despite the fact that they would not have been properly asserted in a N.Y. C.P.L.R. art. 78 proceeding, as condominiums were not generally regarded as unincorporated associations and were not amenable to art. 78 proceedings in the nature of mandamus for claims of bylaw breach; moreover, mandamus was not appropriate where the obligation sought to be enforced, namely, that of the board to maintain the common elements of the condominium, involved more than a mere ministerial act. Brasseur v Speranza, 21 A.D.3d 297, 800 N.Y.S.2d 669, 2005 N.Y. App. Div. LEXIS 8644 (N.Y. App. Div. 1st Dep't 2005).

13. —Contracts

Bare claim of unilateral mistake by plaintiff, unsupported by legally sufficient allegations of fraud on part of defendant, does not state cause of action for reformation. Barclay Arms, Inc. v Barclay Arms Assocs., 74 N.Y.2d 644, 542 N.Y.S.2d 512, 540 N.E.2d 707, 1989 N.Y. LEXIS 483 (N.Y. 1989).

In action for inducing a breach of contract, it is essential to allege that defendant had actual knowledge of the contract, and pleading that defendant “knew or should have known” of the contract renders the complaint insufficient, since it pleads the action in the alternative, and one

of the alternatives is insufficiently pleaded. A A Tube Testing Co. v Sohne, 20 A.D.2d 639, 246 N.Y.S.2d 247, 1964 N.Y. App. Div. LEXIS 4572 (N.Y. App. Div. 2d Dep't 1964).

Where liability is to be imposed for preventing one from making particular contract, plaintiff must show more than qualified probability that contract would have been completed, but he is not bound to plead, in exact detail, circumstances which, on trial, would prove that success would have been inevitable but for tortious acts of defendant. Smith v Emlan Realty Corp., 56 A.D.2d 887, 392 N.Y.S.2d 668, 1977 N.Y. App. Div. LEXIS 11273 (N.Y. App. Div. 2d Dep't 1977).

Trial court properly found that the breach of contract allegations in the amended complaint were sufficiently particular to give accountants notice of the transaction, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action. Weiss v Deloitte & Touche, LLP, 63 A.D.3d 1045, 882 N.Y.S.2d 229, 2009 N.Y. App. Div. LEXIS 5098 (N.Y. App. Div. 2d Dep't 2009).

Defendants' claim that plaintiffs failed to plead the contract cause of action with particularity failed as there was no requirement of heightened particularity in a contract claim; further, plaintiffs submitted an affirmation by their counsel describing defendants' failure/refusal to give them full and timely access to information and documents pertaining to a nonparty's default in making the payments required under the South African settlement. Vandashield Ltd v Isaacson, 146 A.D.3d 552, 46 N.Y.S.3d 18, 2017 N.Y. App. Div. LEXIS 259 (N.Y. App. Div. 1st Dep't 2017).

Although plaintiff’s complaint in an action to recover the real estate commissions failed to allege that the buyers he asserted to have found were ready and able to buy at a price for which he was authorized to sell the property, the technical omission was harmless since the complaint was sufficient to give notice of the transactions and occurrences intended to be proved and the material elements of the cause of action relied upon, and was to be construed liberally. Infusino v Pelnik, 45 Misc. 2d 333, 256 N.Y.S.2d 815, 1965 N.Y. Misc. LEXIS 2249 (N.Y. Sup. Ct. 1965).

14. — —Complaint dismissed

Railroad was entitled to dismissal of contractor's allegations of, inter alia, failure to exercise due care in project design where negligence allegations were merely restatements of implied contractual obligations which were asserted in separate cause of action for breach of contract, and damages sought were clearly within contemplation of written agreement; merely charging breach of "duty of due care" and employing language familiar to tort law do not, without more, transform simple breach of contract action into tort claim. Clark-Fitzpatrick, Inc. v Long Island R. Co., 70 N.Y.2d 382, 521 N.Y.S.2d 653, 516 N.E.2d 190, 1987 N.Y. LEXIS 18964 (N.Y. 1987).

Complaint in action to recover damages for a conspiracy wrongfully to induce a breach of contract which fails to plead the contract, the facts showing the alleged misconduct, and the facts showing damage to plaintiff as a consequence of the alleged misconduct, is fatally defective. Nemenyi v Raymond International, Inc., 22 A.D.2d 657, 253 N.Y.S.2d 151, 1964 N.Y. App. Div. LEXIS 3066 (N.Y. App. Div. 1st Dep't 1964).

Complaint apparently claiming breach of contract by defendants but failing to set forth terms of contract and making no showing of damage to plaintiff and further alleging tortious acts but failing to show injury from such acts did not comply with this section and did not state a cause of action. Menon v Kennedy, 24 A.D.2d 849, 264 N.Y.S.2d 775, 1965 N.Y. App. Div. LEXIS 2948 (N.Y. App. Div. 1st Dep't 1965).

In an action seeking recovery of a specified sum of money alleged to represent damages sustained as a result of a breach of contract, defendant's motion to dismiss the complaint for failure to state a cause of action would be granted without prejudice to plaintiff's applying for permission to serve an amended complaint where the complaint failed to set forth the nature of the contractual obligation alleged to have been violated, the approximate date of the contract, or the nature of the claimed breach and therefore violated the requirements set forth in CPLR § 3013 that statements in a pleading shall be sufficiently particular to give notice of the transactions intended to be proved and the material elements of each cause of action. Sebro Packaging Corp. v S.T.S. Industries, Inc., 93 A.D.2d 785, 461 N.Y.S.2d 812, 1983 N.Y. App. Div. LEXIS 17629 (N.Y. App. Div. 1st Dep't 1983).

In action for damages under CLS Civ R § 50-c for violations of CLS Civ R § 50-b based on television show that allegedly revealed plaintiff's identify as victim of sexual offense, defendant police detective's third-party action for breach of oral contract to reimburse him for legal fees incurred in defending main action was properly dismissed where officer failed to allege consideration for alleged promises. Feeney v City of New York, 255 A.D.2d 483, 255 A.D.2d 484, 680 N.Y.S.2d 646, 681 N.Y.S.2d 62, 1998 N.Y. App. Div. LEXIS 12625 (N.Y. App. Div. 2d Dep't 1998).

Because an employee's complaint failed to identify the provisions of the contracts that allegedly were breached, or otherwise provided notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved, as required by N.Y. C.P.L.R. 3013, the employee had no cause of action sounding in breach of contract, quantum meruit, or unjust enrichment. Winsch v Esposito Bldg. Specialty, Inc., 48 A.D.3d 558, 852 N.Y.S.2d 199, 2008 N.Y. App. Div. LEXIS 1318 (N.Y. App. Div. 2d Dep't 2008).

15. — —Employment contracts

Plaintiff's allegations of interference with employment contract were sufficient to state cause of action and to meet requirements of CLS CPLR §§ 3013 and 3016, even though complaint did not specifically allege that defendants' sole purpose was to damage plaintiff, where plaintiff alleged that defendants made fraudulent representations and that such representations were made with malice, so that it was implicit that defendants' sole purpose was to damage plaintiff and that defendants were aware of contract with which they allegedly interfered; furthermore, plaintiff was not required to allege offending statements in haec verba, since this was not defamation action. Graham v Dim-Rosy U.S.A. Corp., 128 A.D.2d 417, 512 N.Y.S.2d 700, 1987 N.Y. App. Div. LEXIS 44124 (N.Y. App. Div. 1st Dep't 1987).

16. — —Union contracts

The State Supreme Court has subject matter jurisdiction over an action brought by union members against union officials pursuant to the Labor and Management Improper Practices Act (Labor Law, art 20-A) which grants “any member” the right to bring a legal action to redress an alleged breach of fiduciary duty by union officials provided that an unsuccessful request is first made to the union to take such action unless “such request would be futile” (Labor Law, § 725, subd 1); even though the statute contains no pleading requirement, since the futility of a demand upon the union to bring the action must be proved at the trial of this action based upon alleged improper expenditures of union funds, such allegations must be sufficiently set forth in the complaint (CPLR 3013) and the failure to allege the facts from which a conclusion of futility may be drawn leaves the complaint vulnerable to attack; accordingly, the complaint shall be dismissed unless plaintiffs serve an amended complaint alleging the futility of requesting the union to bring the action. Woodley v Butler, 101 Misc. 2d 670, 421 N.Y.S.2d 797, 1979 N.Y. Misc. LEXIS 2741 (N.Y. Sup. Ct. 1979), app. dismissed, 75 A.D.2d 756, 428 N.Y.S.2d 999, 1980 N.Y. App. Div. LEXIS 11307 (N.Y. App. Div. 1st Dep't 1980).

17. —Elections

In a proceeding to direct the holding of a new primary election for a specific office, the original petition and the work sheet were held to set forth some facts which would give grounds for a belief that irregularities, discrepancies or errors had occurred. Reich v Power, 30 A.D.2d 925, 294 N.Y.S.2d 346, 1968 N.Y. App. Div. LEXIS 3301 (N.Y. App. Div. 2d Dep't), aff'd, 22 N.Y.2d 887, 294 N.Y.S.2d 99, 241 N.E.2d 135, 1968 N.Y. LEXIS 1151 (N.Y. 1968).

Since appellant candidates’ validating petition regarding their candidacy for a primary election was not sufficiently particularized to give the trial court and the parties notice of the determinations by the Board of Elections of the City of New York (New York) which were claimed to be erroneous or the signatures that the candidates claimed were improperly invalidated, the trial court properly denied the validating petition. Matter of Jannaccio v Bd. of Elections, 297 A.D.2d 355, 746 N.Y.S.2d 408, 2002 N.Y. App. Div. LEXIS 8029 (N.Y. App. Div.

2d Dep't), app. denied, 98 N.Y.2d 609, 749 N.Y.S.2d 1, 778 N.E.2d 552, 2002 N.Y. LEXIS 2239 (N.Y. 2002).

Trial court properly held that a petition to validate the designation of a candidate in a primary election under N.Y. Elec. Law § 16-102 was insufficiently pleaded as a matter of law. The validating petition was not sufficiently particularized under N.Y. C.P.L.R. 3013 to give notice of which determinations were claimed to be erroneous or which signatures were claimed to be improperly invalidated. Matter of Jennings v Board of Elections of City of N.Y., 32 A.D.3d 486, 819 N.Y.S.2d 487, 2006 N.Y. App. Div. LEXIS 10000 (N.Y. App. Div. 2d Dep't), app. denied, 7 N.Y.3d 707, 821 N.Y.S.2d 812, 854 N.E.2d 1276, 2006 N.Y. LEXIS 2108 (N.Y. 2006).

Court could not invalidate fraudulent designating petition where offending candidate had no notice of proceeding in manner reasonably calculated to reach offending candidate prior to the end of period during which proceeding had to be commenced. Graziano v Walsh, 189 Misc. 2d 680, 737 N.Y.S.2d 503, 2001 N.Y. Misc. LEXIS 663 (N.Y. Sup. Ct. 2001).

18. —Equitable

Under the CPLR equity and law actions no longer are to be distinguished at the pleading stage, so that where a complaint is framed in equity and seeks equitable relief, it will not be dismissed if the facts alleged entitle plaintiff only to legal relief, since the CPLR has effectively merged law and equity actions by removing the prior stumbling blocks thereto: shifting from the requirement that a complaint conform to a “theory of the pleadings” to the requirement that a complaint need only give notice of the transactions intended to be proved and the material elements of the cause of action; and removing the possibility of prejudice to a defendant faced with an equitable complaint which turns out to be a legal action and thereby deprives him of a jury trial, by giving him the right to a jury trial under these circumstances (CPLR 4103). Lane v Mercury Record Corp., 21 A.D.2d 602, 252 N.Y.S.2d 1011, 1964 N.Y. App. Div. LEXIS 3101 (N.Y. App. Div. 1st Dep't 1964), aff'd, 18 N.Y.2d 889, 276 N.Y.S.2d 626, 223 N.E.2d 35, 1966 N.Y. LEXIS 1006 (N.Y. 1966).

Complaint in action to recover damages for a conspiracy wrongfully to induce a breach of contract which fails to plead the contract, the facts showing the alleged misconduct, and the facts showing damage to plaintiff as a consequence of the alleged misconduct, is fatally defective. Nemenyi v Raymond International, Inc., 22 A.D.2d 657, 253 N.Y.S.2d 151, 1964 N.Y. App. Div. LEXIS 3066 (N.Y. App. Div. 1st Dep't 1964).

A plaintiff may properly be limited to a recovery based upon the transactions or occurrences set out in his complaint, but if he establishes a right to money damages on the basis thereof, his complaint should not be dismissed merely because it was framed to support a cause of action for equitable type relief. Kaminsky v Kahn, 23 A.D.2d 231, 259 N.Y.S.2d 716, 1965 N.Y. App. Div. LEXIS 4151 (N.Y. App. Div. 1st Dep't 1965).

Although plaintiff’s complaint sought to obtain equitable relief, if plaintiff succeeds in establishing a cause of action for money damages his complaint should not be dismissed, for it would be a reproach to the efficiency of courts if, under such circumstances, the court were to dismiss the complaint and remit the plaintiff to the necessity of bringing a new action at law. Kaminsky v Kahn, 23 A.D.2d 231, 259 N.Y.S.2d 716, 1965 N.Y. App. Div. LEXIS 4151 (N.Y. App. Div. 1st Dep't 1965).

Complaint praying for an injunction requiring defendants to allow the plaintiff’s child to continue her education in the fourth grade in defendants’ school without disruption failed to set forth essential facts showing a cause of action for such relief. Menon v Kennedy, 24 A.D.2d 849, 264 N.Y.S.2d 775, 1965 N.Y. App. Div. LEXIS 2948 (N.Y. App. Div. 1st Dep't 1965).

Complaint reciting in effect that plaintiff had first option to purchase property from defendants at same terms and conditions as offered by a bona fide purchaser and that notice which plaintiff sent to defendant was sufficient to meet terms set forth in proposed contract offer of bona fide purchaser was sufficient to state a cause of action for specific performance of an option to purchase contained in lease agreement. Duane Sales, Inc. v Carmel, 53 A.D.2d 988, 385 N.Y.S.2d 870, 1976 N.Y. App. Div. LEXIS 15785 (N.Y. App. Div. 3d Dep't 1976), rev'd, 49 N.Y.2d 862, 427 N.Y.S.2d 930, 405 N.E.2d 175, 1980 N.Y. LEXIS 2223 (N.Y. 1980).

Where father’s complaint in action to impress trust on certain real property to compel defendant son to reconvey real property failed to give any notice to the defendant son that the father intended to rely upon inheritance, which the son had received from plaintiff’s father, to obtain relief, court, in entering judgment in favor of the plaintiff, erred in requiring the son to pay the difference between one half of his inheritance and the amount which he had already given plaintiff out of money received from inheritance. Martens v Martens, 56 A.D.2d 594, 391 N.Y.S.2d 634, 1977 N.Y. App. Div. LEXIS 10661 (N.Y. App. Div. 2d Dep't 1977).

Trial court properly granted husband specific performance of wife’s obligations under separation agreement, despite wife’s contention that husband had improperly been grated equitable relief on tort theory, where husband’s counterclaim alleged sufficient facts to show wife’s breach of implied covenant of good faith and fair dealing, and thus allowed her to prepare defense to such claim. Lavington v Edgell, 127 A.D.2d 155, 512 N.Y.S.2d 817, 1987 N.Y. App. Div. LEXIS 41355 (N.Y. App. Div. 1st Dep't), app. denied, 70 N.Y.2d 601, 518 N.Y.S.2d 1023, 512 N.E.2d 549, 1987 N.Y. LEXIS 17372 (N.Y. 1987).

Complaint stated causes of action for declaratory relief and accounting where it alleged that parties had each agreed to invest $50,000 in close corporation and to share profits, but that plaintiff never received his stock and that defendant converted plaintiff’s contribution to his own use. Chalem v Bonime, 155 A.D.2d 360, 547 N.Y.S.2d 329, 1989 N.Y. App. Div. LEXIS 14313 (N.Y. App. Div. 1st Dep't 1989).

Complaint seeking injunctive relief against as well as money damages from certain county officials, leader of county political party and county and state civil service commissions as regards alleged coercion of civil service employees into contributing funds to political party if employee wished to be promoted failed to state cause of action in absence of any allegation as to how the named defendants or their agents, servants and employees were actually involved in the alleged conspiracy. Cullen v Margiotta, 81 Misc. 2d 809, 367 N.Y.S.2d 638, 1975 N.Y. Misc. LEXIS 2483 (N.Y. Sup. Ct. 1975), aff'd, 59 A.D.2d 831, 399 N.Y.S.2d 160, 1977 N.Y. App. Div. LEXIS 16490 (N.Y. App. Div. 2d Dep't 1977).

19. —Fraud

Appellate court erred by reversing a trial court order that had denied a purchaser's motion to amend its complaint against a building's sponsor to add a common law count for fraud with regard to the purchase of a penthouse condominium apartment as the allegations of fraud were predicated solely on alleged material omissions from the offering plan amendments mandated by the Martin Act, N.Y. Gen. Bus. Law § 352 et seq., and the implementing regulations of the New York Attorney General set forth in 13 NYCRR 20 et seq., and no private right of action existed to enforce the Martin Act. Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership, 12 N.Y.3d 236, 879 N.Y.S.2d 17, 906 N.E.2d 1049, 2009 N.Y. LEXIS 138 (N.Y. 2009).

Causes of action founded in fraud alleging that the plaintiffs were induced, to open, maintain and enlarge commodities investment accounts with the defendants by reason of fraudulent misrepresentations with respect to the experience of one of the defendants in trading in commodities, with respect to market conditions and the use of "straddles", and with respect to other matters were not vulnerable by the inclusion of allegations of promissory and vague misrepresentations which, if separately and independently made, would not have been actionable. Daukas v Shearson, Hammill & Co., 26 A.D.2d 526, 270 N.Y.S.2d 760, 1966 N.Y. App. Div. LEXIS 4003 (N.Y. App. Div. 1st Dep't 1966).

Complaint in fraud action was insufficient to state cause of action where it did not describe circumstances constituting the alleged wrong, but instead contained only allegations that defendant acted "fraudulently" or "engaged in trickery" or "chicanery." Biggar v Buteau, 51 A.D.2d 601, 377 N.Y.S.2d 788, 1976 N.Y. App. Div. LEXIS 10913 (N.Y. App. Div. 3d Dep't 1976).

To plead prima facie case of fraud, plaintiff must allege representation of material existing fact, falsity, scienter, deception and injury, and, in addition, each of these essential elements must be supported by factual allegations sufficient to satisfy statutory requirement that circumstances constituting wrong be stated in detail when cause of action based upon fraud or breach of trust

is alleged; said statute imposes more stringent standard of pleading than generally applicable "notice of transaction" rule. Lanzi v Brooks, 54 A.D.2d 1057, 388 N.Y.S.2d 946, 1976 N.Y. App. Div. LEXIS 15025 (N.Y. App. Div. 3d Dep't 1976), aff'd, 43 N.Y.2d 778, 402 N.Y.S.2d 384, 373 N.E.2d 278, 1977 N.Y. LEXIS 2568 (N.Y. 1977).

Claim for affirmative relief made by defendant in civil action failed to state cause of action where, although it referred to fraudulent acts practiced pursuant to a conspiracy, it did not sufficiently specify details of fraudulent acts allegedly practiced. Neiman v Felicie, Inc., 55 A.D.2d 521, 389 N.Y.S.2d 9, 1976 N.Y. App. Div. LEXIS 15160 (N.Y. App. Div. 1st Dep't 1976).

In action by wife to set aside stipulation of settlement on ground of fraud, complaint sufficiently pleaded elements of fraud under CLS CPLR § 3013 and satisfied specific pleading requirements of CLS CPLR § 3016 where wife alleged that husband had claimed, at time he entered stipulation, that his income was $250 per week and that he had assets of $20,000 to $30,000 plus marital residence, and that he continued to represent that his income did not increase materially over 7-year period, although he had purchased 2 houses during that time. Kaufman v Kaufman, 135 A.D.2d 786, 522 N.Y.S.2d 899, 1987 N.Y. App. Div. LEXIS 52727 (N.Y. App. Div. 2d Dep't 1987).

Fraud causes of action were alleged with sufficient specificity where plaintiff claimed that it was induced to participate in auction by defendant's assurances that auction would be conducted in fair, open and impartial manner, that plaintiff submitted bid of $12 million more than bid which was accepted, and that explanation given for sale to other was that, one month prior to bid submissions, defendant had made contract with winning bidder which provided that it would have to pay bidder $17 million if divisions were sold to any other buyer. Banner Indus. v Schwartz, 181 A.D.2d 479, 581 N.Y.S.2d 184, 1992 N.Y. App. Div. LEXIS 3144 (N.Y. App. Div. 1st Dep't 1992).

In action alleging that plaintiff's employees schemed with potential buyer to sell plaintiff corporation at unfairly low price using wrongfully acquired confidential and proprietary information, it was error for court to dismiss common law fraud complaint for failure to specify

which defendants were involved in allegedly clandestine meetings, which ones agreed to keep meetings secret, and who participated in continuing secret contacts, as facts were peculiarly within knowledge of defendants and misconduct complained of was set forth in sufficient detail to apprise defendants of alleged wrongs. Bernstein v Kelso & Co., 231 A.D.2d 314, 659 N.Y.S.2d 276, 1997 N.Y. App. Div. LEXIS 7053 (N.Y. App. Div. 1st Dep't 1997).

In alleging conspiracy, a plaintiff carries the burden of proving (1) a corrupt agreement between two or more persons, (2) an overt act, (3) their intentional participation in the furtherance of a plan or purpose, and (4) the resulting damage. Accordingly, although great latitude is allowed in setting out in the complaint the particular acts from which the conspiracy is to be inferred, a mere allegation of fraud and conspiracy is not sufficient to bring a cause of action for conspiracy. Suarez v Underwood, 103 Misc. 2d 445, 426 N.Y.S.2d 208, 1980 N.Y. Misc. LEXIS 2136 (N.Y. Sup. Ct. 1980), aff'd, 84 A.D.2d 787, 449 N.Y.S.2d 438, 1981 N.Y. App. Div. LEXIS 15976 (N.Y. App. Div. 2d Dep't 1981).

Civil cause of action predicated on commercial bribery scheme violative of federal RICO statute, 18 USCS § 1961 et seq., was sufficiently pleaded under CLS CPLR §§ 3013 and 3016(b), notwithstanding fact that complaint contained preponderance of conclusory allegations, since source of allegations was limited to minutes of guilty pleas taken by some of defendants because there had been little or no discovery, and allegations were sufficient to give notice of occurrences intended to be proven and material elements of causes of action. Riverbay Corp. v Steiner, 144 Misc. 2d 530, 544 N.Y.S.2d 914, 1989 N.Y. Misc. LEXIS 442 (N.Y. Sup. Ct. 1989).

20. — —Complaint dismissed

Property seller’s complaint, alleging that it had conveyed building to defendants under agreement that parties would share profits when building was converted to cooperative ownership, and that defendants had concealed their knowledge of “loophole” in contract (that “cooperative conversion” did not include condominium conversion), failed to state cause of action for reformation of contract based on plaintiff’s unilateral mistake and defendants’ fraud,

since complaint did not allege essential elements of fraud claim—misrepresentation of material fact, falsity, scienter and deception. Barclay Arms, Inc. v Barclay Arms Assocs., 74 N.Y.2d 644, 542 N.Y.S.2d 512, 540 N.E.2d 707, 1989 N.Y. LEXIS 483 (N.Y. 1989).

Complaint for unjust enrichment alleging in conclusory fashion that the damages sought in a second cause of action in fraud constituted the unjust enrichment, fails to allege defendant's receipt of profits or property of plaintiffs, and is insufficient. Alko Mfg. Corp. v Neptune Meter Co., 20 A.D.2d 635, 246 N.Y.S.2d 265, 1964 N.Y. App. Div. LEXIS 4493 (N.Y. App. Div. 1st Dep't 1964), aff'd, 16 N.Y.2d 777, 262 N.Y.S.2d 500, 209 N.E.2d 819, 1965 N.Y. LEXIS 1228 (N.Y. 1965).

A cause of action by plaintiff wife, sounding in fraud, alleging that defendant husband knowingly misrepresented his financial circumstances to induce her to execute a separation agreement and to later obtain a divorce, fails to meet the minimum requirements of CPLR 3013 and 3016 (subd [b]), which concern the particularity of statements contained in pleadings regarding this type of action, and cannot withstand defendant's motion to dismiss where the complaint contains bare conclusory allegations giving neither the court nor the defendant adequate notice of what she intends to prove inasmuch as the essential material must appear on the face of the complaint; furthermore, in answering the defendant's motion to dismiss, the plaintiff offered no satisfactory explanation for her failure to set forth her husband's representations with particularity and has failed to explain why her pleadings are so general. Greschler v Greschler, 71 A.D.2d 322, 422 N.Y.S.2d 718, 1979 N.Y. App. Div. LEXIS 13477 (N.Y. App. Div. 2d Dep't 1979), modified, 51 N.Y.2d 368, 434 N.Y.S.2d 194, 414 N.E.2d 694, 1980 N.Y. LEXIS 2896 (N.Y. 1980).

Where the defendant city served a timely notice of appearance and demand for the complaint, and in light of inadequate excuse for plaintiff's delay in serving the complaint and the weak showing of merit, it was error for the trial court to deny defendant's motion to dismiss pursuant to CPLR § 3012 and to permit plaintiff to proceed. Lella v New York, 79 A.D.2d 514, 433 N.Y.S.2d 458, 1980 N.Y. App. Div. LEXIS 13823 (N.Y. App. Div. 1st Dep't 1980).

A derivative claim by trust beneficiaries on behalf of a union welfare trust fund against a union was properly dismissed, since the complaint merely alleged that allegations of certain joint expenses by the union against the fund were unfair and excessive and alleged no facts demonstrating these allegations or clearly identifying the particular items that were unfair and excessive; such allegations did not meet the requirement of detailed pleading in such a breach of trust action pursuant to CPLR § 3016 or even the liberal notice provisions of CPLR § 3013. Velez v Feinstein, 87 A.D.2d 309, 451 N.Y.S.2d 110, 1982 N.Y. App. Div. LEXIS 16151 (N.Y. App. Div. 1st Dep't), app. dismissed, app. denied, 57 N.Y.2d 605, 1982 N.Y. LEXIS 7181 (N.Y. 1982)).

Wife’s allegations that husband’s attorney, acting in concert with husband, misrepresented value of marital real estate, failed to disclose other pertinent information in order to induce wife to release her interest in property, and represented that separation agreement was fair and equitable and that wife did not need her own attorney, adequately stated cause of action for fraud or, at very least, breach of duty actionable as constructive fraud. Callahan v Callahan, 127 A.D.2d 298, 514 N.Y.S.2d 819, 1987 N.Y. App. Div. LEXIS 41517 (N.Y. App. Div. 3d Dep't 1987).

Third-party defendants (attorneys who unsuccessfully represented plaintiff in state court and continued representing him in related federal action until replaced by third-party plaintiffs whom plaintiff sued for legal malpractice on losing federal litigation) were entitled to dismissal of cause of action alleging that they had wrongfully concealed from third-party plaintiffs “what had occurred in the State court action; their failure to demand a jury; their failure to proceed with the action, and their other conduct or misconduct” and that such concealment led third-party plaintiffs to take on plaintiff’s case which they otherwise would not have done had they known about third-party defendants’ conduct; claim failed to plead all material elements of fraud as required by CLS CPLR § 3013 and did not plead with sufficient particularity and detail facts and circumstances constituting fraud as required by CLS CPLR § 3016. Shayne v Julien,

Schlesinger & Finz, P. C., 131 A.D.2d 655, 517 N.Y.S.2d 26, 1987 N.Y. App. Div. LEXIS 48118 (N.Y. App. Div. 2d Dep't 1987).

Husband was entitled to dismissal of action alleging, inter alia, that he fraudulently induced wife to execute separation agreement, since complaint contained only conclusory allegations as to misrepresentations relating to husband's finances and assets and amount of parties' liabilities, while offering no facts or circumstances constituting claimed fraud; moreover, by accepting benefits of equitable distribution of property and child support payments provided under separation agreement for over 3 years, wife essentially ratified agreement and effectively negated her fraud claim. Shalmoni v Shalmoni, 141 A.D.2d 628, 529 N.Y.S.2d 538, 1988 N.Y. App. Div. LEXIS 6637 (N.Y. App. Div. 2d Dep't), app. dismissed, 73 N.Y.2d 851, 537 N.Y.S.2d 495, 534 N.E.2d 333, 1988 N.Y. LEXIS 3560 (N.Y. 1988).

In wife's action against her husband and their mediator for fraudulently acting in concert to prevent full disclosure of husband's assets and income in connection with mediated separation agreement, husband was entitled to summary judgment, and mediator was entitled to dismissal of complaint against her for failure to state cause of action, where allegations of fraud were general and conclusory in violation of CLS CPLR §§ 3013 and 3016(a), wife was represented by counsel before she executed separation agreement, she acknowledged that there had been investigation and full disclosure of husband's financial circumstances, she continued with mediation proceedings despite knowledge of intimate relationship between husband and mediator's daughter, and she ratified agreement by receiving benefit of it for nearly 2 years. Boyle v Burkich, 245 A.D.2d 609, 665 N.Y.S.2d 104, 1997 N.Y. App. Div. LEXIS 12560 (N.Y. App. Div. 3d Dep't 1997).

In a matter involving the revocation of a building permit, a cause of action alleging fraud and misrepresentation against a city's corporation counsel had to be dismissed as the claim failed to satisfy the specificity and particularity requirements of N.Y. C.P.L.R. §§ 3013 and 3016. Matter of Haberman v Zoning Bd. of Appeals of City of Long Beach, 53 A.D.3d 490, 861 N.Y.S.2d 745, 2008 N.Y. App. Div. LEXIS 6046 (N.Y. App. Div. 2d Dep't 2008).

Because a borrower's claims of fraudulent misrepresentation against an appraiser consisted of nothing more than general allegations of fraudulent services, they did not provide the detailed and specific factual allegations of fraudulent conduct necessary to sustain such claims under N.Y. C.P.L.R. 3013, 3016(b). Wells Fargo Bank, N.A. v Wine, 90 A.D.3d 1216, 935 N.Y.S.2d 664, 2011 N.Y. App. Div. LEXIS 8704 (N.Y. App. Div. 3d Dep't 2011).

21. —Insurance

Complaint which alleged that defendant insurance company carelessly, negligently and in bad faith conducted settlement negotiations with other claimants and as a result, all of the monies available under the policy were exhausted and that this was done intentionally and with full knowledge of the prejudice that would inure to the plaintiff, stated a cause of action. Obad v Allstate Ins. Co., 27 A.D.2d 795, 279 N.Y.S.2d 128, 1967 N.Y. App. Div. LEXIS 4775 (N.Y. App. Div. 4th Dep't 1967).

No infirmity with procedure arose where beneficiary of insurance policy sought to recover the face value of a certificate from employer on ground of wrongful termination of policy and did recover on ground of breach of duty owed to insured. McGinnis v Bankers Life Co., 39 A.D.2d 393, 334 N.Y.S.2d 270, 1972 N.Y. App. Div. LEXIS 3969 (N.Y. App. Div. 2d Dep't 1972).

Insurer waived defense of breach of condition precedent by failing to deny with sufficient particularity allegation in complaint that insured complied with condition precedent of providing timely notice of occurrence to insurer. Meilutis v Commercial Union Ins. Co., 251 A.D.2d 1015, 674 N.Y.S.2d 234, 1998 N.Y. App. Div. LEXIS 7039 (N.Y. App. Div. 4th Dep't 1998).

Plaintiff's contract claim for misappropriation of policy "expirations" should not have been dismissed because the amended complaint set forth the terms allegedly breached and defendants did not contend that any provision of the agreement negated such claim, and plaintiff's claims for commissions allegedly owed, including claims for unpaid commissions during the 90-day period after plaintiff's receipt of defendants' notice of termination, override commissions owed pursuant to an addendum to the agreement, and commissions owed

pursuant to N.Y. Ins. Law § 3425(j), were insufficiently pleaded under N.Y. C.P.L.R. 3013, and plaintiff did not cure the defect, so plaintiff was granted leave to amend its breach of contract cause of action solely as to the commissions' claims. Automobile Coverage, Inc. v American Intl. Group, Inc., 42 A.D.3d 405, 839 N.Y.S.2d 916, 2007 N.Y. App. Div. LEXIS 8787 (N.Y. App. Div. 1st Dep't 2007).

In action by stock brokerage to recover under fidelity blanket bonds covering employee dishonesty for losses allegedly sustained as result of illegal securities manipulations by its employees, only fidelity policies in effect in 1986, when initial notice of major frauds was given, could be held accountable for losses, all other fidelity policies being exonerated, since event triggering insured's obligation under policy with respect to proof of loss was discovery rather than determination of loss, and in view of fact that complaint seeking recovery under fidelity bond must set forth date of discovery of loss with particularity pursuant to CLS CPLR § 3013, brokerage could not plead alternatively that discovery took place in subsequent years when more details became known. Drexel Burnham Lambert Group, Inc. v Vigilant Ins. Co., 157 Misc. 2d 198, 595 N.Y.S.2d 999, 1993 N.Y. Misc. LEXIS 106 (N.Y. Sup. Ct. 1993).

22. —Libel and slander

Statements that plaintiff, a dentist and a married man, was having an affair with another woman, and slept with her, charge him with the crime of adultery, and are slanderous per se. Jordan v Lewis, 20 A.D.2d 773, 247 N.Y.S.2d 650, 1964 N.Y. App. Div. LEXIS 4200 (N.Y. App. Div. 1st Dep't 1964).

Where explanation is needed not only to show that the libelous matter was written about the plaintiff, but also that it was libelous as to him, allegation of special damage is a necessary element of the cause of action. Everett v Gross, 22 A.D.2d 257, 254 N.Y.S.2d 561, 1964 N.Y. App. Div. LEXIS 2514 (N.Y. App. Div. 1st Dep't 1964).

A vague and conclusory allegation that the defendant has falsely stated in the business community at large that the plaintiff was unable to perform its duties under a contemplated lease

agreement does not meet the minimum statutory requirements under CPLR § 3013 and under the circumstances, discovery would constitute nothing more than a fishing expedition. Alanthus Corp. v Travelers Ins. Co., 92 A.D.2d 830, 460 N.Y.S.2d 549, 1983 N.Y. App. Div. LEXIS 17208 (N.Y. App. Div. 1st Dep't 1983).

Allegations in an attorney's complaint that he "became the brunt of a malicious campaign of vilification and ridicule directed by" certain defendants, and that he "became the subject of numerous assertions" initiated by those defendants, to the effect that he had been a knowing and culpable wrongdoer in securities law violations, failed to state a cause of action, since they did not comply with the requirements of CPLR § 3016(a) that in libel cases the particular words complained of be set forth in the complaint, or with the requirement of CPLR § 3013 that statements in a pleading be sufficiently particular to give the court and parties notice of the transactions or occurrences intended to be proved and the material elements of each cause of action or defense. Goldberg v Sitomer, Sitomer & Porges, 97 A.D.2d 114, 469 N.Y.S.2d 81, 1983 N.Y. App. Div. LEXIS 20337 (N.Y. App. Div. 1st Dep't 1983), aff'd, 63 N.Y.2d 831, 482 N.Y.S.2d 268, 472 N.E.2d 44, 1984 N.Y. LEXIS 4646 (N.Y. 1984).

Plaintiff stated cause of action for defamation against real estate company, its employees, and other individual and corporate defendants by alleging that first employee, with approval of second employee and acting as agent of remaining defendants, knowingly made false statements in presence of seller and others that plaintiff had previously been denied credit, that plaintiff had previously backed out of commitment to purchase another home, and that plaintiff was dishonest, not credible, and did not have funds to purchase seller's home; although allegedly defamatory words were not put in quotation marks, plaintiff had set forth words on which defamation action was premised. Taub v Amana Imports, Inc., 140 A.D.2d 687, 528 N.Y.S.2d 884, 1988 N.Y. App. Div. LEXIS 6262 (N.Y. App. Div. 2d Dep't 1988).

Defendants were entitled to dismissal of cause of action for dissemination of defamatory information about plaintiff's mental health to unnamed persons at times and places unknown to plaintiff where complaint did not articulate particular words complained of or time, place,

manner, and persons to whom allegedly defamatory statements were made. Dobies v Brefka, 273 A.D.2d 776, 710 N.Y.S.2d 438, 2000 N.Y. App. Div. LEXIS 7467 (N.Y. App. Div. 3d Dep't), app. dismissed, 95 N.Y.2d 931, 721 N.Y.S.2d 606, 744 N.E.2d 142, 2000 N.Y. LEXIS 3518 (N.Y. 2000).

While it would not be improper under this section for the plaintiff in a libel action to plead the facts upon which she will ultimately rely to prove actual malice, she is not required as a matter of New York law to do so. Cabin v Community Newspapers, Inc., 50 Misc. 2d 574, 270 N.Y.S.2d 913, 1966 N.Y. Misc. LEXIS 1801 (N.Y. Sup. Ct.), aff'd, 27 A.D.2d 543, 275 N.Y.S.2d 396, 1966 N.Y. App. Div. LEXIS 2959 (N.Y. App. Div. 2d Dep't 1966).

In a libel action brought against the publisher, the president and executive editor, and the editor of a newspaper, there was no reason to require the plaintiff to spell out the act of each defendant, where it was alleged that the “defendants published” and “defendants knew” which sufficiently put each defendant on notice concerning the occurrences intended to be proved. Cabin v Community Newspapers, Inc., 50 Misc. 2d 574, 270 N.Y.S.2d 913, 1966 N.Y. Misc. LEXIS 1801 (N.Y. Sup. Ct.), aff'd, 27 A.D.2d 543, 275 N.Y.S.2d 396, 1966 N.Y. App. Div. LEXIS 2959 (N.Y. App. Div. 2d Dep't 1966).

Employee’s complaint insufficiently alleged malice in order to overcome qualified privilege enjoyed by employer regarding personnel evaluation of employee, despite assertion that employer’s behavior in placing allegedly defamatory material in personnel file was “malicious,” where neither complaint nor supporting documents alleged facts in support of assertion. Shamley v ITT Corp., 869 F.2d 167, 1989 U.S. App. LEXIS 2718 (2d Cir. N.Y. 1989).

23. —Malicious prosecution

In an action for malicious prosecution the failure to include in the endorsement on the summons an allegation that defendant lacked probable cause to commence the criminal prosecution was not a fatal omission, where the short form of pleading involved was sufficiently particular to give notice of the nature and the substance of the transactions intended to be proved. Oelkrug v

Gilwaldron Realty Co., 45 Misc. 2d 160, 256 N.Y.S.2d 348, 1964 N.Y. Misc. LEXIS 1183 (N.Y. App. Term 1964).

24. —Matrimonial actions

Although wife specifically demanded a judgment of divorce, court was justified in ordering conveyance of certain real property from husband to both parties as tenants by the entireties where complaint of wife also alleged a cause of action substantiated by testimony, setting forth transactions by which husband pressured wife against her will into transferring to him alone title to marital abode. Medokowich v Medokowich, 48 A.D.2d 8, 367 N.Y.S.2d 584, 1975 N.Y. App. Div. LEXIS 9530 (N.Y. App. Div. 3d Dep't 1975).

Wife could not be granted divorce on ground of abandonment where she did not seek divorce on that ground in her complaint (although complaint sought divorce on ground of cruel and inhuman treatment based, in part, on allegation that husband “abandoned” marital residence), wife never sought to amend her complaint, there was no basis for granting wife’s request on appeal that pleadings be amended to conform to proof, husband’s trial testimony did not include admission that he abandoned wife, and determination of abandonment could not be based on husband’s posttrial memorandum indicating that he did not dispute granting of judgment to wife on basis of abandonment. Elkaim v Elkaim, 123 A.D.2d 371, 506 N.Y.S.2d 450, 1986 N.Y. App. Div. LEXIS 60146 (N.Y. App. Div. 2d Dep't 1986).

Trial court properly granted husband specific performance of wife’s obligations under separation agreement, despite wife’s contention that husband had improperly been grated equitable relief on tort theory, where husband’s counterclaim alleged sufficient facts to show wife’s breach of implied covenant of good faith and fair dealing, and thus allowed her to prepare defense to such claim. Lavington v Edgell, 127 A.D.2d 155, 512 N.Y.S.2d 817, 1987 N.Y. App. Div. LEXIS 41355 (N.Y. App. Div. 1st Dep't), app. denied, 70 N.Y.2d 601, 518 N.Y.S.2d 1023, 512 N.E.2d 549, 1987 N.Y. LEXIS 17372 (N.Y. 1987).

Wife failed to state cause of action for breach of separation agreement by conclusory allegation that "defendant has failed to comply with the terms of the Agreement of Separation on his part," since there was no indication how husband purportedly breached agreement. Lotz v Lotz, 135 A.D.2d 1007, 522 N.Y.S.2d 730, 1987 N.Y. App. Div. LEXIS 52889 (N.Y. App. Div. 3d Dep't 1987), app. dismissed, 71 N.Y.2d 1012, 530 N.Y.S.2d 106, 525 N.E.2d 751, 1988 N.Y. LEXIS 753 (N.Y. 1988).

In matrimonial action, husband's affirmative defense that complaint failed to state cause of action would be stricken from his answer where he failed to indicate in what respect such defense had merit. Molinari v Molinari, 134 Misc. 2d 998, 513 N.Y.S.2d 924, 1987 N.Y. Misc. LEXIS 2144 (N.Y. Sup. Ct. 1987).

Husband's action for divorce on grounds of cruel and inhuman treatment was dismissed for failure to state prima facie case, where complaint failed to describe nature and circumstances of alleged misconduct and time and place of each act complained of. Sullivan v Sullivan, 180 Misc. 2d 433, 689 N.Y.S.2d 378, 1999 N.Y. Misc. LEXIS 143 (N.Y. Sup. Ct. 1999).

25. —Personal injury and death

Allegations in the complaint that the school bus driver did not instruct the child to cross the highway in front of the bus as required by statute; that the bus driver pulled away after the child alighted; that the child was run over crossing the highway immediately thereafter, and that the driver failed to comply with the regulations of the State Education Department are sufficient to give notice to the parties of the transactions or occurrences, intended to be proved and the material elements of each cause of action. Van Gaasbeck v Webatuck Cent. School Dist., 21 N.Y.2d 239, 287 N.Y.S.2d 77, 234 N.E.2d 243, 1967 N.Y. LEXIS 1019 (N.Y. 1967).

Complaint by injured beauty salon patron against beauty salon and manufacturer of hair straightening compound, used on customer who became completely bald after treatment, alleging both negligent manufacture of product and a breach of implied warranty by manufacturer and beauty salon was sufficient to permit customer to advance theory of strict

liability in tort against both manufacturer and beauty salon. Jerry v Borden Co., 45 A.D.2d 344, 358 N.Y.S.2d 426, 1974 N.Y. App. Div. LEXIS 4538 (N.Y. App. Div. 2d Dep't 1974).

In an action by the employee of a subcontractor to recover for injuries sustained when a car in which he was a passenger hit a large pothole in one of the construction site's access roads, in which action the pleadings and bill of particulars contained allegations of common-law negligence but there was no reference to sections of the Labor Law or plaintiff's status as a construction worker on the job, plaintiff's motion to amend the pleadings to conform to the proof should have been granted; defendants, the owner of the construction site and the general contractor, had sufficient information prior to trial by virtue of the general content of the bill of particulars and through depositions and a hearing to know that plaintiff was an employee of a subcontractor and had collected workers' compensation benefits and that they could be held liable for a breach of their statutory duty. Miller v Perillo, 71 A.D.2d 389, 422 N.Y.S.2d 424, 1979 N.Y. App. Div. LEXIS 13490 (N.Y. App. Div. 1st Dep't 1979), app. dismissed, 49 N.Y.2d 1044, 429 N.Y.S.2d 637, 407 N.E.2d 481, 1980 N.Y. LEXIS 2383 (N.Y. 1980).

Where the date of an injury was not alleged in a complaint, and where the only allegation regarding the onset of injury was contained in the affirmation of plaintiffs' attorney filed in opposition to defendant's motion for summary judgment, which stated that plaintiffs intended to prove at trial that the injury occurred in March, 1980, the affirmation was not based on personal knowledge and did not constitute evidence sufficient raise an issue of fact with respect to the date of injury, so that defendant's motion for summary judgment was properly granted. Weinreich v A.H. Robins Co., 96 A.D.2d 860, 465 N.Y.S.2d 765, 1983 N.Y. App. Div. LEXIS 19452 (N.Y. App. Div. 2d Dep't 1983).

Complaint stated cause of action for defendant's negligent entrustment of her vehicle to her son where it alleged that she knew or should have known that he was incompetent to operate motor vehicle "by virtue of his prior personal history and habits, including his prior driving history, dangerous vehicular operational habits and habitual tendency to speed excessively"; while such allegation, without supporting proof, would be insufficient to survive summary judgment motion,

dismissal under CLS CPLR § 3211 was inappropriate. Deitz v Aronin, 135 A.D.2d 1009, 522 N.Y.S.2d 732, 1987 N.Y. App. Div. LEXIS 52890 (N.Y. App. Div. 3d Dep't 1987).

Plaintiff stated legally sufficient cause of action against bank for negligence in design and maintenance of its parking lot, which allegedly resulted in customer's death when she was struck by vehicle, where complaint averred that bank was negligent "in that it failed adequately to design the parking area so as to provide safe ingress and egress from the bank facilities" and that it "failed to provide adequate parking, failed to design and maintain adequate walkways and crosswalks, failed to provide warnings to pedestrian traffic and vehicular traffic, and failed adequately to provide for the safe flow of pedestrian and vehicular traffic upon the premises." Carpenter v Briggs, 136 A.D.2d 817, 523 N.Y.S.2d 651, 1988 N.Y. App. Div. LEXIS 266 (N.Y. App. Div. 3d Dep't 1988).

In action for injuries sustained by firefighter while extinguishing fire in defendants' vacant building, cause of action under CLS Gen Mun § 205-a was legally insufficient and thus was properly dismissed where firefighter did not identify statute, ordinance, rule, order or regulation allegedly violated by defendants. Brophy v Generoso, 137 A.D.2d 478, 524 N.Y.S.2d 226, 1988 N.Y. App. Div. LEXIS 751 (N.Y. App. Div. 2d Dep't 1988).

Plaintiff was given adequate notice under CLS CPLR § 3013 of what defendant in automobile accident case would attempt to prove where defendant's amended answer alleged affirmative defense of failure to wear available seat belts. Mabb v McIntyre, 137 A.D.2d 943, 525 N.Y.S.2d 68, 1988 N.Y. App. Div. LEXIS 1774 (N.Y. App. Div. 3d Dep't), app. dismissed, 72 N.Y.2d 952, 533 N.Y.S.2d 58, 529 N.E.2d 426, 1988 N.Y. LEXIS 2470 (N.Y. 1988).

Plaintiff failed to state cause of action against hospital for wrongful death based on lack of informed consent where (1) there was no allegation from which it could be inferred that codefendant physicians who performed underlying medical services were employed by hospital or that hospital knew or should have known that physicians were acting without informed consent or that operation was not permissible under existing standards, and (2) there was no allegation from which it could be inferred that reasonably prudent person in patient's position

would not have undergone treatment if she were fully informed and that lack of informed consent was proximate cause of injury. Culkin v Nassau Hosp. Ass'n, 143 A.D.2d 973, 533 N.Y.S.2d 588, 1988 N.Y. App. Div. LEXIS 10774 (N.Y. App. Div. 2d Dep't 1988).

In action by car passenger injured when driver swerved to avoid deer and lost control of car, passenger was not entitled to dismissal of car owner's seat belt defense, even though owner cited inapplicable section of Vehicle and Traffic Law, where owner provided passenger with notice of its intention to rely on seat belt defense in its amended answer and amended verified bill of particulars, and thus there was no surprise to passenger, and owner raised triable issue of fact as to whether passenger was wearing available seat belt. Fitz-Gerald v Rich, 251 A.D.2d 1017, 674 N.Y.S.2d 232, 1998 N.Y. App. Div. LEXIS 7043 (N.Y. App. Div. 4th Dep't 1998).

State's affirmative defense in personal injury and wrongful death action, which merely alleged lack of personal jurisdiction due to claimant's failure to comply with "requirements of the Court of Claims Act," failed to raise objection to claimant's method of service upon Attorney General with degree of particularity required by CLS CPLR § 3013, and was thus waived pursuant to CLS Ct C Act § 11(c), since there was nothing in state's answer to indicate whether defense was alluding to service of notice of intention or notice of claim, to notice of intention served in Albany or one served in New York City, or to method or time of service. Fowles v State, 152 Misc. 2d 837, 579 N.Y.S.2d 314, 1991 N.Y. Misc. LEXIS 733 (N.Y. Ct. Cl. 1991).

Complaint pleaded essential elements of negligence action where it was alleged that standards for collection and screening of blood were "negligently" established by blood bank association, that particular blood bank, in collecting and screening blood, adhered to those standards, and adherence thereto resulted in transmission of HIV and other viruses to plaintiff's decedent, causing his death from AIDS. Weigand v University Hosp. of N.Y. Univ. Med. Ctr., 172 Misc. 2d 716, 659 N.Y.S.2d 395, 1997 N.Y. Misc. LEXIS 169 (N.Y. Sup. Ct. 1997).

Complaints were insufficient to hold defendant cigarette manufacturers individually liable in products liability action, where plaintiffs did not specify brand or brands of cigarettes that were smoked or ingested; claims were dismissed with leave granted to serve amended complaints.

Cresser v American Tobacco Co., 174 Misc. 2d 1, 662 N.Y.S.2d 374, 1997 N.Y. Misc. LEXIS 375 (N.Y. Sup. Ct. 1997).

26. —Complaint dismissed

A complaint alleging misappropriation of plaintiff's common law rights in a certain motion picture film acquired by it through license from a third party without more, and absent facts to show that the film was not in the public domain, does not comply with this section. Flamingo Telefilm Sales, Inc. v United Artists Corp., 22 A.D.2d 778, 254 N.Y.S.2d 36, 1964 N.Y. App. Div. LEXIS 2757 (N.Y. App. Div. 1st Dep't 1964).

27. —Prima facie tort

Complaint, filed by builder seeking compensation for damages allegedly arising from scheme of owners and lessees of land in neighborhood of proposed building to cause delay in construction of building through bribery of public officials, negated offense of prima facie tort, but sufficiently alleged cause of action predicated on theory of interference with business relations, and sufficient facts were alleged from which damages might be inferred. Sommer v Kaufman, 59 A.D.2d 843, 399 N.Y.S.2d 7, 1977 N.Y. App. Div. LEXIS 13991 (N.Y. App. Div. 1st Dep't 1977).

The doctrine of prima facie tort was evolved to furnish a remedy for the intentional infliction of damage without excuse or justification, by an act or series of acts, which might otherwise be lawful, and which do not fall within the categories of traditional tort actions. Winderbaum v Winderbaum, 39 Misc. 2d 478, 240 N.Y.S.2d 873, 1963 N.Y. Misc. LEXIS 2080 (N.Y. Sup. Ct.), aff'd, 20 A.D.2d 626, 245 N.Y.S.2d 981, 1963 N.Y. App. Div. LEXIS 6631 (N.Y. App. Div. 1st Dep't 1963).

Exemplary and punitive damages may not be recovered for prima facie tort; only actual damages may be recovered. Winderbaum v Winderbaum, 39 Misc. 2d 478, 240 N.Y.S.2d 873,

1963 N.Y. Misc. LEXIS 2080 (N.Y. Sup. Ct.), aff'd, 20 A.D.2d 626, 245 N.Y.S.2d 981, 1963 N.Y. App. Div. LEXIS 6631 (N.Y. App. Div. 1st Dep't 1963).

To state a good cause of action for prima facie tort the complaint must allege special damages which are alone recoverable for such tort. Winderbaum v Winderbaum, 39 Misc. 2d 478, 240 N.Y.S.2d 873, 1963 N.Y. Misc. LEXIS 2080 (N.Y. Sup. Ct.), aff'd, 20 A.D.2d 626, 245 N.Y.S.2d 981, 1963 N.Y. App. Div. LEXIS 6631 (N.Y. App. Div. 1st Dep't 1963).

To state good cause of action on theory of prima facie tort complaint must contain a proper allegation of special damages, and merely alleging that plaintiff was subjected to ridicule and impairment of his reputation and that he “was damaged in the sum of $100,000”, is insufficient. Friedlander v National Broadcasting Co., 39 Misc. 2d 612, 241 N.Y.S.2d 477, 1963 N.Y. Misc. LEXIS 1913 (N.Y. Sup. Ct. 1963), rev'd, 20 A.D.2d 701, 246 N.Y.S.2d 889, 1964 N.Y. App. Div. LEXIS 4370 (N.Y. App. Div. 1st Dep't 1964).

Failure to itemize special damages renders complaint for prima facie tort insufficient. Hecht v Air Reduction Co., 41 Misc. 2d 463, 245 N.Y.S.2d 935, 1963 N.Y. Misc. LEXIS 1265 (N.Y. Sup. Ct. 1963).

Plaintiffs failed to state causes of action for prima facie tort where allegations of malice were merely conclusory, without sufficient allegations of fact, and allegations of special damages were unspecific and generalized. Bouffard v Lewis, 139 Misc. 2d 786, 528 N.Y.S.2d 751, 1988 N.Y. Misc. LEXIS 275 (N.Y. Sup. Ct. 1988).

While a pedestrian alleged more than one fact in a paragraph, comprehension of claim was not impeded; thus, the pedestrian’s alleged failure to comply with N.Y. C.P.L.R. §§ 3013, 3014 did not support the driver’s motion to dismiss under N.Y. C.P.L.R. § 3211(a)(7); the allegations of facts accepted as true supported a tort claim of negligence against the driver based on the striking of the pedestrian with a vehicle. Ndiaye v Cangelosi, 787 N.Y.S.2d 679, 3 Misc. 3d 1104(A), 2004 N.Y. Misc. LEXIS 528 (N.Y. Sup. Ct. 2004).

28. —Professional malpractice

Although the complaint in a medical malpractice action need not reveal matters that are commonly within the exclusive knowledge of the treating physician, it should set forth sufficient data for defendant to ascertain what it is that plaintiff is complaining about. Weber v Wise, 86 A.D.2d 891, 447 N.Y.S.2d 333, 1982 N.Y. App. Div. LEXIS 15550 (N.Y. App. Div. 2d Dep't 1982).

29. — —Legal

Alleging that defendant as attorney for a valuable consideration had agreed to advise plaintiff, a publisher, as to whether certain passages of proposed publications should be modified or deleted, to avoid violation of law; that but for one publication, defendant failed and refused to read the publications sent to defendant; that plaintiff relied on defendant's legal skills; and that defendant breached his duty by having failed to perform the said services, all to plaintiff's damage, sets forth a cause of action. Kozy Books, Inc. v Stillman, 19 A.D.2d 802, 243 N.Y.S.2d 184, 243 N.Y.S.2d 266, 1963 N.Y. App. Div. LEXIS 3176 (N.Y. App. Div. 1st Dep't 1963).

In an action for malpractice against an attorney for failure to initiate suit for personal injuries sustained in a motor vehicle accident within the period of limitations, a complaint was sufficient which fairly apprised the attorney of the malpractice intended to be proved and the material elements of the cause of action, and the failure to specifically allege negligence and freedom from contributory negligence in the underlying accident case did not prejudice the attorney and should be disregarded. Richardson v King, 36 A.D.2d 781, 319 N.Y.S.2d 218, 1971 N.Y. App. Div. LEXIS 4472 (N.Y. App. Div. 3d Dep't 1971).

Complaint alleging legal malpractice did not contain statements sufficiently particular to give court and defendants notice of transactions intended to be proved and material elements of malpractice cause of action where no notice was given as to how either attorney's alleged malpractice proximately caused plaintiff to sustain damages, and plaintiff did not state merits of

her underlying claim. Colleran v Rockman, 232 A.D.2d 322, 648 N.Y.S.2d 576, 1996 N.Y. App. Div. LEXIS 10550 (N.Y. App. Div. 1st Dep't 1996).

30. — —Medical

Where complaints alleging medical malpractice failed to state, inter alia, whether alleged malpractice was in diagnosis or treatment, patient's condition before or after treatment, what condition required treatment, or whether allegedly negligent treatment was medical, surgical, psychiatric, cosmetic, or obstetric, complaint failed to meet elementary pleading requirement that complaint give court and parties notice of occurrences intended to be proved. Nelson v New York University Medical Center, 51 A.D.2d 352, 381 N.Y.S.2d 491, 1976 N.Y. App. Div. LEXIS 11079 (N.Y. App. Div. 1st Dep't 1976).

31. —Real property

Where complaints alleged that the defendants engaged in blasting operations which resulted in damage to the respective properties of the plaintiffs, such complaints contain adequate notice of the transaction intended to be proved and the material elements of the cause of action. Spano v Perini Corp., 25 N.Y.2d 11, 302 N.Y.S.2d 527, 250 N.E.2d 31, 1969 N.Y. LEXIS 1201 (N.Y. 1969).

A complaint which merely averred that plot owners were adversely affected by an arbitration agreement which prevented a cemetery corporation from engaging in certain prohibited activities and provided that the agreement was to remain in effect until the cemetery corporation could demonstrate that without engaging in those activities it could not maintain itself and that plot owners were adversely affected was clearly insufficient, and plaintiff was given an opportunity to replead. Cypress Hills Cemetery v Werner & Acker Cypress Hills Florists, Inc., 27 A.D.2d 732, 277 N.Y.S.2d 27, 1967 N.Y. App. Div. LEXIS 4914 (N.Y. App. Div. 2d Dep't 1967).

Plaintiff's pleadings and other papers were sufficiently particular to give notice of property subject to foreclosure, even though summons and writ of assistance identified address of premises as "199 Keap Street" instead of "199-201 Keap Street," since (1) summons and complaint correctly designated section, block, and lots of premises, (2) lot designation coincided with lots designated on executed mortgage and tax search for premises, and (3) complaint, judgment of foreclosure, notice of sale, and writ of assistance each contained "metes and bounds" description of premises identical to description provided in mortgage. American Mortgage Bank v Matovitz, 208 A.D.2d 788, 618 N.Y.S.2d 391, 1994 N.Y. App. Div. LEXIS 10046 (N.Y. App. Div. 2d Dep't 1994).

Defendant was entitled to summary judgment dismissing action to foreclose mortgage, on ground that complaint failed to provide sufficient description of property securing mortgage, where complaint referred to property as "all that tract piece or parcel of land in the Town of Colonie, County of Albany, State of New York, more particularly described as follows: see 'Schedule A' annexed hereto and made a part hereof," but Schedule A was not so annexed. Bagnoli v Albert, 263 A.D.2d 594, 692 N.Y.S.2d 790, 1999 N.Y. App. Div. LEXIS 7709 (N.Y. App. Div. 3d Dep't 1999).

Provisions of Civil Practice Law and Rules apply to drafting of complaint for purpose of foreclosing on real estate mortgage. Bagnoli v Albert, 263 A.D.2d 594, 692 N.Y.S.2d 790, 1999 N.Y. App. Div. LEXIS 7709 (N.Y. App. Div. 3d Dep't 1999).

Complaint in mortgage foreclosure action met requirements of CLS CPLR § 3013 where plaintiff alleged that defendant failed to comply with conditions of mortgage including certain payments, that defendant received notice to cure and failed to cure within 7 days, that notice to cure was sent by certified mail, and that plaintiff elected to call due entire amount secured by mortgage; although defendant complained of lack of evidentiary detail, such detail could be supplied by bill of particulars. Agin v Krest Assocs., 157 Misc. 2d 994, 599 N.Y.S.2d 367, 1992 N.Y. Misc. LEXIS 665 (N.Y. Sup. Ct. 1992).

Dismissal of a petition for licensee holdover was appropriate because the notice of termination did not contain the material elements that would have established a cause of action for a licensee holdover as the prerequisite notice contained no facts at all explaining why respondents were licensees and the basis for the termination of the license. The improper predicate notice could not support the proceeding. Marshall v Simmons, 69 Misc. 3d 994, 134 N.Y.S.3d 617, 2020 N.Y. Misc. LEXIS 6954 (N.Y. Civ. Ct. 2020).

32. — —Landlord-tenant

Attorney stated cause of action against his former associate for breach of contract, although his complaint failed to identify theory of recovery, where he alleged that associate (1) agreed to sublet leased premises, perform obligations of tenant under main lease, and indemnify him against losses arising from any breach of obligation under sublease, (2) ceased paying rent and failed to respond to demands for performance, and (3) was indebted to him for rent under sublease; complaint was most inartfully drafted, but further particularity could be obtained by demand for bill of particulars. Kraft v Sheridan, 134 A.D.2d 217, 521 N.Y.S.2d 238, 1987 N.Y. App. Div. LEXIS 50414 (N.Y. App. Div. 1st Dep't 1987).

Tenant’s counterclaim for damages for breach of implied covenant of quiet enjoyment was insufficient for failure to allege abandonment. 401 Boardwalk Corp. v Gutzwiller, 82 Misc. 2d 84, 368 N.Y.S.2d 122, 1975 N.Y. Misc. LEXIS 2567 (N.Y. City Ct. 1975).

Tenant’s affirmative defense was dismissed because it simply stated that the landlord’s petition failed to state a cause of action upon which relief could be granted, and that conclusory defense did not particularize any details in support; the petition stated a cause of action as it asserted that the tenant owed rent arrears to the landlord. 87th St. Realty v Mulholland, 62 Misc. 3d 213, 87 N.Y.S.3d 845, 2018 N.Y. Misc. LEXIS 5024 (Oct. 31, 2018).

When a landlord commenced a summary nonpayment proceeding against a rent-stabilized tenant, the tenant sufficiently alleged the elements of fraud to warrant discovery for a fraudulent overcharge cause of action as the tenant stated that the landlord willfully overcharged the

tenant, engaged in a pattern of fraud and a fraudulent scheme to avert rent stabilization laws, and made material misrepresentations that the landlord knew were false and that the tenant relied upon the landlord's representations to the tenant's detriment. 3612 Broadway Partners LLC v Mejia, 79 Misc. 3d 230, 189 N.Y.S.3d 406, 2023 N.Y. Misc. LEXIS 1243 (N.Y. Civ. Ct. 2023).

33. — —Mechanic's lien

The plaintiff's motion to dismiss a defense entered in his action to foreclose a mechanic's lien that before notice of the lien was filed and without knowledge of it, the defendant contractor paid in full for the foundation for which plaintiff was alleged to have supplied materials was denied, where although the defense of payment was stated in general terms, it was sufficient to give notice of the transaction intended to be proved. The court noted that plaintiff could obtain further specification by use of appropriate disclosure devices or by a motion for a more definite statement. Admiral Transit Mix Corp. v Sagg-Bridgehampton Corp., 56 Misc. 2d 47, 287 N.Y.S.2d 751, 1968 N.Y. Misc. LEXIS 1727 (N.Y. Sup. Ct. 1968).

34. — —Sale of property

In sale of land to individual who assigned contract to a corporation, who, in turn, sold the property to trustees of university no cause of action was stated in either proposed amended complaint or in second action. East Asiatic Co. v Corash, 34 A.D.2d 432, 312 N.Y.S.2d 311, 1970 N.Y. App. Div. LEXIS 4153 (N.Y. App. Div. 1st Dep't 1970).

Buyers failed to state cause of action for breach of contract based on their allegation that house's second-floor kitchen violated local zoning ordinances and was illegal where (1) clause of contract requiring sellers to deliver certificate of occupancy contained language added by buyers, stating that sellers represented that house was legal one-family dwelling, (2) certificate of occupancy certified that house was legal one-family dwelling, and (3) contract also stated that buyers were fully aware of condition of premises based on their own inspection and

investigation. Platzman v Morris, 283 A.D.2d 561, 724 N.Y.S.2d 502, 2001 N.Y. App. Div. LEXIS 5343 (N.Y. App. Div. 2d Dep't 2001).

35. —Stockholders' derivative suits and other actions against corporations

Complaint for dissolution of corporation, which factually recites in detail that the directors and majority refuse to dissolve the corporation for the very purpose of continuing their corporate depredations at the expense of the minority, states a cause of action, which is not derivative in character, and enables plaintiff to maintain it without posting any security, regardless of how small his holdings. Leibert v Clapp, 13 N.Y.2d 313, 247 N.Y.S.2d 102, 196 N.E.2d 540, 1963 N.Y. LEXIS 815 (N.Y. 1963).

A complaint by one in his individual capacity against corporate and individual defendants, alleging misappropriation of corporate assets, seemingly a stockholder's derivative action, demanding an accounting of corporate dividends and distributions, without alleging declaration of dividends or non-receipt of them if declared, and demanding certificates of stock without showing how he is entitled thereto, is insufficient since it merely puts defendants on notice that he has grievances against the defendants but he fails to give notice of the material elements of each cause of action he attempts to set forth. Shapolsky v Shapolsky, 22 A.D.2d 91, 253 N.Y.S.2d 816, 1964 N.Y. App. Div. LEXIS 2751 (N.Y. App. Div. 1st Dep't 1964).

Complaint in stockholders' derivative action for damages for self-dealing transactions on part of corporate directors and controlling shareholders and alleging, among other things, that another corporation controlled by prime stockholder sold machinery in general to the nominal corporate defendant at an unfair high figure but bought from it at an unfair low figure did not sufficiently illuminate transactions involved and was insufficient to state a cause of action based on fraud and breach of trust which was required to be stated in detail. Block v Landegger, 44 A.D.2d 671, 354 N.Y.S.2d 430, 1974 N.Y. App. Div. LEXIS 5227 (N.Y. App. Div. 1st Dep't 1974).

Pleading requirement that complaint alleging breach of trust duty on part of officers and directors of corporation shall state in detail the circumstances constituting the wrong is in addition to and

is to be distinguished from the provisions of the general pleading statute. Greenberg v Acme Folding Box Co., 84 Misc. 2d 181, 374 N.Y.S.2d 997, 1975 N.Y. Misc. LEXIS 3101 (N.Y. Sup. Ct. 1975).

36. — —Fraud

Causes of action at issue meet pleading requirements of CPLR 3013 and 3016 (b) with regard to specificity; 45-page amended complaint contains sufficient detail to apprise defendants of substance of claims, and affords sufficient notice thereof; amended complaint meets requirement that misconduct complained of be set forth in sufficient detail to inform defendant as to incidents complained of, even where detailed circumstances constituting alleged fraud are yet unknown because they are peculiarly within knowledge of defendant parties; allegations that corporate officers set up rival organization, resigned en masse, utilized rival corporation for direct competition against their former employer, and disparaged plaintiffs' reputation in business community in process, all sufficiently state valid cause of action for various forms of relief sought in amended complaint. Ritasa Freight Services, Inc. v Zucchi, 161 A.D.2d 187, 554 N.Y.S.2d 572, 1990 N.Y. App. Div. LEXIS 4964 (N.Y. App. Div. 1st Dep't 1990).

In an action against makers and distributors of opioid medications for harm caused by the products, dismissal of the consumer protection claims and fraud claims was not warranted because, inter alia, plaintiffs adequately pleaded that they had suffered direct injuries as a result of materially deceptive acts or practices relating to the products' addictive properties and they sufficiently pleaded false advertising that had dramatically increased consumer demand for and consumption of prescription opioids, including the creation of public misperception about the safety and efficacy of such prescription drugs. In re Opioid Litig., 2018 N.Y. Misc. LEXIS 2428 (N.Y. Sup. Ct. 2018).

37. — —Complaint dismissed

Where a complaint alleges that defendant in breach of his fiduciary duties caused his corporation to enter into a contract with a third party, and a copy of the written agreement, annexed to the complaint, discloses that the corporation did not execute the contract, since the annexed copy must prevail over its pleaded version, the complaint must be dismissed for insufficiency. 300 Broadway Realty Corp. v Kommit, 21 A.D.2d 836, 250 N.Y.S.2d 103, 1964 N.Y. App. Div. LEXIS 3645 (N.Y. App. Div. 3d Dep't 1964).

As a complaint did not allege that a corporation's president in any way abused the privilege of doing business in corporate form, it did not state cause of action against him under the theory of piercing the corporate veil. East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc., 66 A.D.3d 122, 884 N.Y.S.2d 94, 2009 N.Y. App. Div. LEXIS 5856 (N.Y. App. Div. 2d Dep't 2009), aff'd, 16 N.Y.3d 775, 919 N.Y.S.2d 496, 944 N.E.2d 1135, 2011 N.Y. LEXIS 216 (N.Y. 2011).

Complaint in derivative action which contained conclusory allegations of breaches of fiduciary duty by defendant officers and directors, unsupported by factual assertions of specific wrongdoing, failed to state cause of action. Greenberg v Acme Folding Box Co., 84 Misc. 2d 181, 374 N.Y.S.2d 997, 1975 N.Y. Misc. LEXIS 3101 (N.Y. Sup. Ct. 1975).

38. —Unfair competition

A complaint which as a whole is unnecessarily complicated and joins causes of action for alleged breach of contract, or contracts, with a charge of the business tort of disparagement and unfair competition fails to comply with CPLR § 3013 and Rule 3014. Payrolls & Tabulating, Inc. v Sperry Rand Corp., 22 A.D.2d 595, 257 N.Y.S.2d 884, 1965 N.Y. App. Div. LEXIS 4564 (N.Y. App. Div. 1st Dep't 1965).

A complaint stated causes of action against individual defendants for unfair competition and conspiracy and a motion to dismiss should not be granted where complaint contains statements sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action since substance rather than form in the pleadings, considered as a whole, is the

criterion. Home Reporter, Inc. v Brooklyn Spectator, Inc., 34 A.D.2d 956, 312 N.Y.S.2d 433, 1970 N.Y. App. Div. LEXIS 4638 (N.Y. App. Div. 2d Dep't 1970).

Plaintiff's allegations that defendant, acting in concert with others, with intent to restrain competition and prevent plaintiff from engaging in the free pursuit of his business, deleted plaintiff's name from defendant's directory and notified him that it would not accept tender of the publication fee nor publish plaintiff's name in the future were obviously not sufficiently particular to give the court and the parties notice of the transactions intended to be proved. Zicos v Telefood, Inc., 45 Misc. 2d 64, 256 N.Y.S.2d 152, 1965 N.Y. Misc. LEXIS 2335 (N.Y. Sup. Ct. 1965).

39. —Warranty

Actions by homeowners against home builders for breach of express warranty, based on allegedly defective siding and sheathing, were properly dismissed where homeowners' complaints failed to state terms of warranties and homeowners' reliance on them. Butler v Caldwell & Cook, Inc., 122 A.D.2d 559, 505 N.Y.S.2d 288, 505 N.Y.S.2d 397, 1986 N.Y. App. Div. LEXIS 59834 (N.Y. App. Div. 4th Dep't 1986).

Breach of warranty class action suits brought by homeowners against builder were properly dismissed with leave to replead since complaints were not sufficiently particular where many homeowners failed to state when homes were purchased and thus several causes of action may have been time-barred. Butler v Caldwell & Cook, Inc., 122 A.D.2d 559, 505 N.Y.S.2d 288, 505 N.Y.S.2d 397, 1986 N.Y. App. Div. LEXIS 59834 (N.Y. App. Div. 4th Dep't 1986).

Buyer's breach of express warranty cause of action against a seller was properly dismissed for failure to set forth the terms of the alleged warranty with sufficient particularity to give the seller fair notice pursuant to N.Y. C.P.L.R. 3013. Hicksville Dry Cleaners, Inc. v Stanley Fastening Sys., L.P., 37 A.D.3d 218, 830 N.Y.S.2d 530, 2007 N.Y. App. Div. LEXIS 1525 (N.Y. App. Div. 1st Dep't 2007).

40. —Other actions

Where plaintiff contended that the defendant had conditionally approved applications for the licensing of package stores, but failed to show that the application had been conditionally approved without a determination of public convenience and advantage, that complaint was insufficient in an action for a declaratory judgment and to permanently enjoin the State Liquor Authority from issuing any package store licenses pursuant to its Bulletin No. Walsh v New York State Liquor Authority, 23 A.D.2d 876, 259 N.Y.S.2d 491, 1965 N.Y. App. Div. LEXIS 4248 (N.Y. App. Div. 2d Dep't), aff'd, 16 N.Y.2d 781, 262 N.Y.S.2d 502, 209 N.E.2d 821, 1965 N.Y. LEXIS 1230 (N.Y. 1965).

Limited partners did not state cause of action against partnership's brokers for failure to return partners' uninvested capital contributions where brokers returned $23.6 million to partnership for distribution to limited partners, which represented $18.5 million of uninvested capital plus certain expenses and 9 percent interest, and factual allegations neither met basic requirements of CLS CPLR § 3013 nor supported assertion that $30-$32 million should have been returned. Broome v ML Media Opportunity Partners L.P., 273 A.D.2d 63, 709 N.Y.S.2d 59, 2000 N.Y. App. Div. LEXIS 6332 (N.Y. App. Div. 1st Dep't 2000).

Plaintiff has sufficiently pleaded a civil cause of action pursuant to the Federal Racketeer Influenced and Corrupt Organizations Act (18 USC § 1961 et seq. [RICO]) by alleging that defendants used the United States mail to further their fraudulent schemes in violation of mail fraud statutes, that they paid and received commercial bribes in violation of the Penal Law, that they committed extortion in violation of the Penal Law, and that they submitted inflated invoices to recoup their expenses; there has been little or no discovery, and the sources of plaintiff's allegations are the minutes of the guilty pleas taken by some of the defendants. Accordingly, the cause of action has been sufficiently pleaded pursuant to CPLR 3013 and 3016 (b); the fact that the complaint may contain a preponderance of conclusory allegations is not fatal to the pleading provided that there are sufficient allegations which give notice of the occurrences intended to be proved and the material elements of the causes of action. Moreover, plaintiff has sufficiently

alleged the existence of an “enterprise” and a nexus between the pattern of racketeering activity and that enterprise where plaintiff alleged that the acts of bribe paying and receiving were numerous and extensive over a five-year period and were not scattered or isolated. Plaintiff has properly pleaded an affect on interstate commerce by alleging that the purchase and sale of building materials by defendants affected such commerce. Riverbay Corp. v Steiner, 144 Misc. 2d 530, 544 N.Y.S.2d 914, 1989 N.Y. Misc. LEXIS 442 (N.Y. Sup. Ct. 1989).

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).

Plaintiff’s application to proceed as Jane Doe in a suit against a school district alleging child sexual abuse was granted because the court found that allowing plaintiff to proceed under a pseudonym was appropriate with the tipping point being the potential impact to plaintiff’s children, both of whom attend school in the school district. Doe v Macfarland, 66 Misc. 3d 604, 117 N.Y.S.3d 476, 2019 N.Y. Misc. LEXIS 6524 (N.Y. Sup. Ct. 2019).

Research References & Practice Aids

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