NY CLS CPLR R 3016

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Consolidated Laws Service **>**

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

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

Notice

This section has more than one version with varying effective dates.

R 3016. Particularity in specific actions.

(a) Libel or Slander. In an action for libel or slander, the particular words complained of shall be set forth in the complaint, but their application to the plaintiff may be stated generally.

(b) Fraud or Mistake. Where a cause of action or defense is based upon misrepresentation, fraud, mistake, wilful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail.

(c) Separation or Divorce. In an action for separation or divorce, the nature and circumstances of a party's alleged misconduct, if any, and the time and place of each act complained of, if any, shall be specified in the complaint or counterclaim as the case may be.

(d) Judgment. In an action on a judgment, the complaint shall state the extent to which any judgment recovered by the plaintiff against the defendant, or against a person jointly liable with the defendant, on the same cause of action has been satisfied.

(e) Law of Foreign Country. Where a cause of action or defense is based upon the law of a foreign country or its political subdivision, the substance of the foreign law relied upon shall be stated.

(f) Sale and Delivery of Goods or Performing of Labor or Services. In an action involving the sale and delivery of goods, or the performing of labor or services, or the furnishing of materials, the plaintiff may set forth and number in his verified complaint the items of his claim and the reasonable value or agreed price of each. Thereupon the defendant by his verified answer shall indicate specifically those items he disputes and whether in respect of delivery or performance, reasonable value or agreed price.

(g) Personal Injury. In an action designated in subsection (a) of section five thousand one hundred four of the insurance law, for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, the complaint shall state that the plaintiff has sustained a serious injury, as defined in subsection (d) of section five thousand one hundred two of the insurance law, or economic loss greater than basic economic loss, as defined in subsection (a) of section five thousand one hundred two of the insurance law.

(h) Gross Negligence or Intentional Infliction of Harm by Certain Directors, Officers or Trustees of Certain Corporations, Associations, Organizations or Trusts. In an action or proceeding based upon the conduct of a director, officer or trustee described in section seven hundred twenty-a of the not-for-profit corporation law or subdivision six of section 20.09 of the arts and cultural affairs law, the complaint shall be verified and shall state whether or not said complaint is based upon gross negligence or intentional infliction of harm.

(i) Privacy of name in certain legal challenges to college/university disciplinary findings. In any proceeding brought against a college or university that is chartered by the regents or incorporated by special act of the legislature, which proceeding seeks to vacate or modify a finding that a student was responsible for a violation of college or

university rules regarding a violation covered by article one hundred twenty-nine-B of the education law, the name and identifying biographical information of any student shall be presumptively confidential and shall not be included in the pleadings and other papers from such proceeding absent a waiver or cause shown as determined by the court. Such witnesses shall be identified only as numbered witnesses. If such a name or identifying biographical information appears in a pleading or paper filed in such a proceeding, the court, absent such a waiver or cause shown, shall direct the clerk of the court to redact such name and identifying biographical information and so advise the parties.

(j) Consumer credit transactions. In an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, the contract or other written instrument on which the action is based shall be attached to the complaint, however, for the purposes of this section, if the account was a revolving credit account, the charge-off statement may be attached to the complaint instead of the contract or other written instrument, and the following information shall be set forth in the complaint:

(1) The name of the original creditor;

(2) The last four digits of the account number printed on the most recent monthly statement recording a purchase transaction, last payment or balance transfer;

(3) The date and amount of the last payment or, if no payment was made, a statement that the purchaser, borrower or debtor made no payment on the account;

(4) If the complaint contains a cause of action based on an account stated, the date on or about which the final statement of account was provided to the defendant;

(5)

(A) Except as provided in subparagraph (B) of this paragraph, an itemization of the amount sought, by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney’s fees; (vi) interest; and (vii) any other fees and charges.

(B) If the account was a revolving credit account, an itemization of the amount sought, by: (i) the total amount of the debt due as of charge-off; (ii) the total amount of interest accrued since charge-off; (iii) the total amount of non-interest charges or fees accrued since charge-off; and (iv) the total amount of payments and/or credits made on the debt since charge-off;

(6) The account balance printed on the most recent monthly statement recording a purchase transaction, last payment or balance transfer;

(7)

(A) Whether the plaintiff is the original creditor.

(B) If the plaintiff is not the original creditor, the complaint shall also state (i) the date on which the debt was sold or assigned to the plaintiff; (ii) the name of each previous owner of the account from the original creditor to the plaintiff and the date on which the debt was assigned to that owner by the original creditor or subsequent owner; and (iii) the amount due at the time of the sale or assignment of the debt by the original creditor; and

(8) Any matters required to be stated with particularity pursuant to rule 3015 of this article.

History

Add, L 1962, ch 308, eff Sept 1, 1963; amd, L 1974, ch 575, § 1, eff Sept 1, 1974; L 1976, ch 87, § 1, eff April 29, 1976; L 1984, ch 805, § 9, eff Sept 1, 1984; L 1986, ch 220, § 13, eff June 28, 1986; L 1990, ch 904, § 25, eff July 30, 1990; L 1991, ch 656, § 3, eff July 26, 1991; L 2015, ch 76, § 2, effective October 5, 2015; L 2021, ch 593, § 7, effective May 7, 2022.

Annotations

Notes

Editor's Notes

Laws 1990, ch 904, § 28, eff July 10, 1990, provides:

§ 28. This act shall not be construed or interpreted to limit or alter the rights of a trust to fulfill the terms of any agreements made with the holders of any bonds, notes or other obligations of a trust issued and outstanding on or prior to the effective date of this act, or to in any way impair the rights and remedies of such holders.

Laws 2021, ch 593, § 1, eff November 8, 2021, provides:

§ 1. This act shall be known and may be cited as the "consumer credit fairness act ".

Laws 2021, ch 593, § 15, eff November 8, 2021, provides:

§ 15. This act shall take effect immediately; provided, however, that sections two, three, five, six, seven, eight, nine, ten, eleven and twelve shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to actions and proceedings commenced on or after such date; and provided, further, that section four of this act shall take effect on the one hundred fiftieth day after this act shall have become a law.

Derivation Notes

Earlier statutes and rules: CPA §§ 255-a, 1186, 1201; RCP 96, 280; CCP §§ 535, 1764, 1938, 1946; Code Proc §§ 136, 164, 165, 378; 2 RS 147, § 52.

Amendment Notes

The 2015 amendment by ch 76, § 2, added (i).

The 2021 amendment by ch 593, § 7, added (j).

Commentary

PRACTICE INSIGHTS:

UNIQUE PARTICULARITY REQUIREMENTS OF COURT OF CLAIMS ACT HAVE JURISDICTIONAL CONSEQUENCES

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INSIGHT

CPLR 3013 generally requires a pleading to be sufficiently particular to give courts and parties notice of the occurrences or transactions relied upon and the elements of each cause of action or defense. In federal practice, Fed. R. Civ. P. 8(a) requires even less: “a short and plain statement of the claim” evidencing the pleader's entitlement to relief. The state's requirements for particularity as to specific matters and in specific actions are spelled out in CPLR 3015 and 3016, respectively. Because the state parts with its sovereign immunity on the condition that a notice of intention to file a claim or a notice of claim meet the requirements of Ct. Cl. Act §§ 8, 10 and 11, a practitioner armed with such relaxed pleading requirements ventures into the Court of Claims at his or her peril.

ANALYSIS

Particularity requirements of Court of Claims Act are much more stringent and jurisdictional.

Affirming the Third Department's dismissal of the claims of 767 former and current state employees who brought suit for overtime compensation under the Fair Labor Standards Act, the Court of Appeals held that the pleadings failed to comply with Court of Claims Act section 11(b). A notice of intention must state “the time when and place where such a claim arose [and] … the nature of same” and a notice of claim must state “the items of damage … and the total sum claimed ….” These particular claims were joined from two separate actions; some commenced with a notice of intention and others with the claim itself. The pleading in question specified only that the overtime entitlement arose from work performed in “July 1992 and continuing to the

present …;" and, as to the place of occurrence, only the name and home address of the employee but not the agency for which he or she worked or a primary work location. Apparently, these joined cases had been commenced first in federal court and, when recommenced in the Court of Claims, the pleadings were recycled. The Court of Appeals held that the State need not guess as to the particulars and was not required to check its own records to "ferret out or assemble information that section 11(b) obligates the claimant to allege." *Lepkowski v. State*, 1 N.Y.3d 201, 208, 770 N.Y.S.2d 696, 701, 802 N.E.2d 1094, 1099 (2003). *See also Kolnacki v. State of New York*, 8 N.Y.3d 277, 281, 832 N.Y.S.2d 481, 864 N.E.2d 611, reargument denied, 8 N.Y.3d 994, 838 N.Y.S.2d 835, 870 N.E.2d 153 (2007) (claimant's failure to include the "total sum" of monetary damages in her personal injury claim, pursuant to Ct. Cl. Act § 11 (b), is jurisdictional defect meriting dismissal); *Sacher v. State of New York*, 211 A.D.3d 867, 180 N.Y.S.3d 245 (2d Dep't 2022) (Majority and dissent differ as to whether claimant's notice of intention to file a claim sufficiently set forth "the time when" the claim arose within the meaning of Court of Claims Act § 11(b). Majority found claimant failed to correctly identify that date, applying a strict compliance standard, rather than a "substantial compliance" standard; it concluded that the claim was jurisdictionally defective and the Court of Claims thus lacked subject matter jurisdiction. Dissent concluded, however, that "[a]lthough the NOI contained an approximate date for when the claim arose, it was overall sufficiently definite to enable the State to conduct an investigation and ascertain its potential liability."); *Weichsel v. State of New York*, 211 A.D.3d 988, 180 N.Y.S.3d 277 (2d Dep't 2022) ("Here, the claim alleged that the acts of sexual abuse occurred over a four-year period from 'on or about and between approximately 1999 and 2003.' These allegations fall short of satisfying the pleading requirements of Court of Claims Act § 11(b) (citations omitted).").

Note that the courts have relaxed the pleading standards in actions under the Child Victims Act (CVA). *See e.g,, Rodriguez v. State of New York,* 219 A.D.3d 520, 193 N.Y.S.3d 305 (2d Dep't 2023) (Action under CVA. Citing to *Meyer v. State of New York,* 213 A.D.3d 753 (2d Dep't 2023), *see below,* court held that the claimant adequately pleaded the "time when" the claim arose requirement under the Court of Claims Act. "Under the particular circumstances of this

case, the date ranges provided in the claim, together with the other information set forth therein, were sufficient to satisfy the 'time when' requirement of Court of Claims Act § 11(b). The claimant alleged, among other things, that '[i]n approximately 1987, when [he] was approximately sixteen (16) years old, [he] was admitted to' a State-operated psychiatric hospital 'for inpatient residential treatment,' and that '[while] admitted to the … facility' he was 'sexually abused and assaulted' by a staff member on two occasions. Additionally, the claimant identified his alleged abuser in the claim and set forth the details of the two alleged assaults, including the location within the facility where they allegedly occurred. The claimant also alleged that, before the second incident of abuse occurred, he reported to his treating psychiatrist, whom the claimant identified by name, that the alleged perpetrator made the claimant 'uncomfortable.' 'Given that the CVA allows claimants to bring civil actions decades after the alleged sexual abuse occurred, it is not clear how providing exact dates, as opposed to the time periods set forth in the instant claim, would better enable the State to conduct a prompt investigation of the subject claim' (citations omitted)." In a concurrence, Justice Chambers asserted that while she was constrained by the prior precedent of the court, she believed that there should be no difference in the pleadings requirements in CVA versus non-CVA cases. *See* David L. Ferstendig, *Court of Claims Pleading Requirements,* 754 N.Y.S.L.D. 3–4 (2023).); *Chmielewski v. State of New York,* 217 A.D.3d 1583, 192 N.Y.S.3d 860 (4th Dep't 2023) (Action under CVA. "Here, claimant alleges that the claim 'accrued on or about and in between' the year 1962. Given that the claim was brought under the CVA, which revived for statute of limitations purposes certain civil claims relating to sexual abuse that may have occurred some decades ago, and that the alleged sexual abuse alleged in this case occurred more than 60 years ago, when claimant was a child, we conclude that the one-year time frame alleged in the claim is sufficient (citations omitted)."); *Meyer v State of New York*, 213 A.D.3d 753, 183 N.Y.S.3d 521 (2d Dep't 2023) (Action under CVA: "Here, given that the alleged sexual abuse occurred more than 40 years ago, when the claimant was a child, 'it is not reasonable to expect [the] claimant to be able to provide exact dates when each instance of abuse occurred, nor is it required' (citation omitted). Given that the CVA allows claimants to bring civil actions decades after the

alleged sexual abuse occurred, it is not clear how providing exact dates, as opposed to the time periods set forth in the instant claim, would better enable the State to conduct a prompt investigation of the subject claim (citation omitted). Indeed, this Court has recognized that 'in matters of sexual abuse involving minors, as recounted by survivors years after the fact, dates and times are sometimes approximate and incapable of calendrical exactitude' (citation omitted). Under the particular circumstances of this case, the date ranges provided in the claim stating that the sexual abuse commenced in approximately 1978 and occurred 'repeatedly' and 'multiple times' from approximately 1978 to 1982, during the period in which the claimant was directed to the Workshop to receive counseling, along with other information contained in the claim including, inter alia, that there was a criminal investigation, prosecution, and conviction of West based upon the claimant's complaints of sexual abuse, were sufficient to satisfy the 'time when' requirement of Court of Claims Act § 11(b) (citations omitted). We note that our determination that the claimant met the 'time when' requirement in the context of this action brought under the CVA does not change our jurisprudence with respect to the 'time when' requirement under different contexts, such as where a 'single incidence of negligence' occurs on a discrete date or other situations where 'a series of ongoing acts or omissions occur[ ] on multiple dates over the course of a period of time' (*see Sacher v State of New York*, 2022 NY Slip Op 07087, *3 [2d Dept].); *Weinstein, Korn & Miller, New York Civil Practice: CPLR* ¶ 304.06 (David L. Ferstendig, 2d Ed. 2024). *But see Musumeci v State of New York,* 220 A.D.3d 877, 198 N.Y.S.3d 559 (2d Dep't 2023) (CVA Action. "The claimant failed to satisfy the 'time when … [the] claim arose' requirement of Court of Claims Act § 11(b), since the claim failed to correctly identify the range of dates on which the alleged negligence and injury occurred." David L. Ferstendig, *While the Court of Claims Pleading Requirements May Be Relaxed in Child Victim Act Cases, Not Everything Passes Muster,* 757 N.Y.S.L.D. 3–4 (2023)); L. 2007, ch 606, eff. 08/15/07, in response to decision in *Kolnacki*, amending Ct. Cl. Act § 11(b) by eliminating requirement that the claim state the "total sum" claimed in personal injury, medical, dental, or podiatric malpractice or wrongful death actions.

Nevertheless, the other pleading requirements set forth in Ct. Cl. Act § 11 (b) remain in effect. *See Jones v. State of New York*, 56 A.D.3d 906; 867 N.Y.S.2d 265 (3d Dep't 2008).

Accordingly, the practitioner must recognize that a pleading shortfall in the Court of Claims is jurisdictional. If the statute of limitations (which is quite short, pursuant to the Court of Claims Act) has run, there is no remedy.

Advisory Committee Notes

Subd (a) of this rule is based upon RCP 96.

Subd (b) of this section is based upon part of New Jersey rule 4:9-1, which is an expansion of part of Federal rule 9(b). It states a common law and code requirement of long standing.

Subd (c) of this section is former rule 280 with minor language changes.

Subd (d) of this section derives from CPA §§ 1186, 1201, substantially unchanged. Former § 640-a has been omitted because of the elimination of the five-year limitation of former §§ 650, 651 and 652. See notes to subd (b) of § 5229. The language of former § 642 which related to a date from which interest should be computed has also been omitted. Since all money judgments bear interest from the date they are entered (see § 5003; CPA § 481), requiring specification of the "date of the judgment" is sufficient.

Subd (e) of this section has been added to provide for notice to the opponent when foreign law is to be relied upon.

Subd (f) of this section preserves the provisions of CPA § 255-a, with minor changes in language.

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I. Under CPLR

1. In general

There is no statutory requirement that actions sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity. Kenneth R. v Roman Catholic Diocese, 229 A.D.2d 159, 654 N.Y.S.2d 791, 1997 N.Y. App. Div. LEXIS 2166 (N.Y. App. Div. 2d Dep't), cert. denied, 522 U.S. 967, 118 S. Ct. 413, 139 L. Ed. 2d 316, 1997 U.S. LEXIS 6730 (U.S. 1997), app. dismissed, 91 N.Y.2d 848, 667 N.Y.S.2d 683, 690 N.E.2d 492, 1997 N.Y. LEXIS 4116 (N.Y. 1997).

Health insurer was entitled to dismissal of optometrist's cause of action for tortious interference with his contractual relations with his patients where insurer's communications with patients were part of its random routine antifraud review, and optometrist failed to allege sufficient facts to support claim that alleged interference was for sole purpose of harming him, rather than merely incidental to lawful purpose of obtaining information. Trachtman v Empire Blue Cross & Blue Shield, 251 A.D.2d 322, 673 N.Y.S.2d 726, 1998 N.Y. App. Div. LEXIS 6355 (N.Y. App. Div. 2d Dep't 1998).

Where a contract provision was unenforceable, the defendants had qualified immunity, and certain causes of action were contradicted by the evidence or were not set forth, the trial court erred in denying the defendants' motion to dismiss. Well v Rambam, 300 A.D.2d 580, 753 N.Y.S.2d 512, 2002 N.Y. App. Div. LEXIS 12708 (N.Y. App. Div. 2d Dep't 2002).

Dismissal of the securities class action suit was not warranted, because the case was an ordinary notice pleading case and this provision did not apply. Matter of Netshoes Sec. Litig. v XXX, 68 Misc. 3d 788, 126 N.Y.S.3d 856, 2020 N.Y. Misc. LEXIS 2375 (N.Y. Sup. Ct. 2020).

2. Libel or slander

The complaint in an action for slander is required to state in haec verba the particular defamatory words claimed to have been uttered and this requirement is strictly enforced and the exact words must be set forth; any qualification in the pleading "to the effect", "substantially", or

words of similar import generally renders the complaint defective. Gardner v Alexander Rent-A-Car, Inc., 28 A.D.2d 667, 280 N.Y.S.2d 595, 1967 N.Y. App. Div. LEXIS 3902 (N.Y. App. Div. 1st Dep't 1967).

Plaintiff's cause of action against coemployee which seemed to sound in defamation was insufficient for its lack of pleading the exact language and, if that language was not slanderous per se, a pleading of special damages was required. Kelly v CBS, Inc., 59 A.D.2d 686, 398 N.Y.S.2d 673, 1977 N.Y. App. Div. LEXIS 13625 (N.Y. App. Div. 1st Dep't 1977).

Any qualification in pleading of allegedly defamatory words, as by use of words "to the effect," "substantially," or words of similar import, renders complaint defective. Liffman v Booke, 59 A.D.2d 687, 398 N.Y.S.2d 674, 1977 N.Y. App. Div. LEXIS 13626 (N.Y. App. Div. 1st Dep't 1977).

Since plaintiff failed to set forth particular words complained of in his complaint, his cause of action for defamation should have been dismissed. Skinner v Government Employees Ins. Co., 196 A.D.2d 494, 600 N.Y.S.2d 749, 1993 N.Y. App. Div. LEXIS 7714 (N.Y. App. Div. 2d Dep't 1993).

Coach's claims of libel per se and slander per se against a school district and district officials was pled with the particularity required by N.Y. C.P.L.R. 3016(a) because the claims pled the words complained of, and the time, manner and persons to whom the words were allegedly stated. Wilcox v Newark Val. Cent. School Dist., 74 A.D.3d 1558, 904 N.Y.S.2d 523, 2010 N.Y. App. Div. LEXIS 4817 (N.Y. App. Div. 3d Dep't 2010).

3. —Elements

A letter accusing the addressee's employee of acting improperly in a single instance was insufficient to support a charge of libel, since to defame one with respect to his business, profession, or occupation, it is necessary that the plaintiff be charged with being "ignorant, incompetent, or incapable in his calling." Amelkin v Commercial Trading Co., 23 A.D.2d 830,

259 N.Y.S.2d 396, 1965 N.Y. App. Div. LEXIS 4195 (N.Y. App. Div. 1st Dep't 1965), aff'd, 17 N.Y.2d 500, 267 N.Y.S.2d 218, 214 N.E.2d 379, 1966 N.Y. LEXIS 1644 (N.Y. 1966).

Unless complaint, in libel action, alleges special damages, the language alleged as libelous must be libelous per se. Garfinkel v Twenty-First Century Publishing Co., 30 A.D.2d 787, 291 N.Y.S.2d 735, 1968 N.Y. App. Div. LEXIS 3449 (N.Y. App. Div. 1st Dep't), app. dismissed, 22 N.Y.2d 970, 295 N.Y.S.2d 336, 242 N.E.2d 487, 1968 N.Y. LEXIS 1081 (N.Y. 1968).

Slander is uttering of defamatory words which tend to injure another in his reputation, office, trade, etc.; in such action, particular words complained of must be set forth in complaint. Liffman v Booke, 59 A.D.2d 687, 398 N.Y.S.2d 674, 1977 N.Y. App. Div. LEXIS 13626 (N.Y. App. Div. 1st Dep't 1977).

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).

Defamation claim was properly dismissed because a letter in which the alleged defamatory statement was allegedly published was not submitted, nor were quotes from it or a contextual description of it, so the claim was not alleged with the particularity required by N.Y. C.P.L.R. 3016(a). Fusco v Fusco, 36 A.D.3d 589, 829 N.Y.S.2d 138, 2007 N.Y. App. Div. LEXIS 174 (N.Y. App. Div. 2d Dep't 2007).

Trial court erred in denying a broadcaster’s motion to dismiss plaintiff’s defamation complaint based on plaintiff’s failure to set forth in the complaint “the particular words complained of,” as required by N.Y. C.P.L.R. 3016(a). The quoted language in the complaint, i.e., “porn door to door” and “peddling porn,” consisted of mere phrases and thus by implication could not be the

“exact words” in their entirety allegedly uttered by the broadcaster; rather, those phrases were only a portion of the particular defamatory words and thus were not in compliance with N.Y. C.P.L.R. 3016(a). Keeler v Galaxy Communications, LP, 39 A.D.3d 1202, 834 N.Y.S.2d 411, 2007 N.Y. App. Div. LEXIS 4857 (N.Y. App. Div. 4th Dep't 2007).

Trial court should have granted those branches of a cross motion which were to dismiss the twelfth affirmative defenses in a grantee’s fraud suit, both of which asserted that the complaint failed to state the circumstances constituting fraud with the requisite specificity. Greco v Christoffersen, 70 A.D.3d 769, 896 N.Y.S.2d 363, 2010 N.Y. App. Div. LEXIS 929 (N.Y. App. Div. 2d Dep't 2010).

Dismissal of a customer’s suit against a power company was proper because, although the customer asserted that the complaint alleged a fraud claim, the customer failed to allege or provide details of any misstatements or misrepresentations made specifically by the power company’s representatives to him, as required by N.Y. C.P.L.R. 3016(b). Moore v Liberty Power Corp., LLC, 72 A.D.3d 660, 897 N.Y.S.2d 723, 2010 N.Y. App. Div. LEXIS 2878 (N.Y. App. Div. 2d Dep't), app. denied, 14 N.Y.3d 713, 904 N.Y.S.2d 695, 930 N.E.2d 769, 2010 N.Y. LEXIS 1327 (N.Y. 2010).

Buyers, in their complaint and as supplemented by an affidavit, described the misrepresentations and omissions in sufficient detail to clearly inform the companies and the agents with respect to the incidents complained of; accordingly, the buyers’ second and third causes of action to recover damages for fraudulent misrepresentation and fraudulent inducement respectively, were pleaded with sufficient specificity to survive N.Y. C.P.L.R. 3016(b). Pike v New York Life Ins. Co., 72 A.D.3d 1043, 901 N.Y.S.2d 76, 2010 N.Y. App. Div. LEXIS 3411 (N.Y. App. Div. 2d Dep't 2010).

Heart of an investor’s complaint was the claim that factual details about a partnership’s real estate venture were within the partners’ knowledge and withheld from the investor, and, thus, the requirements of N.Y. C.P.L.R. 3016(b) were met; it was impossible to state in detail the circumstances constituting fraud when those circumstances are peculiarly within the knowledge

of the party moving for summary relief. In such a case, the specificity requirement was not to be so strictly interpreted as to prevent an otherwise valid cause of action. Paolucci v Mauro, 74 A.D.3d 1517, 903 N.Y.S.2d 584, 2010 N.Y. App. Div. LEXIS 4802 (N.Y. App. Div. 3d Dep't 2010).

Trial court properly denied a motion to dismiss the causes of action for, inter alia, libel and slander filed by a radiation oncology provider and its shareholder because the specificity requirements were met where the amended complaint set forth the particular words uttered by each of the individual defendants as well as the time, manner, and persons to whom the alleged defamatory statements were made, and the defendants' claims of contractual and statutory immunity constituted affirmative defenses,which were premature inasmuch as the parties had not yet engaged in discovery to determine whether any of the defenses were applicable. Radiation Oncology Servs. of Cent. N.Y., P.C. v Our Lady of Lourdes Mem. Hosp., Inc., 148 A.D.3d 1418, 49 N.Y.S.3d 792, 2017 N.Y. App. Div. LEXIS 1873 (N.Y. App. Div. 3d Dep't 2017).

Because the buyers’ reliance upon allegedly fraudulent silence of a law firm, a broker, a lender, and the sellers concerning the existence of leases encumbering the property was unreasonable as a matter of law and did not contain the specificity required by N.Y. C.P.L.R. 3016(b), and because the claim was outside the ambit of N.Y. Gen. Bus. Law § 349, they were not entitled to a preliminary injunction under N.Y. C.P.L.R. 6301. Berrocal v Abrams Garfinkel Margolis Bergson LLP, 910 N.Y.S.2d 760, 27 Misc. 3d 1214(A), 243 N.Y.L.J. 85, 2010 N.Y. Misc. LEXIS 881 (N.Y. Sup. Ct. 2010).

Trial court properly dismissed an action by a housing cooperative corporation (co-op) and its managing agent for defamation and tortious interference with prospective business relationships because the challenged statements were non-actionable opinion, many of which did not have a precise meaning and others were hyperbolic and incapable of being proven true or false, the statements allegedly made to a landscaper failed to meet the specificity requirements, and the complaint alleged that the defendants were motivated by desires other than a desire to inflict

harm on the co-op and the agent. Holliswood Owners Corp. v Rivera, 145 A.D.3d 968, 44 N.Y.S.3d 159, 2016 N.Y. App. Div. LEXIS 8691 (N.Y. App. Div. 2d Dep't 2016).

4. — —Libel per se

Because a staff member's complaint satisfied the pleading requirements of N.Y. C.P.L.R. 3016 and constituted slander per se, and because it was not entirely clear that the staff member was timely paid in accordance with N.Y. Lab. Law § 191(3), the trial court properly denied the employer's motion to dismiss those causes of action. Epifani v Johnson, 65 A.D.3d 224, 882 N.Y.S.2d 234, 2009 N.Y. App. Div. LEXIS 5219 (N.Y. App. Div. 2d Dep't 2009).

A statement that an attorney is engaged in activity "that in one of its variations . . . was called champerty, a crime" accuses the attorney of stirring up and fomenting litigation and is libelous per se. Gewurz v Bernstein, 107 Misc. 2d 857, 436 N.Y.S.2d 142, 1981 N.Y. Misc. LEXIS 2104 (N.Y. Sup. Ct. 1981).

5. —Federal proceedings

Trial court did not abuse its discretion by taking judicial notice of Ontario law regarding noneconomic damages despite the failure of defendants to raise the applicability of the law as an affirmative defense and to provide the substance of the law in their pleadings in accordance with N.Y. C.P.L.R. 3016(e); because N.Y. C.P.L.R. 4511(b) permits a court to take judicial notice of the laws of foreign countries that are presented prior to the presentation of any evidence at the trial, the court was not barred from doing so based on a party's failure to comply with the requirement in N.Y. C.P.L.R. 3016(e) that the substance of such laws shall be set forth in the pleading. Butler v Stagecoach Group, PLC, 72 A.D.3d 1581, 900 N.Y.S.2d 541, 2010 N.Y. App. Div. LEXIS 3584 (N.Y. App. Div. 4th Dep't 2010), aff'd in part, modified, 17 N.Y.3d 306, 929 N.Y.S.2d 41, 952 N.E.2d 1033, 2011 N.Y. LEXIS 1803 (N.Y. 2011).

New York's strict pleading rule for slander does not apply in Federal District Court; therefore, plaintiff is not required to plead purportedly defamatory statements in haec verba. Korry v International Tel. & Tel. Corp., 444 F. Supp. 193, 1978 U.S. Dist. LEXIS 19646 (S.D.N.Y. 1978).

CPLR Rule 3016(a) requires plaintiff, prosecuting slander action, to set forth particular words of which complaint is made. Chodos v FBI, 559 F. Supp. 69, 1982 U.S. Dist. LEXIS 10327 (S.D.N.Y.), aff'd, 697 F.2d 289, 1982 U.S. App. LEXIS 20387 (2d Cir. N.Y. 1982).

Failure to plead allegedly defamatory remarks in haec verba, as required by CLS CPLR § 3016(a) does not defeat action commenced in federal court, because Federal Rules of Civil Procedure control applicable pleading standards. Neu v Corcoran, 695 F. Supp. 1552, 1988 U.S. Dist. LEXIS 10604 (S.D.N.Y. 1988), rev'd, 869 F.2d 662, 1989 U.S. App. LEXIS 2733 (2d Cir. N.Y. 1989).

In a former employee's sexual harassment and hostile work environment lawsuit against her former employer and several individuals, the employee's state law tort claim of defamation based on the dissemination of a certain e-mail was not subject to the pleading requirements of N.Y. C.P.L.R. 3016(a), or Fed. R. Civ. P. 9(b), and the complaint met the notice requirements of Fed. R. Civ. P. 8(a) by stating facts that generally alleged the elements of her defamation claim. Pasqualini v MortgageIT, Inc., 498 F. Supp. 2d 659, 2007 U.S. Dist. LEXIS 54519 (S.D.N.Y. 2007).

6. —Pleading

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).

In action pursuant to General Business Law Article 25, defendant was not required to move for dismissal (CPLR § 3211, subd a), or for a more definite complaint (CPLR § 3024, subd a),

where plaintiff failed to allege a libel cause of action (CPLR § 3016, subd a). Randaccio v Retail Credit Co., 43 A.D.2d 798, 350 N.Y.S.2d 255, 1973 N.Y. App. Div. LEXIS 2905 (N.Y. App. Div. 4th Dep't 1973).

Complaint which was brought by husband and wife and which involved statement allegedly made to wife's fellow employees by defendants to news media, and to plaintiffs in the presence of family and others, with intent to demean wife before her fellow employees and the public was sufficient to state a cause of action, notwithstanding that libelous or slanderous matter was not mentioned specifically, where record established that the offensive material was published of and concerned plaintiff and was susceptible of a defamatory meaning. Blowers v Lawyers Cooperative Publishing Co., 44 A.D.2d 760, 354 N.Y.S.2d 239, 1974 N.Y. App. Div. LEXIS 5289 (N.Y. App. Div. 4th Dep't 1974).

Absent claim for special damages there was no properly pled cause of action for libel. McAdam v Ridge Press, Inc., 57 A.D.2d 763, 394 N.Y.S.2d 202, 1977 N.Y. App. Div. LEXIS 11917 (N.Y. App. Div. 1st Dep't 1977).

Failure to set forth particular words complained of in cause of action for slander constitutes failure to state cause of action. Pappalardo v State, 109 A.D.2d 873, 487 N.Y.S.2d 65, 1985 N.Y. App. Div. LEXIS 47391 (N.Y. App. Div. 2d Dep't 1985).

Court properly dismissed plaintiff's defamation action against his former employer where complaint failed to set forth particular words complained of. Vardi v Mutual Life Ins. Co., 136 A.D.2d 453, 523 N.Y.S.2d 95, 1988 N.Y. App. Div. LEXIS 22 (N.Y. App. Div. 1st Dep't 1988).

Employee's defamation claim required dismissal where complaint failed to set forth particular words complained of, and failed to state particular person to whom allegedly defamatory comments were made. Monsanto v Electronic Data Systems Corp., 141 A.D.2d 514, 529 N.Y.S.2d 512, 1988 N.Y. App. Div. LEXIS 6313 (N.Y. App. Div. 2d Dep't 1988).

Contrary to defendant’s contention, plaintiff’s defamation complaint set forth the particular words complained of, and thereby complied with N.Y. C.P.L.R. 3016(a). Sokol v Leader, 74 A.D.3d 1180, 904 N.Y.S.2d 153, 2010 N.Y. App. Div. LEXIS 5393 (N.Y. App. Div. 2d Dep't 2010).

Because a tenant’s proposed amplified counterclaims against the landlord for defamation, injurious falsehood, and malicious prosecution failed to meet the pleading requirements of N.Y. C.P.L.R. 3016(a) and were palpably insufficient as a matter of law, the tenant’s motion for leave to amend was properly denied. BCRE 230 Riverside LLC v Fuchs, 59 A.D.3d 282, 874 N.Y.S.2d 34, 2009 N.Y. App. Div. LEXIS 1184 (N.Y. App. Div. 1st Dep't 2009).

Attorney's defamation claims against former clients and a former associate were time-barred because the claims were predicated on alleged defamatory statements uttered on or before September 6, 2012, but the attorney did not commence litigation until September 9, 2013; although the attorney's claims predicated on alleged defamatory statements uttered on or after September 7, 2012 were not time-barred, the claims were not sufficiently specific with respect to time. Arvanitakis v Lester, 145 A.D.3d 650, 44 N.Y.S.3d 71, 2016 N.Y. App. Div. LEXIS 8057 (N.Y. App. Div. 2d Dep't 2016).

Even though the CPLR requires liberal construction of complaints, no cause of action for defamation can be found, where the complaint does not comply with CPLR 3016 as to specification of the actionable statements. Neidich v State Com. for Human Rights, 53 Misc. 2d 984, 280 N.Y.S.2d 463, 1967 N.Y. Misc. LEXIS 1893 (N.Y. Sup. Ct. 1967).

Slander plaintiff’s failure to plead with particularity the actual words used in alleged slanderous utterances mandated dismissal of the slander claim for failure to state a claim upon which relief could be granted. Dist. Council No. 9 v Reich, 772 N.Y.S.2d 467, 2 Misc. 3d 271, 2003 N.Y. Misc. LEXIS 1464 (N.Y. Sup. Ct. 2003).

7. —Discovery

Petitioner was entitled to preaction disclosure under CLS CPLR § 3102(c) to aid in bringing action, including claim for defamation, where he alleged facts sufficient to establish prima facie case therefor except for requirement of CLS CPLR § 3016(a) that particular words complained of be set forth, as to which documents sought would clearly be helpful, and opposition to motion failed to show, as matter of law, either existence of qualified privilege or absence of malice. Hoo v Forest Pharms., 225 A.D.2d 504, 639 N.Y.S.2d 693, 1996 N.Y. App. Div. LEXIS 3261 (N.Y. App. Div. 1st Dep't 1996).

Petitioner, a police officer who was allegedly defamed by statements made on television news broadcasts concerning a shooting incident, is entitled to a verbatim transcript of broadcast tapes involving the incident but is not, however, entitled to broad preaction discovery (CPLR 3102, subd [c]) of unedited tapes, transcripts and other such materials since, even if petitioner has established a cause of action based on the broadcast statements, such discovery is not material and necessary for petitioner to frame his complaint (CPLR 3016, subd [a]) and allowing petitioner to search through various documents and tapes to determine whether there were any witnesses other than those quoted on the broadcast tapes who made defamatory statements and could thus be potential defendants would go beyond the purposes served by preaction disclosure. Application of Dack, 101 Misc. 2d 490, 421 N.Y.S.2d 775, 1979 N.Y. Misc. LEXIS 2709 (N.Y. Sup. Ct. 1979).

8. —Defenses

Campaign utterances, oral and written, of a candidate for public office are qualifiedly privileged; a public official cannot recover damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice; that is, with knowledge of its falsity or with reckless disregard of whether or not it was false. Gilberg v Goffi, 21 A.D.2d 517, 251 N.Y.S.2d 823, 1964 N.Y. App. Div. LEXIS 3243 (N.Y. App. Div. 2d Dep't 1964), aff'd, 15 N.Y.2d 1023, 260 N.Y.S.2d 29, 207 N.E.2d 620, 1965 N.Y. LEXIS 1471 (N.Y. 1965).

Health insurer was entitled to dismissal of optometrist's cause of action for allegedly defamatory communications made by insurer to optometrist's patients where (1) those communications were part of insurer's random routine antifraud review and were protected by qualified privilege, which was not overcome by optometrist's conclusory allegations of malice, (2) some communications were time-barred, and (3) allegations of defamation were not sufficiently particular for purposes of CLS CPLR § 3016(a). Trachtman v Empire Blue Cross & Blue Shield, 251 A.D.2d 322, 673 N.Y.S.2d 726, 1998 N.Y. App. Div. LEXIS 6355 (N.Y. App. Div. 2d Dep't 1998).

Truth was complete defense to defamation claims asserted by former assistant district attorneys who resigned prior to fulfilling their contractual commitment period obligation and alleged that their professional reputations were harmed when employer told third parties that they were "terminated," where employer retained contractual right to discharge assistant district attorneys for cause if they resigned before end of initial commitment period, and to characterize severance of their employment as "termination." Dillon v City of New York, 261 A.D.2d 34, 704 N.Y.S.2d 1, 1999 N.Y. App. Div. LEXIS 12988 (N.Y. App. Div. 1st Dep't 1999).

Corporation's claim against its shareholders for damage to the corporate reputation was subject to one-year statute of limitations and was not set forth in haec verba. Besicorp Ltd. v Kahn, 290 A.D.2d 147, 736 N.Y.S.2d 708, 2002 N.Y. App. Div. LEXIS 77 (N.Y. App. Div. 3d Dep't), app. denied, 98 N.Y.2d 601, 744 N.Y.S.2d 761, 771 N.E.2d 834, 2002 N.Y. LEXIS 952 (N.Y. 2002).

Customer's summary judgment motion was granted as an automobile warranty company's libel claims, because when considered pursuant to N.Y. C.P.L.R. 3016(a), statements made by the customer on his internet web site concerning the company's business practices were merely statements of the customer's opinion concerning the services he received. Penn Warranty Corp. v DiGiovanni, 810 N.Y.S.2d 807, 10 Misc. 3d 998, 234 N.Y.L.J. 87, 2005 N.Y. Misc. LEXIS 2341 (N.Y. Sup. Ct. 2005).

9. —Proof at trial

In action for separation based upon abandonment, complaint must state facts sufficient to establish that the abandonment was wilful, with intention not to return, and must also state the times and places where acts constituting abandonment occurred. Harmen v Harmen, 12 A.D.2d 784, 209 N.Y.S.2d 568, 1961 N.Y. App. Div. LEXIS 13440 (N.Y. App. Div. 2d Dep't 1961).

Although CLS CPLR § 3016(a) requires that particular words complained of shall be set forth in complaint for libel, proof at trial is sufficient if it establishes words pleaded or substance thereof. Rossignol v Silvernail, 185 A.D.2d 497, 586 N.Y.S.2d 343, 1992 N.Y. App. Div. LEXIS 8944 (N.Y. App. Div. 3d Dep't 1992).

In an action for slander, even though the complaint was defective in that it did not set forth the particular words complained of, the defendant, by failing to move to dismiss the complaint prior to trial, waived its right to attack the form of the complaint and, the trial having been had, the plaintiff was entitled to his motion to conform the pleadings to the evidence. Schindler v Chase Manhattan Bank, N. A., 106 Misc. 2d 646, 434 N.Y.S.2d 633, 1980 N.Y. Misc. LEXIS 2745 (N.Y. Civ. Ct. 1980).

10. —Complaint dismissed

In view of plaintiff’s affirmation that she did not seek to hold president of city teacher’s association liable in his individual capacity and plaintiff’s failure to allege facts in her complaint sufficient to establish basis for liability on part of teacher’s association, complaint in action for libel and slander was properly dismissed. Muka v Heffron, 56 A.D.2d 682, 391 N.Y.S.2d 744, 1977 N.Y. App. Div. LEXIS 10839 (N.Y. App. Div. 3d Dep't), app. dismissed, 42 N.Y.2d 823, 396 N.Y.S.2d 650, 364 N.E.2d 1344, 1977 N.Y. LEXIS 2157 (N.Y. 1977).

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. 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).

In a defamation action, the trial court erroneously determined that only a specific number of clauses in one paragraph of plaintiff's complaint stated a cause of action of libel where plaintiff attached each newspaper article which formed the basis for each clause to his complaint, and, by doing so, sufficiently complied with the statutory requirements for pleading a libel cause of action under CPLR § 3016(a). Sassower v New York News, Inc., 101 A.D.2d 1020, 476 N.Y.S.2d 698, 1984 N.Y. App. Div. LEXIS 18758 (N.Y. App. Div. 4th Dep't 1984).

Special Term properly dismissed plaintiffs' libel action against newspaper, with leave to replead, where causes of action were premised on libel by extrinsic fact and plaintiffs failed to allege special damages with sufficient particularity in that they alleged only that they had been damaged in "a round figure" of $1,000,000 rather than providing accurate identification of actual losses. Talbot v Johnson Newspaper Corp., 124 A.D.2d 284, 508 N.Y.S.2d 80, 1986 N.Y. App. Div. LEXIS 61325 (N.Y. App. Div. 3d Dep't 1986).

Former employee, who had been discharged for failing polygraph test, did not state cause of action against former employer for defamation where his complaint (1) did not allege particular words complained of nor time, place and manner of particular defamatory statement, (2) did not allege dissemination of defamatory statement to any prospective employers, and (3) did not allege that privileged content of communication between certain of defendant's other employees (as to reason for plaintiff's discharge) was product of actual malice. Grynberg v Alexander's, Inc., 133 A.D.2d 667, 519 N.Y.S.2d 838, 1987 N.Y. App. Div. LEXIS 51708 (N.Y. App. Div. 2d Dep't 1987), app. denied, 70 N.Y.2d 616, 526 N.Y.S.2d 436, 521 N.E.2d 444, 1988 N.Y. LEXIS 123 (N.Y. 1988).

In action by one electronics corporation against another, court should have dismissed causes of action sounding in defamation of character since plaintiff's claims that defendants made false statements in electronics jobbers' community which negatively reflected on its reliability and solvency did not meet minimum pleading requirements of CLS CPLR § 3016. Belvision, Inc. v M & G Electronics, Inc., 134 A.D.2d 313, 520 N.Y.S.2d 790, 1987 N.Y. App. Div. LEXIS 50496 (N.Y. App. Div. 2d Dep't 1987).

Defendant was entitled to dismissal of cause of action for defamation where (1) allegedly defamatory statements were made in connection with medical or hospital peer review function and thus were protected by statutory and common-law immunities in absence of showing of actual malice, and (2) complaint failed to state either “particular words complained of,” as mandated by CLS CPLR § 3016(a), or particular persons to whom statements were made. Shapiro v Central Gen. Hosp., Inc., 251 A.D.2d 317, 673 N.Y.S.2d 724, 1998 N.Y. App. Div. LEXIS 6352 (N.Y. App. Div. 2d Dep't), app. denied, 92 N.Y.2d 811, 680 N.Y.S.2d 457, 703 N.E.2d 269, 1998 N.Y. LEXIS 3135 (N.Y. 1998).

Defamation counterclaim that merely paraphrased the alleged defamatory words and did not specifically allege the circumstances under which the words were made did not satisfy the requirements under N.Y. C.P.L.R. 3016(a) that defamation claims include specific allegations of the allegedly discriminatory words used, the time, place, and manner of the allegedly false statements, and to whom the statements were made. A doctor’s motion to dismiss the counterclaim was improperly denied, but, by exercising its discretion, the court allowed amendment, instead of dismissal, of the counterclaim. Nesathurai v University At Buffalo, 23 A.D.3d 1070, 804 N.Y.S.2d 195, 2005 N.Y. App. Div. LEXIS 12410 (N.Y. App. Div. 4th Dep't 2005).

Supreme court properly directed dismissal of a defamation cause of action asserted against city defendants since plaintiff failed to comply with the pleading requirements of subsection (a); plaintiff failed to identify who read aloud a statement to shift workers, who posted the statement on the message bulletin boards, and to whom the statement was made. Montanino v New York City Dept. of Sanitation, 2025 N.Y. App. Div. LEXIS 3398 (N.Y. App. Div. 2d Dep't 2025).

Former teacher failed to state a cause of action against an assistant principal for the assistant principal allegedly making false and defamatory statements regarding the teacher’s alleged lateness, forgetfulness, laziness, and failure to follow directions to an investigator who was investigating the teacher’s possible employment with the police department because the statements criticizing the teacher’s performance were, as a matter of law, non-actionable

expressions of opinion. The statements also were protected by a qualified privilege. Ruiz v Armstrong, 85 Misc. 3d 237, 207 N.Y.S.3d 374, 2024 N.Y. Misc. LEXIS 742 (N.Y. Sup. Ct. 2024).

Appraiser's defamation claim failed to satisfy N.Y. C.P.L.R. 3016(a), where the court had not been provided with a copy of the alleges defamatory letter and the complaint failed to specify the precise statements in the letter that ere the subject of the defamation claim. Furthermore, there was nothing in the complaint to suggest (1) that publication outside the executors' family had occurred; (2) that any harm to the appraiser had resulted; or (3) that the executor's agent had played any role in the writing or alleged publication of the letter, so the agent's motion to dismiss was granted. Melnitzky v Rose, 299 F. Supp. 2d 219, 2004 U.S. Dist. LEXIS 365 (S.D.N.Y. 2004), aff'd in part and rev'd in part, 148 Fed. Appx. 11, 2005 U.S. App. LEXIS 16743 (2d Cir. N.Y. 2005).

11. — —Failure to plead malice

Basketball and basketball games are matters of general public interest, particularly in the light of the great attraction the game has for the public, thus failure to plead malice or show that statements relative to such matters were made with a reckless disregard for their truth is a reason for dismissing libel complaint. Garfinkel v Twenty-First Century Publishing Co., 30 A.D.2d 787, 291 N.Y.S.2d 735, 1968 N.Y. App. Div. LEXIS 3449 (N.Y. App. Div. 1st Dep't), app. dismissed, 22 N.Y.2d 970, 295 N.Y.S.2d 336, 242 N.E.2d 487, 1968 N.Y. LEXIS 1081 (N.Y. 1968).

In a defamation action by a law firm arising out of remarks made during a bitter struggle to the convert a residential apartment building to a cooperative, in which certain tenants who opposed the conversion to a cooperative categorized the attempt by the law firm to charge legal fees against nonclient tenants as "illegal and unethical," defendant tenants' motion to dismiss the complaint would be granted since the law firm, in thrusting itself into this dispute, made its conduct and its claim for legal fees an issue for discussion, the alleged defamatory statements

were made solely to other tenants in the building and there was no allegation of publication to anyone outside the building, a bona fide communication on any subject in which the party communicating has an interest is privileged if made to a person having a corresponding interest and the defendants and the other tenants in the subject building constituted a group with a common interest, the statements by the defendant tenants were expressions of opinion having sufficient factual basis which were comments only upon particular acts of the law firm and which were not actionable under the “single instance” rule, and it was incumbent upon the law firm to prove that the statements were false and that the defendant was actuated by express malice or actual ill will and the statements in and of themselves were not sufficient to raise a factual issue of malice. Tanner & Gilbert v Verno, 92 A.D.2d 802, 460 N.Y.S.2d 48, 1983 N.Y. App. Div. LEXIS 17179 (N.Y. App. Div. 1st Dep't), app. dismissed in part, app. denied, 60 N.Y.2d 553, 1983 N.Y. LEXIS 5560 (N.Y. 1983), app. dismissed in part, app. denied, 60 N.Y.2d 632, 467 N.Y.S.2d 354, 454 N.E.2d 937, 1983 N.Y. LEXIS 3328 (N.Y. 1983).

12. — —Failure to set forth specific words complained of

Where no attempt was made in complaint to set forth alleged slander or libel in haec verba, cause of action would be dismissed. Health Delivery Systems, Inc. v Scheinman, 42 A.D.2d 566, 344 N.Y.S.2d 190, 1973 N.Y. App. Div. LEXIS 4248 (N.Y. App. Div. 2d Dep't 1973).

Complaint against corporation and three of its alleged officers for slander, fraud, interference with contractual relations, conspiracy, and prima facie tort was subject to being dismissed for failure to state a cause of action, even though it contained allegations which might have been appropriate to some or all of alleged torts, where allegations were pleaded in form of a single cause of action contrary to statutory requirements, and, though damage seemed to be attributed to alleged defamation, plaintiff failed to fulfill further requirement of setting forth particular words claimed to have been uttered by individual defendants. Roberts v Finkel, 46 A.D.2d 878, 362 N.Y.S.2d 176, 1974 N.Y. App. Div. LEXIS 3232 (N.Y. App. Div. 1st Dep't 1974).

Cause of action for libel and slander was not properly pleaded where complaint did not set forth either copy of alleged libel or contents thereof and did not contain allegation as to time of issuance of libel and to whom it was published. Liffman v Booke, 59 A.D.2d 687, 398 N.Y.S.2d 674, 1977 N.Y. App. Div. LEXIS 13626 (N.Y. App. Div. 1st Dep't 1977).

Defendant would be granted summary judgment dismissing a cause of action for defamation, where the complaint failed to set forth “the particular words complained of” as required by CPLR § 3016(a), and where an examination of the allegedly defamatory statements defendant made to the police revealed that they merely related a narrative of the events witnessed and contained no accusation of criminal conduct by plaintiff nor any expression as to the quality of plaintiff’s conduct. Viza v Greece, 94 A.D.2d 965, 463 N.Y.S.2d 970, 1983 N.Y. App. Div. LEXIS 18454 (N.Y. App. Div. 4th 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).

Pro se complaint alleging slander was properly dismissed where complaint failed to recite allegedly defamatory words and where action was barred by one-year stature of limitations. Ressis v Herman, 122 A.D.2d 516, 505 N.Y.S.2d 266, 1986 N.Y. App. Div. LEXIS 59786 (N.Y. App. Div. 3d Dep't 1986), app. dismissed, 69 N.Y.2d 1017, 517 N.Y.S.2d 937, 511 N.E.2d 80, 1987 N.Y. LEXIS 16814 (N.Y. 1987).

Defendant was entitled to summary judgment dismissing action for libel and slander where plaintiff's allegation of defamatory words merely paraphrased words allegedly spoken, contrary to requirements of CLS CPLR § 3016. Conley v Gravitt, 133 A.D.2d 966, 520 N.Y.S.2d 672, 1987 N.Y. App. Div. LEXIS 52000 (N.Y. App. Div. 3d Dep't 1987).

Cause of action for defamation alleging that defendants had accused plaintiff of being Nazi was properly dismissed since actual words used were not set forth as required by CPLR § 3016(a), and alleged remarks were expression of opinion which was not actionable. Schwartz v Nordstrom, Inc., 160 A.D.2d 240, 553 N.Y.S.2d 684, 1990 N.Y. App. Div. LEXIS 3755 (N.Y. App. Div. 1st Dep't), app. dismissed, 76 N.Y.2d 845, 560 N.Y.S.2d 129, 559 N.E.2d 1288, 1990 N.Y. LEXIS 1995 (N.Y. 1990), app. denied, 76 N.Y.2d 711, 563 N.Y.S.2d 62, 564 N.E.2d 672, 1990 N.Y. LEXIS 3376 (N.Y. 1990).

Court of Claims properly granted summary judgment to state as to portion of defamation claim against it where claimant failed to allege specific words complained of; denial of summary judgment pending further discovery would be inappropriate 3 ½ years after claim was filed. Mahoney v Temporary Com. of Investigation, 165 A.D.2d 233, 565 N.Y.S.2d 870, 1991 N.Y. App. Div. LEXIS 1556 (N.Y. App. Div. 3d Dep't 1991).

Complaint did not state defamation claim against plaintiff's former employer, who allegedly told human resources personnel in other companies that plaintiff was "grossly negligent in discharging his duties," where complaint did not set forth actual words complained of, or specify persons to whom alleged comments were published. Gill v Pathmark Stores, 237 A.D.2d 563, 655 N.Y.S.2d 623, 1997 N.Y. App. Div. LEXIS 3013 (N.Y. App. Div. 2d Dep't 1997).

Plaintiff failed to assert defamation claims with sufficient particularity where he relied on text of third-party paraphrasing of defendant's alleged statements. Ramos v Madison Square Garden Corp., 257 A.D.2d 492, 684 N.Y.S.2d 212, 1999 N.Y. App. Div. LEXIS 398 (N.Y. App. Div. 1st Dep't 1999).

Court should have granted plaintiff's motion to vacate judgment entered on his default in replying to counterclaim sounding in libel and slander where counterclaim failed to recite particular words complained of or identity to whom they were published. Loria v Plesser, 267 A.D.2d 213, 699 N.Y.S.2d 439, 1999 N.Y. App. Div. LEXIS 12540 (N.Y. App. Div. 2d Dep't 1999).

Allegation of complaint that defendants "have told and are continuing to tell various customers at (their pizzeria) that the plaintiff has stolen money from them" failed to comply with requirements of CLS CPLR § 3016(a) that "the defamatory words be set forth in haec verba." Wadsworth v Beaudet, 267 A.D.2d 727, 701 N.Y.S.2d 145, 1999 N.Y. App. Div. LEXIS 13079 (N.Y. App. Div. 3d Dep't 1999).

Former professor's slander per se claim against a college and its president was properly dismissed as the complaint did not set out the allegedly defamatory remarks as required by N.Y. C.P.L.R. § 3016(a). Trakis v Manhattanville Coll., 51 A.D.3d 778, 859 N.Y.S.2d 453, 2008 N.Y. App. Div. LEXIS 4188 (N.Y. App. Div. 2d Dep't 2008).

Analyst's defamation claim against an operator should have been dismissed because the analyst did not plead the specific words allegedly used by the operator, as required by N.Y. C.P.L.R. 3016(a), and offered no excuse for her failure to do so; instead, the analyst appeared to have paraphrased the allegedly defamatory statements. Manas v VMS Assoc., LLC, 53 A.D.3d 451, 863 N.Y.S.2d 4, 2008 N.Y. App. Div. LEXIS 6189 (N.Y. App. Div. 1st Dep't 2008).

Slander claim could not be maintained without setting forth the particulars of the allegedly defamatory statements in the complaint or in the bill of particulars. Zetes v Stephens, 108 A.D.3d 1014, 969 N.Y.S.2d 298, 2013 N.Y. App. Div. LEXIS 5036 (N.Y. App. Div. 4th Dep't 2013).

Student's defamation claim against a university was properly dismissed for failure to state a cause of action because the student did not allege the particular words complained of or show publication, as communications to the student were not publication to a third party, and qualified

privilege protected the university's communications to the university's public safety department. Mitchell v New York Univ. ("NYU"), 129 A.D.3d 542, 12 N.Y.S.3d 30, 2015 N.Y. App. Div. LEXIS 5039 (N.Y. App. Div. 1st Dep't), app. denied, 26 N.Y.3d 908, 40 N.E.3d 577, 18 N.Y.S.3d 599, 2015 N.Y. LEXIS 3483 (N.Y. 2015).

Seller of a business was entitled to summary judgment on the buyer's cause of action alleging the seller published defamatory statements to “certain clients” because the buyer did not set forth the actual words complained of nor specify the persons to whom the seller allegedly published the statements. CSI Group, LLP v Harper, 153 A.D.3d 1314, 61 N.Y.S.3d 592, 2017 N.Y. App. Div. LEXIS 6508 (N.Y. App. Div. 2d Dep't 2017).

Plaintiffs failed to sufficiently plead a defamation cause of action because the complaint did not allege the particular defamatory words, the dates of the alleged statements, or the persons to whom the statements were allegedly published; the defamation claim was also untimely because it was premised upon alleged defamatory statements made more than one year prior to the commencement of the action. Kimso Apts., LLC v Rivera, 180 A.D.3d 1033, 119 N.Y.S.3d 519, 2020 N.Y. App. Div. LEXIS 1406 (N.Y. App. Div. 2d Dep't 2020).

Defendants’ motion to dismiss the defamation action was properly granted because the complaint had to set forth the particular words allegedly constituting defamation, and had to allege the time, place, and manner of the false statement and specify to whom it was made; and, to the extent that the amended complaint alleged that certain alleged defamatory statements were made over a two-year period from 2015 through 2017, those allegations were not sufficiently specific with respect to time. Tsatskin v Kordonsky, 189 A.D.3d 1296, 138 N.Y.S.3d 641, 2020 N.Y. App. Div. LEXIS 7743 (N.Y. App. Div. 2d Dep't 2020).

Defamation causes of action were properly dismissed; the amended complaint did not set forth the persons to whom the statements were allegedly published and, for many of the alleged defamatory statements, failed to set forth the actual words complained of or the time when, place where, and manner in which the statements were made. Nofal v Yousef, 228 A.D.3d 772,

214 N.Y.S.3d 398, 2024 N.Y. App. Div. LEXIS 3247 (N.Y. App. Div. 2d Dep't), app. dismissed, 42 N.Y.3d 1026, 247 N.E.3d 893, 222 N.Y.S.3d 394, 2024 N.Y. LEXIS 1877 (N.Y. 2024).

For the defamation claim, the court found that the plaintiff failed to meet the requirements of N.Y. C.P.L.R. 3016(a) by not identifying any specific defamatory statements in his complaint or affidavit. The court also found that the statements made by the defendant's agents were subject to a qualified privilege because they were made during an investigation into reported misconduct, and the plaintiff failed to show that the statements were made with malice to overcome the privilege; therefore, defendant's motion for summary judgment was granted. Rosen v Chopper, 2025 N.Y. App. Div. LEXIS 3674 (N.Y. App. Div. 3d Dep't 2025).

Counterclaim dismissed where actual defamatory words were not pleaded as required by subd a of CPLR Rule 3016. 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).

Court would dismiss defamation claim where plaintiffs failed to set forth particular words complained of and did not identify persons to whom defendants published defamatory statement. Larson v Albany Med. Ctr., 173 Misc. 2d 508, 662 N.Y.S.2d 224, 1997 N.Y. Misc. LEXIS 348 (N.Y. Sup. Ct. 1997), aff'd, modified, 252 A.D.2d 936, 676 N.Y.S.2d 293, 1998 N.Y. App. Div. LEXIS 8687 (N.Y. App. Div. 3d Dep't 1998).

Where a former employee's defamation claim against his former employer, a city transportation authority and two of its executives, and against a city metropolitan authority and two of its employees, was dismissed because it was time barred and the employee failed to file a required notice before filing suit, the claim failed in any event because the employee failed to allege in his complaint the spoken words that served as the basis of his claim, as required by N.Y. C.P.L.R. § 3016. Hargett v Metro. Transit Auth., 552 F. Supp. 2d 393, 2008 U.S. Dist. LEXIS 30599 (S.D.N.Y. 2008).

13. —Complaint sufficient

Complaint filed by journalist sufficiently alleged cause of action for libel based upon allegedly malicious statements attributed to and published by defendants, impugning journalist's professional ability and integrity, as well as her mental stability. Nichols v Village Voice, Inc., 57 A.D.2d 527, 393 N.Y.S.2d 716, 1977 N.Y. App. Div. LEXIS 11439 (N.Y. App. Div. 1st Dep't 1977).

In libel action, although the article as a whole did not reasonably admit of a defamatory interpretion, the question of whether such an interpretation might reasonably be ascribed to the photographs and headline, when considered apart from the text of the article, was for the jury, precluding the granting of the motion to dismiss the complaint as to such portion. John's 53-26, Inc. v Chilton Co., Div. of American Broadcasting Cos., 83 A.D.2d 830, 441 N.Y.S.2d 556, 1981 N.Y. App. Div. LEXIS 15202 (N.Y. App. Div. 2d Dep't 1981).

In a libel action, plaintiff's complaint was sufficient notwithstanding that it did not allege "the specific words complained of" as required by CPLR 3016 where plaintiff annexed to the complaint an 11,700-word article in which references to plaintiff were widespread and consistent and which article as a whole left the unmistakeable impression that the author believed plaintiff to be incompetent in his profession. Pappalardo v Westchester Rockland Newspapers, Inc., 101 A.D.2d 830, 475 N.Y.S.2d 487, 1984 N.Y. App. Div. LEXIS 18496 (N.Y. App. Div. 2d Dep't 1984), aff'd, 64 N.Y.2d 862, 487 N.Y.S.2d 325, 476 N.E.2d 651, 1985 N.Y. LEXIS 16048 (N.Y. 1985).

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).

Action for defamation met specificity requirement of CLS CPLR § 3016(a) and sufficiently met publication requirement where physician's complaint quoted statements impugning his professional ability and alleged that statements were made to other staff members, patients, and potential patients, and in response to defendants' motion to dismiss, he appended documents containing alleged defamatory statements and indicating people to whom they were published. Chime v Sicuranza, 221 A.D.2d 401, 633 N.Y.S.2d 536, 1995 N.Y. App. Div. LEXIS 11974 (N.Y. App. Div. 2d Dep't 1995), overruled in part, Taggart v Costabile, 131 A.D.3d 243, 14 N.Y.S.3d 388, 2015 N.Y. App. Div. LEXIS 5349 (N.Y. App. Div. 2d Dep't 2015).

Allegation that defendant told plaintiff's co-employees that he had "stalked" his immediate superiors (which, if true, would constitute first degree harassment) was sufficiently specific to satisfy requirements of CLS CPLR § 3016(a) and thus supported defamation cause of action; however, statements accusing plaintiff of stalking, if made before stalking was criminalized, would not be defamatory. DeFilippo v Xerox Corp., 223 A.D.2d 846, 636 N.Y.S.2d 463, 1996 N.Y. App. Div. LEXIS 129 (N.Y. App. Div. 3d Dep't), app. dismissed, 87 N.Y.2d 1056, 644 N.Y.S.2d 147, 666 N.E.2d 1061, 1996 N.Y. LEXIS 1117 (N.Y. 1996).

Mother was not entitled to dismissal of father's defamation claims arising from her repeated allegations of his sexual molestation and physical abuse of their children where his complaint set forth particular words complained of as well as time and manner of her statements and persons to whom they were made, and thus his allegations were sufficiently detailed under CLS CPLR § 3016 to withstand motion to dismiss. Dobies v Brefka, 263 A.D.2d 721, 694 N.Y.S.2d 499, 1999 N.Y. App. Div. LEXIS 8032 (N.Y. App. Div. 3d Dep't 1999).

Dismissal of the teacher's defamation claim under N.Y. C.P.L.R. 3211(a) was error because the allegation that the defamation caused her economic harm through revocation of her professional teaching license was sufficient. Pursuant to N.Y. C.P.L.R. 3016, the allegations reciting the content of the principal's letters contained sufficient specificity as to the exact words and the

time and manner in which the principal's assertions were made; the teacher's complaint sufficiently refuted the claims as it repeatedly referred to the principal's statements about the teacher as false or fraudulent representations or misrepresentations; and the content and context of the statements were sufficient to potentially establish malice. Pezhman v City of New York, 29 A.D.3d 164, 812 N.Y.S.2d 14, 2006 N.Y. App. Div. LEXIS 3452 (N.Y. App. Div. 1st Dep't 2006).

Attachment of newspaper articles alleged to libel the plaintiff to plaintiff's complaint constitutes sufficient compliance with CPLR 3016(a). 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).

Former employee adequately stated a claim under N.Y. C.P.L.R. 3016(b) with respect to a claim of compelled self-defamation to the New York State Board of Education, as she had to state the circumstances surrounding her termination in regard to renewing her state medical license. Kiblitsky v Lutheran Med. Ctr., 922 N.Y.S.2d 769, 32 Misc. 3d 575, 2011 N.Y. Misc. LEXIS 2148 (N.Y. Sup. Ct. 2011).

Trial court erred in granting defendant's motion to dismiss plaintiff's defamation claim, which alleged that defendant made a false statement that the then 13-year-old plaintiff had sexual intercourse with her father, because, as required by CPLR 3016(a), the cause of action set forth the "particular words" alleged to be false and defamatory. G.L. v Markowitz, 101 A.D.3d 821, 955 N.Y.S.2d 643, 2012 N.Y. App. Div. LEXIS 8427 (N.Y. App. Div. 2d Dep't 2012).

In a financial services company's suit against a former officer and director for conversion and breach of fiduciary duty, the former officer's defamation counterclaim against the company and its current officers was properly pleaded under N.Y. C.P.L.R. 3016(a) because he set forth the particular words complained of, who made the statements, to whom they were made, and when they were made. Reserve Solutions, Inc. v Vernaglia, 438 F. Supp. 2d 280, 2006 U.S. Dist. LEXIS 41430 (S.D.N.Y. 2006).

Plaintiff made sufficient allegations to support its claim for slander with respect to certain customers where despite not pleading the precise words, plaintiff did identify the names of the customers to whom the statements were communicated, the time frame during which the statements were made, and most importantly, the message communicated to the third-parties. General Sec., Inc. v APX Alarm Sec. Solutions, Inc., 647 F. Supp. 2d 207, 2009 U.S. Dist. LEXIS 75285 (N.D.N.Y. 2009).

14. — —Specific words complained of set forth

The defendant's alleged statement that "I'll call the cops to raid the apartment upstairs. I know what's going on up there and I'm not running a whore house" is actionable, and plaintiff's general allegation that the words spoken pertained to her was sufficient to state a cause of action for slander. Conner v Niemiec, 25 A.D.2d 857, 269 N.Y.S.2d 788, 1966 N.Y. App. Div. LEXIS 4308 (N.Y. App. Div. 2d Dep't 1966).

Court properly denied the motion for dismissal of the physician's claim of defamation with respect to three written communications regarding suspension of his clinical privileges because the hospital and its employees failed to establish the defense that they did not act with malice, the single-publication rule did not apply, and the complaint set forth the particular words complained of. Colantonio v Mercy Med. Ctr., 115 A.D.3d 902, 982 N.Y.S.2d 563, 2014 N.Y. App. Div. LEXIS 1978 (N.Y. App. Div. 2d Dep't 2014).

15. —Illustrative cases

The trial court did not abuse its discretion in determining that plaintiff in an action for libel or slander had established a meritorious claim, or in conditioning dismissal of the action upon plaintiff's service of a complaint within 20 days, in view of the requirement of CPLR § 3016(a) that in an action for libel or slander "the particular words complained of shall be set forth in the complaint," in that defendant was fully aware from the verified summons of the nature of the

action except for the words complained of. Donnelly v Pepicelli, 58 N.Y.2d 268, 460 N.Y.S.2d 781, 447 N.E.2d 724, 1983 N.Y. LEXIS 2918 (N.Y. 1983).

Requirement that plaintiff in libel action set forth particular words he claims are libelous was met when plaintiff included excerpt of allegedly libelous article in his complaint. Ostrer v Reader's Digest Ass'n, 48 A.D.2d 856, 368 N.Y.S.2d 575, 1975 N.Y. App. Div. LEXIS 10083 (N.Y. App. Div. 2d Dep't 1975).

In an action to enforce a non-competition covenant in an employment contract and to recover damages for misappropriation of trade secrets, the defendant’s second and third counterclaims satisfied the requirements of CPLR § 3016(a) governing libel and slander actions, where a copy of an allegedly libelous letter was attached to the amended answer and was expressly incorporated in the second counterclaim and where the third counterclaim alleged specific slanderous statements made by the third-party defendant in a telephone conversation; however, two paragraphs of the amended answer alleging additional defamations failed to set forth the particular words complained of and failed to meet the requirements of CPLR § 3014 that separate causes of action be separately stated and numbered and would be struck. Liberally construed, the pleading sufficiently alleged separate causes of action against the third-party defendant to withstand a motion to dismiss made pursuant to CPLR § 3211(a)(7), despite the fact that it did not in make clear whether the defendant was not an individual or corporate or partnership capacity. David J. Cogan Management Co. v Lipset, 79 A.D.2d 918, 434 N.Y.S.2d 417, 1981 N.Y. App. Div. LEXIS 9790 (N.Y. App. Div. 1st Dep't 1981).

Counterclaim for slander failed to set forth “particular words,” as required by CLS CPLR § 3016, where it alleged only that party “engaged in a vicious course of action which has denigrated” corporation’s “professional and technical expertise.” Lexow & Jenkins, P. C. v Hertz Commercial Leasing Corp., 122 A.D.2d 25, 504 N.Y.S.2d 192, 1986 N.Y. App. Div. LEXIS 59096 (N.Y. App. Div. 2d Dep't 1986).

Discharged bank employee failed to state cause of action for defamation based on vague allegations that her discharge after failing polygraph tests (given to all employees following

discovery of cash shortage at bank) “foreseeably suggested and implied” that she committed workplace theft, since such allegations failed to comply with specificity requirements contained in CLS CPLR § 3016; letter of reference sent to prospective employer merely provided employee’s dates of employment, stating that absence of additional information did not reflect on individual employee, and even if letter could be construed as defamatory, employee failed to allege that its qualifiedly privileged contents were product of actual malice. Buffolino v Long Island Sav. Bank, FSB, 126 A.D.2d 508, 510 N.Y.S.2d 628, 1987 N.Y. App. Div. LEXIS 41650 (N.Y. App. Div. 2d Dep't 1987).

In action by attorney for equitable accounting and winding up of affairs of former law partnership, plaintiff was entitled to dismissal of counterclaim for defamation alleging that he gave sworn affidavit in Office of Court Administration stating that defendant attorney had failed to file retainer statement as to personal injury action in accordance with court rules since counterclaim did not set forth particular words alleged to be defamatory, and reading of allegations of counterclaim indicated that plaintiff did not charge professional incompetence, but merely stated that defendant did not file retainer statement. Erlitz v Segal, Liling & Erlitz, 142 A.D.2d 710, 530 N.Y.S.2d 848, 1988 N.Y. App. Div. LEXIS 8012 (N.Y. App. Div. 2d Dep't 1988).

Employee of insurance company failed to state cause of action for slander based on his claim that 2 former supervisors commented that he had granted favorable terms to other men based on his sexual interest in them, and that he had AIDS, since alleged statements were not pleaded with requisite specificity, and persons who heard statements were not identified. Horowitz v Aetna Life Ins., 148 A.D.2d 584, 539 N.Y.S.2d 50, 1989 N.Y. App. Div. LEXIS 3929 (N.Y. App. Div. 2d Dep't 1989).

Action grows out of 1980 contract dispute between defendant and fabric manufacturer of which plaintiff is sole shareholder; arbitration proceedings resulted in award of $24,500 to manufacturer on June 14, 1987; in July of 1987 plaintiff commenced action in Supreme Court to vacate award; action was removed to United States District Court; petition was dismissed by District Court as time barred; on December 22, 1987 plaintiff, individually, commenced this suit;

six causes of action all relate to arbitration proceedings and seek $374,000 in damages–shareholder may not secure personal recovery for alleged injury to corporation; therefore, court properly dismissed for lack of standing all but fifth cause of action alleging defamation–fifth cause was also properly dismissed; actual words used are not set forth as required by CPLR 3016 (a); alleged remarks were expression of opinion which is not actionable. Schwartz v Nordstrom, Inc., 160 A.D.2d 240, 553 N.Y.S.2d 684, 1990 N.Y. App. Div. LEXIS 3755 (N.Y. App. Div. 1st Dep't), app. dismissed, 76 N.Y.2d 845, 560 N.Y.S.2d 129, 559 N.E.2d 1288, 1990 N.Y. LEXIS 1995 (N.Y. 1990), app. denied, 76 N.Y.2d 711, 563 N.Y.S.2d 62, 564 N.E.2d 672, 1990 N.Y. LEXIS 3376 (N.Y. 1990).

Complaint in libel action failed to comply with requirement of CLS CPLR § 3016(a) where plaintiffs merely set forth existence of improper default judgment, and failure of satisfaction of judgment to indicate that debt was never owed, and vaguely alleged that satisfaction of judgment might negatively reflect on their credit rating. Varela v Investors Ins. Holding Corp., 185 A.D.2d 309, 586 N.Y.S.2d 272, 1992 N.Y. App. Div. LEXIS 9070 (N.Y. App. Div. 2d Dep't 1992), aff'd, 81 N.Y.2d 958, 598 N.Y.S.2d 761, 615 N.E.2d 218, 1993 N.Y. LEXIS 1123 (N.Y. 1993).

Defamation action, based on anonymous letter distributed by parishioner at mass, could not withstand motion to dismiss where plaintiff had not pleaded special damages, and letter, which did not refer to plaintiff by name, merely stated that “(a)mongst us is a modern time Judas” who divided church community, “who preys on the week and elderly ... should not be allowed to continue in the quest of becoming a Lay Minister” and was subjecting pastor to “the constant torment of (his) false accusations.” Wadsworth v Beaudet, 267 A.D.2d 727, 701 N.Y.S.2d 145, 1999 N.Y. App. Div. LEXIS 13079 (N.Y. App. Div. 3d Dep't 1999).

Father failed to state cause of action for defamation, based on mother’s statements to “various professionals and authorities” regarding filing of child neglect petition against father, where complaint merely reiterated allegations contained in neglect petition without attributing or otherwise connecting any of those allegations to any particular statements made by mother

during relevant period. 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).

Trial court properly denied the insurance company officers and directors' motion to dismiss, as the rehabilitator properly pled a cause of action against them for breach of fiduciary duty; the many contentions in the complaint included factual allegations of self-dealing and conflicts of interest, some of which allegedly enriched certain defendants personally at the expense of the insurance company. Serio v Rhulen, 24 A.D.3d 1092, 806 N.Y.S.2d 283, 2005 N.Y. App. Div. LEXIS 14503 (N.Y. App. Div. 3d Dep't 2005).

Because the comments posted by four anonymous defendants on a newspaper's website constituted expressions of protected opinion, which could not form the basis of a defamation claim under N.Y. C.P.L.R. 3016(a), the newspaper was not required to disclose their identities under N.Y. C.P.L.R. 3102. Varrenti v Gannett Co., Inc., 929 N.Y.S.2d 671, 33 Misc. 3d 405, 2011 N.Y. Misc. LEXIS 4163 (N.Y. Sup. Ct. 2011).

Plaintiff's defamation claim failed to state a claim because it did not specify the allegedly defamatory statements, when and to whom they were made, as required by N.Y. CPLR 3016(a). Fast Track Constr. Sys., Inc v Turken Found. Inc, 2024 N.Y. Misc. LEXIS 14169 (N.Y. Sup. Ct. 2024).

Former teacher's complaint fails to state a claim of libel or slander where the former teacher did not identify the words complained of, and even assuming the employment reference given to the defendants was defamatory, the defendants could not be held liable merely for receiving it. Oparaji v N.Y. City Dep't of Educ., 2005 U.S. Dist. LEXIS 13043 (E.D.N.Y. June 14, 2005), aff'd, 172 Fed. Appx. 352, 2006 U.S. App. LEXIS 5692 (2d Cir. N.Y. 2006).

16. Fraud or mistake

Bare allegations of fraud, without any allegations of the details constituting the wrong, are not sufficient to sustain 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 in action to recover damages for fraud and conspiracy was legally insufficient where it failed to state in detail the circumstances constituting the wrong. Marcucilli v Alicon Corp., 41 A.D.2d 932, 343 N.Y.S.2d 367, 1973 N.Y. App. Div. LEXIS 4529 (N.Y. App. Div. 2d Dep't 1973).

In order to plead valid cause of action sounding in fraud, complaint must set forth all of elements of fraud including making of material representations by defendant to plaintiff. Garelick v Carmel, 141 A.D.2d 501, 529 N.Y.S.2d 126, 1988 N.Y. App. Div. LEXIS 6328 (N.Y. App. Div. 2d Dep't 1988).

Complaint sufficiently stated a cause of action alleging fraud with respect to the alleged misrepresentations regarding a lender’s integrity and that the lender would hold the floating-rate notes as collateral during the pendency of the “loan; further, the trial court properly determined that any misrepresentations by an agent that the transaction was tax-free were, standing alone, not actionable, but, if the assignee was able to establish that the agent, with the intent to induce reliance, misrepresented the underlying nature of the transaction for the purpose of deceiving the assignee as to the tax consequences of the transaction, the assiginee may have been able to recover any proximately caused damages under a theory of fraud. The appellate court rejected the contention that the fraud cause of action should have been dismissed on the ground that the assignor was a sophisticated investor. Carbon Capital Mgt., LLC v American Express Co., 88 A.D.3d 933, 932 N.Y.S.2d 488, 2011 N.Y. App. Div. LEXIS 7449 (N.Y. App. Div. 2d Dep't 2011).

Causes of action for breach of fiduciary duty, fraud, and aiding and abetting fraud were not pleaded with sufficient detail in a suit brought against parties who allegedly received wrongful transfers of property during the pendency of a matrimonial action. Fraudulent conveyances were adequately pleaded as to some defendants but not others. Swartz v Swartz, 145 A.D.3d 818, 44 N.Y.S.3d 452, 2016 N.Y. App. Div. LEXIS 8259 (N.Y. App. Div. 2d Dep't 2016).

Where a complaint set forth a cause of action for willful misconduct without stating in detail the circumstances constituting the wrong, the special pleading requirements of CPLR 3016 (subd [b]) were not complied with and the cause of action is dismissed. Piercy v Citibank N. A., 101 Misc. 2d 302, 424 N.Y.S.2d 76, 1978 N.Y. Misc. LEXIS 2917 (N.Y. Sup. Ct. 1978), aff'd, Piercy v Citibank, N.A., 48 N.Y.2d 900, 424 N.Y.S.2d 897, 400 N.E.2d 1349, 1979 N.Y. LEXIS 2515 (N.Y. 1979).

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).

In a contractual dispute, the fraud claim failed because the complaint failed to satisfy the rule as vague references to telephone calls without identifying what was said and when was not enough to claim fraudulent inducement, and the argument that defendant failed to perform as promised was duplicative of the breach of contract cause of action. CBH Med., P.C. v Merit Sys., LLC, 77 Misc. 3d 418, 178 N.Y.S.3d 886, 2022 N.Y. Misc. LEXIS 6163 (N.Y. Sup. Ct. 2022), dismissed in part, 2022 N.Y. Misc. LEXIS 8746 (N.Y. Sup. Ct. Nov. 16, 2022).

Unpublished decision: In an action arising out of allegations of breach of contract, fraud in the inducement, and fraud, defendant's motion to dismiss was granted because defendant established its entitlement to dismissal of the breach of contract claim, the fraud claim lacked the requisite specificity required by the Civil Practice Law and Rules, and plaintiff failed to allege facts to support the claims for fraud, conversion, and unjust enrichment. Popescu v Austin, 2022 N.Y. Misc. LEXIS 1988 (N.Y. Sup. Ct. 2022).

17. —Elements

In order for a patient to bring an action against a treating physician based on intentional fraud, which stems from alleged medical malpractice, it must be established that the physician knew or had reason to know of the fact of his malpractice and of the injury suffered by his patient in consequence thereof, and also that, knowing it to be false at the time, the physician thereafter made material, factual misrepresentations to the patient with respect to the subject matter of the malpractice and the therapy appropriate to its cure, on which the patient justifiably relied. Simcuski v Saeli, 44 N.Y.2d 442, 406 N.Y.S.2d 259, 377 N.E.2d 713, 1978 N.Y. LEXIS 1991 (N.Y. 1978).

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).

Plaintiff's claim for a reformation of voting trust certificates to enable the holders thereof to remain stockholding members of the merged enterprise, or alternatively entitle them to the stated investment value of their original shares, on the theory that by a mutual mistake the provisions had inadvertently been omitted from the agreements was not sufficient to permit reformation under CPLR 3016(b). Abajian v Compagnie Generale De Telegraphie Sans Fil, 23 A.D.2d 553, 256 N.Y.S.2d 768, 1965 N.Y. App. Div. LEXIS 4837 (N.Y. App. Div. 1st Dep't 1965), aff'd, 17 N.Y.2d 553, 268 N.Y.S.2d 321, 215 N.E.2d 505, 1966 N.Y. LEXIS 1573 (N.Y. 1966).

Absent present intent to deceive, statement of future intentions, promises or expectations is not actionable on grounds of fraud; complaint based upon statement of future intention must allege facts to show that defendant, at time promissory representation was made, never intended to

honor or act on his statement and moreover, any inference drawn from fact that expectation did not occur is not sufficient to sustain plaintiff's burden of showing that defendant falsely stated his intentions. 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).

A cause of action for fraud would be dismissed where the plaintiff failed to allege either a present intent to defraud on the part of defendants or actual assertions from which such an intent could be inferred. Senerchia Realty Corp. v Yonkers Community Development Agency, 80 A.D.2d 889, 437 N.Y.S.2d 124, 1981 N.Y. App. Div. LEXIS 10752 (N.Y. App. Div. 2d Dep't 1981).

A fraud counterclaim was insufficient to state a cause of action and plaintiff's motion to dismiss was improperly denied, where the counterclaim lacked a named plaintiff and did not state the conduct these plaintiffs allegedly engaged in which constituted the complained-of wrong. Abrams v Community Services, Inc., 86 A.D.2d 555, 446 N.Y.S.2d 74, 1982 N.Y. App. Div. LEXIS 15080 (N.Y. App. Div. 1st Dep't 1982).

Buyer corporation's common-law fraud action, for aiding in supposed scheme to promote sale of stock at inflated price, was properly dismissed as to seller corporation's officers and financial counseling firm where buyer relied solely on express warranties made directly by seller corporation and failed to connect seller's officers or financial counseling firm with making of those warranties, and where seller, although alleging that such defendants participated in preparation of false projections, failed to allege that defendants' acts were part of common scheme to have projections included in warranties. CPC Int'l Inc. v McKesson Corp., 120 A.D.2d 221, 507 N.Y.S.2d 984, 1986 N.Y. App. Div. LEXIS 60009 (N.Y. App. Div. 1st Dep't 1986), modified, 70 N.Y.2d 268, 519 N.Y.S.2d 804, 514 N.E.2d 116, 1987 N.Y. LEXIS 18546 (N.Y. 1987).

Bare allegations of fraud are insufficient to state cause of action; to allege fraud, party must allege all essential elements and each must be supported by factual allegations sufficient to

satisfy CLS CPLR § 3016(b). Edison Stone Corp. v 42nd Street Dev. Corp., 145 A.D.2d 249, 538 N.Y.S.2d 249, 1989 N.Y. App. Div. LEXIS 2073 (N.Y. App. Div. 1st Dep't 1989).

It was not abuse of discretion to deny plaintiff's motion to amend complaint; plaintiff's proposed amended complaint, seeking to add two new causes of action for fraud and misrepresentation based upon same factual allegations as in original complaint, failed to state cognizable claims, since cause of action for fraud does not arise when only fraud alleged relates to breach of contract; moreover, proposed fraud claims were legally deficient because they relied upon alleged misrepresentations of future intent and failed to plead fraud with sufficient particularity as required by CPLR 3016 (b). Glenn Partition, Inc. v Trustees of Columbia University in New York, 169 A.D.2d 488, 564 N.Y.S.2d 361, 1991 N.Y. App. Div. LEXIS 331 (N.Y. App. Div. 1st Dep't 1991).

In order to avoid release on ground of fraud, party must allege every material element of that cause of action with specific and detailed evidence in record sufficient to prove prima facie case. Shklovskiy v Khan, 273 A.D.2d 371, 709 N.Y.S.2d 208, 2000 N.Y. App. Div. LEXIS 7095 (N.Y. App. Div. 2d Dep't 2000).

Limited liability company member's N.Y. C.P.L.R. 3016(b) cause of action failed to state a claim for fraud against an attorney, because it did not allege a material misrepresentation of fact or a misleading partial disclosure with an intent to deceive, or that the member relied on the attorney's special knowledge. Barbarito v Zahavi, 107 A.D.3d 416, 968 N.Y.S.2d 422, 2013 N.Y. App. Div. LEXIS 3866 (N.Y. App. Div. 1st Dep't 2013).

Plaintiffs sufficiently pleaded fraud claims because the complaint alleged, inter alia, the creation and presentation for payment to plaintiffs of false purchase orders, defendants knew that the work described on the bogus purchase orders was false, plaintiffs relied on the purchase orders in making unnecessary payments, and plaintiffs were damaged as a result of defendants' fraud. Cohen Bros. Realty Corp. v Mapes, 181 A.D.3d 401, 119 N.Y.S.3d 478, 2020 N.Y. App. Div. LEXIS 1476 (N.Y. App. Div. 1st Dep't 2020).

Trial court properly sustained fraud claim against defendant because plaintiff sufficiently alleged misrepresentations of “accurate and objective” diamond gradings by the overseas branches of defendant, as well as misrepresentations of “consistent” gradings by defendant in New York, and plaintiff also pleaded justifiable reliance on such misrepresentations in purchasing diamonds with overseas certificates with the expectation that defendant in New York would issue consistent appraisals. KS Trade LLC v International Gemological Inst., Inc., 190 A.D.3d 556, 141 N.Y.S.3d 452, 2021 N.Y. App. Div. LEXIS 260 (N.Y. App. Div. 1st Dep't 2021).

Allegation of fraud may be based on act or conduct of defendant that is intended to deceive plaintiff; concealment of facts one has obligation to disclose with intent to defraud has same legal effect as affirmative misrepresentation. Banco Nacional Ultramarino, S.A. v Chan, 169 Misc. 2d 182, 641 N.Y.S.2d 1006, 1996 N.Y. Misc. LEXIS 133 (N.Y. Sup. Ct. 1996), aff'd, 240 A.D.2d 253, 659 N.Y.S.2d 734, 1997 N.Y. App. Div. LEXIS 6510 (N.Y. App. Div. 1st Dep't 1997).

To prove fraudulent concealment under New York law, a plaintiff must prove, in addition to all of the elements of common law fraud, that the defendant had a duty to disclose material information. For both common law fraud and fraudulent concealment, the more stringent N.Y. C.P.L.R. § 3016(b) pleading rule requires that the circumstances constituting the wrong shall be stated in detail. In re WorldCom, Inc., 374 B.R. 94, 2007 Bankr. LEXIS 2756 (Bankr. S.D.N.Y. 2007).

Plaintiffs failed to state a claim for fraud under New York law and to plead fraud with particularity where even if debtor's actions and statements were misrepresentations, plaintiffs could not show that they were made for the purpose of inducing their reliance or that they changed their own position in reliance on them. O'Hearn v Gormally (In re Gormally), 550 B.R. 27, 2016 Bankr. LEXIS 1086 (Bankr. S.D.N.Y. 2016).

18. — —Requirement of specificity

Specificity is required in pleading of fraud because allegation of fraud raises question respecting subjective intent in forming charged party’s conduct; often it is only through objective

circumstances of alleged fraud that subjective element of fraud is susceptible of demonstration and, therefore, circumstances of tort must be stated with sufficient specificity to permit inference of fraudulent intent. Barclay Arms, Inc. v Barclay Arms Associates, 144 A.D.2d 287, 534 N.Y.S.2d 168, 1988 N.Y. App. Div. LEXIS 11243 (N.Y. App. Div. 1st Dep't 1988), aff'd, 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 fraud and for aiding and abetting fraud, brought by recording artist against, inter alia, accounting firm hired by his manager to prepare quarterly statements of his net worth, relationship between recording artist and accounting firm was sufficiently intimate to be equated with privity where (1) recording artist stated in affidavit that manager selected accounting firm for him and that firm had continuously performed accounting services for him, and (2) fees of accounting firm were paid with funds of recording artist. Joel v Weber, 166 A.D.2d 130, 569 N.Y.S.2d 955, 1991 N.Y. App. Div. LEXIS 7102 (N.Y. App. Div. 1st Dep't 1991).

Where liability for fraud is to be extended beyond principal actors, to those who, although not participants in fraudulent scheme, are said to have aided in an encouraged its commission, it is especially important that specificity requirement of CLS CPLR § 3016(b) be strictly adhered to. 125 Assocs. v Cralin Trading Assocs., L.P., 196 A.D.2d 630, 601 N.Y.S.2d 196, 1993 N.Y. App. Div. LEXIS 8217 (N.Y. App. Div. 2d Dep't 1993).

Trial court properly dismissed a client’s cause of action against lawyers to recover damages for fraud because the client failed to allege or provide details of any misstatements or misrepresentations made to her specifically by the lawyers as required by N.Y. C.P.L.R. 3016(b). Scott v Fields, 85 A.D.3d 756, 925 N.Y.S.2d 135, 2011 N.Y. App. Div. LEXIS 4928 (N.Y. App. Div. 2d Dep't 2011).

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).

While an owner’s complaint, pursuant to N.Y. C.P.L.R. 3016(b), adequately stated a cause of action to recover damages for fraud against a company based upon the alleged misrepresentations of its employee, the existence of a contract of sale precluded a claim under the theory of implied contract. Scott v Fields, 92 A.D.3d 666, 938 N.Y.S.2d 575, 2012 N.Y. App. Div. LEXIS 1015 (N.Y. App. Div. 2d Dep't 2012).

Because an executor’s legal malpractice cause of action was untimely under N.Y. C.P.L.R. 214(6), and because the executor’s fraud cause of action was duplicative of the legal malpractice claim and was not pleaded with the particularity required by N.Y. C.P.L.R. 3016(b), the trial court should have granted the law firm’s motion to dismiss. Pace v Raisman & Assoc., Esqs., LLP, 95 A.D.3d 1185, 945 N.Y.S.2d 118, 2012 N.Y. App. Div. LEXIS 3960 (N.Y. App. Div. 2d Dep't 2012).

Owners’ cause of action for fraudulent concealment was properly dismissed for failure to comply with N.Y. C.P.L.R. 3016(b) because the complaint did not show how the manufacturers knowingly concealed their alleged knowledge of the defects in the windows and doors. Schwatka v Super Millwork, Inc., 106 A.D.3d 897, 965 N.Y.S.2d 547, 2013 N.Y. App. Div. LEXIS 3392 (N.Y. App. Div. 2d Dep't 2013).

Third-party complaint contained sufficient allegations of fact from which it could be inferred that the title company was aware of the alleged fraudulent scheme and intended to aid in the commission thereof; the Supreme Court should have denied that branch of the title company's motion which was to dismiss the third-party fraud cause of action insofar as asserted against it. JP Morgan Chase Bank, N.A. v Hall, 122 A.D.3d 576, 996 N.Y.S.2d 309, 2014 N.Y. App. Div. LEXIS 7467 (N.Y. App. Div. 2d Dep't 2014).

Guarantor failed to sufficiently plead a fraud claim against the law firm that represented the seller in connection with the sale of stock because the guarantor did not allege, with particularity, what specifically the law firm represented as to how or when the guarantor would acquire any of the seller's shares in the corporation. Fulton v Hankin & Mazel, PLLC, 132 A.D.3d 806, 18 N.Y.S.3d 654, 2015 N.Y. App. Div. LEXIS 7692 (N.Y. App. Div. 2d Dep't 2015).

Plaintiff insurer's misrepresentation claim was properly dismissed because the complaint contained insufficient information about the insurance policies plaintiff was allegedly fraudulently induced to issue, and the circumstances under which those policies were issued. However, plaintiff's claim should not have been dismissed with prejudice, but rather, plaintiff had to be given the opportunity to replead. CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC, 146 A.D.3d 60, 44 N.Y.S.3d 2, 2016 N.Y. App. Div. LEXIS 7872 (N.Y. App. Div. 1st Dep't 2016).

Causes of action alleging fraud, fraudulent concealment, aiding and abetting fraud, and breach of fiduciary duty lacked specific factual allegations and did not satisfy the particularity requirements. The complaint adequately pleaded a cause of action alleging aiding and abetting breach of fiduciary duty by alleging a breach, knowing participation in that breach, and resulting damages. Weinstein v CohnReznick, LLP, 144 A.D.3d 1140, 43 N.Y.S.3d 387, 2016 N.Y. App. Div. LEXIS 7919 (N.Y. App. Div. 2d Dep't 2016).

Supreme court should have granted an insurer's motion to summary judgment as to an insured's fraud claims because the insured's complaint did not allege any specific misrepresentation or omission by the insurer upon which he relied to his detriment. Nafash v Allstate Ins. Co., 137 A.D.3d 1088, 28 N.Y.S.3d 381, 2016 N.Y. App. Div. LEXIS 2052 (N.Y. App. Div. 2d Dep't 2016).

Investor failed to sufficiently plead a fraud claim against the former controlling shareholders because there were no misrepresentations or omissions attributed directly to the shareholders, the investor had total, unfettered access to every aspect of company information both before and after its initial investment, and, as such, the investor had the means to discover the truth behind any false claims about the condition of the company and whether this was a feasible investment. MP Cool Invs. Ltd. v Forkosh, 142 A.D.3d 286, 40 N.Y.S.3d 1, 2016 N.Y. App. Div. LEXIS 5823 (N.Y. App. Div. 1st Dep't), app. denied, 28 N.Y.3d 911, 69 N.E.3d 1023, 47 N.Y.S.3d 227, 2016 N.Y. LEXIS 3873 (N.Y. 2016).

In an action by investors against collateralized debt obligation fund managers and others, a fraudulent misrepresentation claim was sufficiently pled, based on allegations that

misrepresentations about the funds were knowingly made to induce the investments, and such misrepresentations were reasonably relied upon. Norddeutsche Landesbank Girozentrale v Tilton, 149 A.D.3d 152, 48 N.Y.S.3d 98, 2017 N.Y. App. Div. LEXIS 1461 (N.Y. App. Div. 1st Dep't 2017).

Fraud allegations lacked particularity because the complaint failed to set forth any dates or details of the alleged misstatements or misrepresentations. Lee Dodge, Inc. v Sovereign Bank, N.A., 148 A.D.3d 1007, 51 N.Y.S.3d 531, 2017 N.Y. App. Div. LEXIS 1988 (N.Y. App. Div. 2d Dep't 2017).

Buyer's fraud claim against a broker was properly dismissed because the claim's bare and conclusory allegations, with no supporting detail, were insufficient. Saul v Cahan, 153 A.D.3d 947, 61 N.Y.S.3d 265, 2017 N.Y. App. Div. LEXIS 6373 (N.Y. App. Div. 2d Dep't 2017).

Plaintiff failed to plead fraud with the requisite particularity when it failed to allege any specific facts that, if true, would give rise to a reasonable inference that some connection existed between defendants and the fraudulent calls in question. Cronos Group Ltd. v XComIP, LLC, 156 A.D.3d 54, 64 N.Y.S.3d 182, 2017 N.Y. App. Div. LEXIS 6500 (N.Y. App. Div. 1st Dep't 2017).

Investor did not sufficiently plead a fraud claim against an online broker because the investor failed to allege specifically that the online broker knew or should have known the monthly statements it sent to the investor reported a false or inaccurate value, and the allegations were not otherwise pleaded with particularity. Barrett v Grenda, 154 A.D.3d 1275, 62 N.Y.S.3d 673, 2017 N.Y. App. Div. LEXIS 7023 (N.Y. App. Div. 4th Dep't 2017).

Borrower's fraud claim did not raise a material issue of fact in a foreclosure action because, inter alia, the fraud allegations in the answer were not stated with particularity to include forgery of any documents, the signature on the notes was deemed to be legitimate based upon the borrower's failure to deny in the answer that the notes contained his signature, and even if the notes had been forged, the borrower could be deemed to have adopted any unauthorized

signature. BAC Home Loans Servicing, LP v Uvino, 155 A.D.3d 1155, 64 N.Y.S.3d 377, 2017 N.Y. App. Div. LEXIS 7751 (N.Y. App. Div. 3d Dep't 2017), overruled in part, MTGLQ Invs., L.P. v Miciotta, 204 A.D.3d 1119, 166 N.Y.S.3d 349, 2022 N.Y. App. Div. LEXIS 2208 (N.Y. App. Div. 3d Dep't 2022).

Homeowner's failed to plead, with sufficient particularity, a fraudulent inducement claim against a builder because the lack of particularity doomed the general statement that the builder misrepresented its degree of expertise and competence with regard to the project, and the other allegations related to statements of future intent that were not actionable. Luckow v RBG Design-Build, Inc., 156 A.D.3d 1289, 68 N.Y.S.3d 549, 2017 N.Y. App. Div. LEXIS 9272 (N.Y. App. Div. 3d Dep't 2017).

In a city development agency's proceeding to acquire hotel property by eminent domain, fraudulent conveyance claims by the judgment creditor were not subject to the particularity requirement for pleading purposes because they were based on constructive fraud. Matter of City of Syracuse Indus. Dev. Agency (Amadeus Dev., Inc.), 156 A.D.3d 1329, 68 N.Y.S.3d 596, 2017 N.Y. App. Div. LEXIS 9117 (N.Y. App. Div. 4th Dep't 2017), reh'g denied, app. denied, 160 A.D.3d 1506, 72 N.Y.S.3d 857, 2018 N.Y. App. Div. LEXIS 2953 (N.Y. App. Div. 4th Dep't 2018).

Parent failed to state a viable fraud or misrepresentation cause of action, alleging a teacher maintained an inappropriate relationship with his son, because the parent failed to plead, inter alia, any specific representations by the teacher. Cheslowitz v Board of Trustees of the Knox Sch., 156 A.D.3d 753, 68 N.Y.S.3d 103, 2017 N.Y. App. Div. LEXIS 8910 (N.Y. App. Div. 2d Dep't 2017).

Licensor failed to meet the heightened pleading requirements for fraud because the complaint was devoid of specific factual instances of fraud by the licensee and did not provide any explanation of how the licenses's alleged acts actually violated the securities laws, and, without more, the allegations in the complaint were insufficient to avoid the Exclusive License Agreement's liability-limitation provision. Electron Trading, LLC v Morgan Stanley & Co. LLC,

157 A.D.3d 579, 69 N.Y.S.3d 633, 2018 N.Y. App. Div. LEXIS 389 (N.Y. App. Div. 1st Dep't 2018).

Complaint adequately pleaded fraud with the requisite particularity because plaintiff alleged that two directors were aware of misrepresentations and omissions in the corporation's proxy statement, knew but failed to disclose to a limited liability company or its investors that a person who was prohibited from serving as an officer or director controlled the corporation and knew that the corporation was functionally insolvent. Wimbledon Fin. Master Fund, Ltd. v Weston Capital Mgt. LLC, 160 A.D.3d 596, 76 N.Y.S.3d 121, 2018 N.Y. App. Div. LEXIS 2855 (N.Y. App. Div. 1st Dep't 2018).

Insurer pleaded, with sufficient particularity, a fraud action against an insured's president because the complaint alleged the president intentionally underestimated the insured's gross sales when applying for insurance, and the insurer relied upon that misrepresentation to its detriment, by charging and collecting a lower premium. Minico Ins. Agency, LLC v B&M Cleanup Servs., 165 A.D.3d 776, 86 N.Y.S.3d 515, 2018 N.Y. App. Div. LEXIS 6734 (N.Y. App. Div. 2d Dep't 2018).

Worker on a renovation project sufficiently pleaded, with particularity, a fraud claim against the property owner because the complaint alleged the owner knowingly made misrepresentations to the worker regarding insurance coverage for the renovation project. Robles v Patel, 165 A.D.3d 858, 86 N.Y.S.3d 186, 2018 N.Y. App. Div. LEXIS 6674 (N.Y. App. Div. 2d Dep't 2018).

Worker on a renovation project failed to sufficiently plead, with particularity, a fraud claim against an insurer because the worker failed to adequately allege that the misrepresentations the property owner made to the insurer were made for the purpose of being communicated to the worker in order to induce his reliance thereon or that the misrepresentations were relayed to the worker. Robles v Patel, 165 A.D.3d 858, 86 N.Y.S.3d 186, 2018 N.Y. App. Div. LEXIS 6674 (N.Y. App. Div. 2d Dep't 2018).

Supreme court properly denied the motion to dismiss homeowners' causes of action sounding in fraud, fraudulent inducement, and fraudulent misrepresentation because the complaint pleaded those causes of action with sufficient particularity; the causes of action sounding in fraud, fraudulent inducement, and fraudulent misrepresentation were not duplicative of the breach of contract cause of action. Ramirez v Donado Law Firm, P.C., 169 A.D.3d 940, 95 N.Y.S.3d 103, 2019 N.Y. App. Div. LEXIS 1208 (N.Y. App. Div. 2d Dep't 2019).

Trial court properly denied the lenders' motion to dismiss a contractor's fraud and fraudulent concealment cross-claims because the contractor's allegations regarding the foreclosing bank's intent to defraud were sufficient to satisfy the heightened pleading standard applicable to fraud-based claims where the contractor alleged, inter alia, that the estoppel certificate was prepared by the bank, that it advised the contractor that its execution was a condition of being hired, that the bank knew that the contractor understood the representation to apply to the entire contract term even though the promised funds would not be available during that time, which permitted an inference that the statement was an actionable "half-truth." Orchard Hotel LLC v D.A.B. Group LLC, 172 A.D.3d 530, 102 N.Y.S.3d 550, 2019 N.Y. App. Div. LEXIS 3857 (N.Y. App. Div. 1st Dep't 2019).

Landlord failed to sufficiently plead fraud and fraudulent inducement claims against the tenant because the complaint did not contain any specific allegations setting forth the misrepresentations allegedly made by the tenant, and the commercial lease extensions, executed by the landlord's manager before a Notary Public, were clear and unambiguous. Tsinias Enters. Ltd. v Taza Grocery, Inc., 172 A.D.3d 1271, 101 N.Y.S.3d 138, 2019 N.Y. App. Div. LEXIS 3965 (N.Y. App. Div. 2d Dep't 2019).

Plaintiffs sufficiently pleaded a fraudulent misrepresentation claim, and stated in sufficient detail the facts constituting the alleged wrong because the complaint alleged that at the time plaintiffs entered into the purchase and proprietary license agreements, defendant fraudulently misrepresented that plaintiffs' investment was secured by real estate owned by the licensor.

Qureshi v Vital Transp., Inc., 173 A.D.3d 1076, 103 N.Y.S.3d 515, 2019 N.Y. App. Div. LEXIS 4981 (N.Y. App. Div. 2d Dep't 2019).

Cause of action seeking relief against an allegedly voidable transfer was properly dismissed because it was not pleaded with sufficient particularity. Heid v Renwood Assoc., Inc., 184 A.D.3d 555, 123 N.Y.S.3d 499, 2020 N.Y. App. Div. LEXIS 3194 (N.Y. App. Div. 2d Dep't 2020).

Trial court properly denied the plaintiff's motion to dismiss the defendants' counterclaims to his action for breach of fiduciary duty and breach of contract because he failed to demonstrate that dismissal of the counterclaims was warranted based on the defense of ratification where the defendants alleged, inter alia, that they were unaware of the plaintiff's improper actions regarding the loans because he actively concealed them, the defendants' counterclaims were all subject to a six-year limitations period since allegations of fraud were integral to them, the counterclaims were timely, and the facts were sufficient to permit a reasonable inference of the alleged conduct. Farro v Schochet, 190 A.D.3d 698, 135 N.Y.S.3d 883, 2021 N.Y. App. Div. LEXIS 176 (N.Y. App. Div. 2d Dep't 2021).

Plaintiff pleaded a fraud claim with sufficient particularity because, inter alia, the two-page "trust summary" that plaintiff signed omitted certain key elements of the trust agreement, including a description of the powers granted to defendant; plaintiff was defendant's father. Berkovits v Berkovits, 190 A.D.3d 911, 141 N.Y.S.3d 84, 2021 N.Y. App. Div. LEXIS 419 (N.Y. App. Div. 2d Dep't 2021).

Trial court erred in denying a motion filed by a developer, owner, and law firm (jointly, the defendants) to dismiss a complaint filed b a contractor and project manager (jointly, the plaintiffs) for fraud and violation of the Judiciary Law because the fraud claim was not pleaded with particularity and was time-barred, the complaint failed to allege the requisite fiduciary or special relationship between the parties and failed to identify the "multiple court submissions" that allegedly contained false and misleading statements by the law firm, that they were directed at a court or promulgated during a pending judicial proceeding. Dreamco Dev. Corp. v Empire

State Dev. Corp., 191 A.D.3d 1444, 142 N.Y.S.3d 688, 2021 N.Y. App. Div. LEXIS 931 (N.Y. App. Div. 4th Dep't 2021).

Plaintiffs' fraud claim regarding the investment of $50 million in 2017 should not have been dismissed for failure to plead with particularity because the complaint alleged, inter alia, that at meetings on August 23 and 24, 2017, defendant's director made false, misleading, and incomplete statements to plaintiffs' representatives that the pipeline was on track to be fully complete by January 2018 and ready for commercial service by July 1, 2018, when defendant knew it was not on track. GSCP VI EdgeMarc Holdings, L.L.C. v ETC Northeast Pipeline, LLC, 192 A.D.3d 454, 144 N.Y.S.3d 168, 2021 N.Y. App. Div. LEXIS 1410 (N.Y. App. Div. 1st Dep't 2021).

Trial court properly dismissed the fraudulent inducement claim against defendants because plaintiff's allegation that he was fraudulently induced to enter into the retainer by defendants' statements that it would not charge plaintiff more than $100,000 was clearly refuted by the language of the retainer itself, and plaintiff failed to specifically plead the circumstances constituting defendants' alleged fraud. Dubon v Drexel, 195 A.D.3d 991, 151 N.Y.S.3d 126, 2021 N.Y. App. Div. LEXIS 4264 (N.Y. App. Div. 2d Dep't 2021).

Plaintiffs insufficiently pleaded the causes of action sounding in fraud and misrepresentation because the causes of action sounding in fraud and misrepresentation were supported only by conclusory allegations as plaintiffs failed to allege any specific misrepresentations by defendant, and the proposed amended complaint did not cure the deficiencies. Oppedisano v D'Agostino, 196 A.D.3d 497, 151 N.Y.S.3d 150, 2021 N.Y. App. Div. LEXIS 4325 (N.Y. App. Div. 2d Dep't 2021).

Plaintiff's fraud claim was not duplicative of the breach of contract claim and was pleaded with sufficient particularity because the fraud claim alleged that defendants induced plaintiff to sell them more product during the holiday season with a misrepresentation that defendants would pay plaintiff all of the monies owed with respect to prior orders, despite knowing that defendants'

bank accounts did not have sufficient funds to cover the costs. Emby Hosiery Corp. v Tawil, 196 A.D.3d 462, 151 N.Y.S.3d 406, 2021 N.Y. App. Div. LEXIS 4338 (N.Y. App. Div. 2d Dep't 2021).

Trial court erred in dismissing various defendants' cross-claims, counterclaims, and/or third-party causes of action because the defendants demonstrated their entitlement to dismissal of the causes of action for abuse of process, the defendants could not be held liable under a contract to which they were not a party, the allegations of fraud failed to properly plead all of the requisite elements with sufficient particularity, and the Judiciary Law did not apply to the attorney parties who were represented by counsel, and no duty was alleged to support the actions sounding in common-law indemnification. Pinkesz Mut. Holdings, LLC v Pinkesz, 198 A.D.3d 693, 156 N.Y.S.3d 216, 2021 N.Y. App. Div. LEXIS 5459 (N.Y. App. Div. 2d Dep't 2021).

Physicians pleaded fraud with particularity because their allegations were sufficiently detailed to fairly apprise an employer of the circumstances constituting the wrong. Cordaro v AdvantageCare Physicians, P.C., 208 A.D.3d 1090, 176 N.Y.S.3d 1, 2022 N.Y. App. Div. LEXIS 5151 (N.Y. App. Div. 1st Dep't 2022).

Plaintiff's allegations with respect to the cause of action alleging fraud were merely a recitation of the negligent misrepresentation cause of action, plus the conclusory allegation that the lenders' representations were so reckless and wanton as to constitute fraud, and therefore, the plaintiff failed to plead a cause of action sounding in fraud with particularity, as required by statute. Borovina v ACAP Fund GP, LLC, 220 A.D.3d 729, 197 N.Y.S.3d 548, 2023 N.Y. App. Div. LEXIS 5113 (N.Y. App. Div. 2d Dep't 2023).

Cause of action sounding in fraud was properly dismissed because the complaint did not set forth the circumstances in detail, but consisted of conclusory assertions. Pare v Aalbue, 222 A.D.3d 769, 202 N.Y.S.3d 368, 2023 N.Y. App. Div. LEXIS 6447 (N.Y. App. Div. 2d Dep't 2023).

In an action to reform a contract, the trial court erred denying plaintiff's proposed amended complaint as it satisfied the pleading requirements for fraud and mistake and the defendant's evidentiary materials failed to refute the factual allegations. The court further reasoned that the

proposed amendment was not palpably insufficient, did not prejudice or surprise the opposing party, and was not patently devoid of merit, so leave to amend should have been granted. Lsirowkop, LLC v Behr, 234 A.D.3d 951, 227 N.Y.S.3d 339, 2025 N.Y. App. Div. LEXIS 411 (N.Y. App. Div. 2d Dep't 2025).

Trial court properly dismissed plaintiff's claim for mutual mistake, as there were no allegations that defendants also operated under a mistake, but plaintiff's claims for unilateral mistake with fraud, undue influence, and for a constructive trust were erroneously dismissed as plaintiff sufficiently alleged the required elements including a material misrepresentation, knowledge of falsity, reliance, damages, a confidential relationship, promise, transfer in reliance, and unjust enrichment. Barker v Gervera, 236 A.D.3d 1318, 230 N.Y.S.3d 834, 2025 N.Y. App. Div. LEXIS 1513 (N.Y. App. Div. 4th Dep't 2025).

Landlord failed to state claims for fraud and negligent misrepresentation against a holdover tenant because these causes of action were not pleaded with particularity. Atlasman v Korol, 2025 N.Y. App. Div. LEXIS 2977 (N.Y. App. Div. 2d Dep't 2025).

Dismissal of an aggrieved candidate's election dispute petition was warranted because she failed to state her fraud allegations with the requisite specificity and without such detail, no factfinder could reasonably infer the opposing candidate's involvement in fraud. Thomas v Eugene, 973 N.Y.S.2d 529, 41 Misc. 3d 418, 2013 N.Y. Misc. LEXIS 3529 (N.Y. Sup. Ct. 2013).

Where sale was denied but specific items were not specifically denied, defendant could prove that sale was made to another, and summary judgment was improper. Sultenfuss v Bernier, 94 N.Y.S.2d 70, 1949 N.Y. Misc. LEXIS 3046 (N.Y. Sup. Ct. 1949).

Because the private placement memoranda authored by an attorney and a law firm were the means by which a company was able to solicit funds for an admitted Ponzi scheme, pursuant to N.Y. C.P.L.R. 3016(b), the investors sufficiently alleged actual knowledge of the underlying fraud and substantial assistance. Oster v Kirschner, 77 A.D.3d 51, 905 N.Y.S.2d 69, 2010 N.Y. App. Div. LEXIS 5848 (N.Y. App. Div. 1st Dep't 2010).

As plaintiff's fraud complaint sufficiently identified defendants' alleged misrepresentations, described when and how they were made to plaintiff, and sufficiently identified defendants' roles in the alleged fraud, it survived their motion to dismiss MBIA Ins. Corp. v Countrywide Home Loans, Inc., 87 A.D.3d 287, 928 N.Y.S.2d 229, 2011 N.Y. App. Div. LEXIS 5509 (N.Y. App. Div. 1st Dep't 2011).

Complaint failed to meet the pleading requirements N.Y. C.P.L.R. 3016(b) because the allegations of fraudulent misrepresentations and omissions which occurred after the investments at issue did not form the basis for the fraud claims, since the element of reliance was necessarily absent, the complaint was devoid of any allegations of specific misrepresentations or omissions made by the directors, and the allegations made did not give rise to a reasonable inference that the directors participated in, or had actual knowledge of any of the fraud alleged in the complaint; further, the complaint failed to allege facts demonstrating the existence of the requisite relationship for purposes of the negligent misrepresentation and omission claims. As the complaint failed to adequately allege an underlying fraud, the directors' knowledge of this fraud, and their substantial assistance in the achievement of the fraud, the seventh cause of action to recover damages for aiding and abetting fraud was insufficient. High Tides, LLC v DeMichele, 88 A.D.3d 954, 931 N.Y.S.2d 377, 2011 N.Y. App. Div. LEXIS 7457 (N.Y. App. Div. 2d Dep't 2011).

Dismissal of a building owner/manager's fraud claim against tenants, alleging that they fraudulently reported their income for purposes of avoiding luxury deregulation of their rent-stabilized apartment, was proper where it was not pled with the requisite particularity pursuant to N.Y. C.P.L.R. 3016(b); the owner/manager failed to establish its reliance on the tenants' reported income, the allegations of fraud were wholly speculative, and the remaining allegations were conclusory. Katz 737 Corp. v Cohen, 104 A.D.3d 144, 957 N.Y.S.2d 295, 2012 N.Y. App. Div. LEXIS 8744 (N.Y. App. Div. 1st Dep't 2012), app. denied, 21 N.Y.3d 864, 973 N.Y.S.2d 87, 995 N.E.2d 1159, 2013 N.Y. LEXIS 2146 (N.Y. 2013).

Borrower’s cause of action alleging fraud against a title insurer failed to satisfy the requirements of N.Y. C.P.L.R. 3016(b) because it contained only bare and conclusory allegations, without any supporting detail. Indymac Bank, F.S.B. v Vincoli, 105 A.D.3d 704, 962 N.Y.S.2d 624, 2013 N.Y. App. Div. LEXIS 2155 (N.Y. App. Div. 2d Dep't 2013).

Religious society member’s allegations of fraud satisfied the pleading requirements of N.Y. C.P.L.R. 3016(b) as to the society’s president as: (1) the member claimed the president induced the member to give the society $240,000 by promising the member that the member would be able to purchase, at a discount, a penthouse apartment in the condominium project allegedly to be built on the society’s site; (2) the member contended that the president knew at that time that there was no such project; and (3) the very nature of the scheme gave rise to the reasonable inference that the president knew of and was involved in the fraud. Oi Tai Chan v Society of Shaolin Temple, Inc., 910 N.Y.S.2d 872, 30 Misc. 3d 244, 244 N.Y.L.J. 92, 2010 N.Y. Misc. LEXIS 5289 (N.Y. Sup. Ct. 2010).

Fraud was pleaded with sufficient particularity by identifying a specific misrepresentation, made in the course of providing accounting services, which was alleged to be intentional. The fraud claim was not subject to dismissal as duplicative of a professional malpractice claim because the fraud allegations relied upon facts setting forth intentional acts and because the professional malpractice claim alleged separate acts and omissions. Jefferson Apts., Inc. v Mauceri, 52 Misc. 3d 1012, 36 N.Y.S.3d 789, 2016 N.Y. Misc. LEXIS 2718 (N.Y. Sup. Ct. 2016).

Where the pool business allegedly delivered the wrong colored pool, the consumer’s claimed misrepresentation was not vague because although the specific moment of the alleged misrepresentation was not pinpointed, its approximate point in the back and forth process was clear enough for pleading purposes. Franciosa v Fla. Concepts Pools Inc., 73 Misc. 3d 834, 156 N.Y.S.3d 816, 2021 N.Y. Misc. LEXIS 5380 (N.Y. Sup. Ct. 2021).

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).

19. —Mutual mistake

In an action for a declaratory judgment in which plaintiff sought to reform its lease on the basis of mutual mistake and to enjoin the landlord from prosecuting a summary holdover proceeding against plaintiff on the basis of default of lease provisions which required tenant to pay real estate taxes for the entire building, the lease would be reformed to require an apportionment of such real estate taxes between the store premises leased by plaintiff and the remainder of the building. Darami Realties, Inc. v Spencer Arms Hotel Associates, 80 A.D.2d 541, 438 N.Y.S.2d 465, 1981 N.Y. App. Div. LEXIS 10198 (N.Y. App. Div. 1st Dep't), app. dismissed, 54 N.Y.2d 831, 1981 N.Y. LEXIS 5277 (N.Y. 1981).

Corporation which operated salvage operation sufficiently stated cause of action for rescission of 1986 consent order based on mutual mistake where (1) corporation accepted transformers to be dismantled and sold for scrap, and later determined that transformers contained oil laced with polychlorinated biphenyl (PCB), (2) in 1984, corporation entered into consent order with Department of Environmental Conservation (DEC) regarding field investigation to determine whether site posed significant threat to environment, (3) after completion of investigation, corporation entered into another consent order with DEC in 1986 which required it to pay for remedial program, (4) corporation claimed that it entered into second consent order only after being assured by DEC that cost of remedial program would not exceed $300,000, which was limit of corporation's insurance policy, and (5) corporation later determined that cost of remedial program was between $3.6 and $23.7 million. I. Shulman & Son, Inc. v Jorling, 189 A.D.2d 1012, 592 N.Y.S.2d 858, 1993 N.Y. App. Div. LEXIS 424 (N.Y. App. Div. 3d Dep't 1993).

Building owners' second amended third-party complaint failed to allege mutual mistake with sufficient particularity because the complaint did not contain any factual allegations that the insurer agreed to provide coverage to the owners in their individual capacities or that any oral agreement was reached by which the insurer was obligated to do so. Hilgreen v Pollard Excavating, Inc., 193 A.D.3d 1134, 146 N.Y.S.3d 323, 2021 N.Y. App. Div. LEXIS 2195 (N.Y. App. Div. 3d Dep't), app. dismissed, 37 N.Y.3d 1002, 174 N.E.3d 694, 152 N.Y.S.3d 669, 2021 N.Y. LEXIS 1851 (N.Y. 2021).

Complaint seeking recission of a divorce settlement agreement three years after it was executed failed to state a claim as a husband's claim that the parties' investments in accounts with Madoff investment firms did not exist and that the wife should shoulder her share of the losses did not plead mutual mistake with particularity as required by N.Y. C.P.L.R. § 3016(b) since there was no claim that at the time of the agreement, the account could not be redeemed for value; in dividing their estate, the parties assumed that an investor had an ability to redeem the account for value, and in doing so, they made no mistake. Simkin v Blank, 242 N.Y.L.J. 122, 2009 N.Y. Misc. LEXIS 6714 (N.Y. Sup. Ct. Dec. 22, 2009), rev'd, 80 A.D.3d 401, 915 N.Y.S.2d 47, 2011 N.Y. App. Div. LEXIS 14 (N.Y. App. Div. 1st Dep't 2011).

20. —Breach of fiduciary duty

In action against brokerage firm and others for breach of fiduciary duty, fraud, breach of contract, and breach of implied covenant of good faith and fair dealing, plaintiff's subjective claims of reliance on defendants' expertise did not prove confidential relationship where requisite high degree of dominance and reliance did not exist before transaction evoking alleged wrong. Societe Nationale D'Exploitation Industrielle Des Tabacs Et Allumettes v Salomon Bros. Int'l, Ltd., 251 A.D.2d 137, 674 N.Y.S.2d 648, 1998 N.Y. App. Div. LEXIS 6904 (N.Y. App. Div. 1st Dep't 1998).

Decedent's administrator failed to show fraud by attorney or trust company when they were involved in investments that went bad; although her financial advisor had a duty of care, he did

not breach it. Rasmussen v A.C.T. Envtl. Servs., 292 A.D.2d 710, 739 N.Y.S.2d 220, 2002 N.Y. App. Div. LEXIS 2446 (N.Y. App. Div. 3d Dep't 2002).

Since the fraud that limited partners alleged the managing partner had engaged in involved concealment of the managing partner's continuing interest in a former partnership asset, the limited partners could adequately plead a fraud cause of action without providing great detail; the centrality of the fraud and breach of fiduciary claims brought the action under a six-year limitations period, which they were able to satisfy pursuant to the delayed discovery rule, under which the limitations period began to run only when they learned of the transfer of the asset in question from a newspaper account that mentioned the managing partner by name. Kaufman v Cohen, 307 A.D.2d 113, 760 N.Y.S.2d 157, 2003 N.Y. App. Div. LEXIS 5918 (N.Y. App. Div. 1st Dep't 2003).

Dismissal of a shareholder's derivative suit pursuant to, inter alia, N.Y. Bus. Corp. Law § 626(c) and N.Y. C.P.L.R. 3016(b) was error because, based on the complaint's allegations, demand on the board of directors was excused; several director were accused of receiving financial benefits by engaging in insider trading of the corporation's stock on the basis of inside information concerning the corporation's earnings, and another director was interested due to the substantial fees that his small law firm earned for services rendered to the corporation, amounting to nearly $1 million over the two years before the filing of the complaint. The allegations were supported, inter alia, by the timing, volume, and frequency of these transactions, and the positions of the transacting corporate officers within the company. Tsutsui v Barasch, 67 A.D.3d 896, 892 N.Y.S.2d 400, 2009 N.Y. App. Div. LEXIS 8484 (N.Y. App. Div. 2d Dep't 2009).

Trial court erred in dismissing a futures contract trader's complaint as untimely and for failure to state a cause of action because the six-year statute of limitations applied and the trader sufficiently alleged a fraudulent scheme by two floor clerks and their breach of a fiduciary duty to him. McDonnell v Bradley, 109 A.D.3d 592, 970 N.Y.S.2d 612, 2013 N.Y. App. Div. LEXIS 5609 (N.Y. App. Div. 2d Dep't 2013).

Plaintiff's cause of action alleging breach of fiduciary duty was properly dismissed, as plaintiff failed to allege sufficient specific facts under N.Y. C.P.L.R. 3016(b) that the actions of the directors were undertaken in bad faith or that any damages were attributable to their actions; plaintiff made only conclusory allegations of emotional distress, harassment, or humiliation. DeRaffele v 210-220-230 Owners Corp., 33 A.D.3d 752, 823 N.Y.S.2d 202, 2006 N.Y. App. Div. LEXIS 12493 (N.Y. App. Div. 2d Dep't 2006), app. denied, 8 N.Y.3d 814, 839 N.Y.S.2d 453, 870 N.E.2d 694, 2007 N.Y. LEXIS 1552 (N.Y. 2007).

Breach of fiduciary duty action was properly dismissed because plaintiff failed to allege factual circumstances and details of defendants' alleged misconduct or how such misconduct induced plaintiff to sign the subject documents. Stortini v Pollis, 138 A.D.3d 977, 31 N.Y.S.3d 90, 2016 N.Y. App. Div. LEXIS 2870 (N.Y. App. Div. 2d Dep't 2016).

Dismissal of a developer's breach of fiduciary duty claim, alleging that there was a scheme to defraud it of hundreds of millions of dollars owed to it by the Saudi government, was proper because it failed to allege with particularity the applicable Saudi law and it only generally discussed applicable Saudi concepts without citation to any law, such that a fiduciary relationship was not sufficiently alleged. MBI Intl. Holdings Inc. v Barclays Bank PLC, 151 A.D.3d 108, 57 N.Y.S.3d 119, 2017 N.Y. App. Div. LEXIS 4291 (N.Y. App. Div. 1st Dep't), app. denied, 29 N.Y.3d 919, 86 N.E.3d 562, 64 N.Y.S.3d 670, 2017 N.Y. LEXIS 2694 (N.Y. 2017).

Plaintiffs sufficiently pleaded a breach of fiduciary duty claim because the complaint alleged a fiduciary relationship and that defendants breached their fiduciary duty to plaintiffs when they placed the licensor's real estate out of plaintiffs' reach. Qureshi v Vital Transp., Inc., 173 A.D.3d 1076, 103 N.Y.S.3d 515, 2019 N.Y. App. Div. LEXIS 4981 (N.Y. App. Div. 2d Dep't 2019).

Plaintiff pleaded a breach of fiduciary duty claim with sufficient particularity because, inter alia, the complaint alleged that defendant owed to plaintiff a fiduciary duty as a co-shareholder in a closely-held family corporation, and that defendant breached that fiduciary duty by inducing plaintiff to enter into a trust agreement, to the detriment of the interests of plaintiff and the

corporation; plaintiff was defendant's father. Berkovits v Berkovits, 190 A.D.3d 911, 141 N.Y.S.3d 84, 2021 N.Y. App. Div. LEXIS 419 (N.Y. App. Div. 2d Dep't 2021).

A plaintiff may not merely allege in conclusory terms that the plaintiff's interest was diluted; claims for breach of fiduciary duty must be pleaded with particularity. Hemingway Group LLC v. iHemingway Group LLC v i80 Group LLC, 222 A.D.3d 422, 202 N.Y.S.3d 3, 2023 N.Y. App. Div. LEXIS 6278 (N.Y. App. Div. 1st Dep't 2023).

Complaint, which asserted that corporate directors breached their fiduciary duties to corporation by failing to collect from subsidiaries full amount due under contract for services rendered to subsidiaries, but which neither alleged circumstances constituting director's alleged misconduct, nor alleged facts from which inference of negligence or lack of due care could be drawn, was sufficient. Kutik v Taylor, 80 Misc. 2d 839, 364 N.Y.S.2d 387, 1975 N.Y. Misc. LEXIS 2274 (N.Y. Sup. Ct. 1975).

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).

Petition, which alleged in effect that decedent had transferred approximately $116,050 to respondent during period when respondent treated decedent as a "psychotherapist or psychoanalyst" and maintained a "highly sensitive confidential relationship with the decedent" and that respondent had sent decedent to an attorney for the drawing of a will bequeathing one-half of decedent's estate to respondent, adequately pled abuse of confidential relationship. Estate of Reiner, 86 Misc. 2d 511, 383 N.Y.S.2d 504, 1976 N.Y. Misc. LEXIS 2476 (N.Y. Sur. Ct. 1976).

In an action wherein it is alleged that defendants, who sold their cooperative apartment to plaintiff, represented that a raise in maintenance of 5% was likely for the following year when

they knew that such charges would be raised in excess of 25%, defendants are not barred from stating a third-party claim for contribution against the cooperative corporation that owns the subject building. The right to contribution and apportionment of liability among multiple wrongdoers arises when they each owe a duty to plaintiff or to each other and by breaching their respective duties they contribute to plaintiff's ultimate injuries; since a cooperative owes a fiduciary duty to its shareholders, defendants may assert that a misrepresentation of future maintenance charges would be a violation of a duty owed to them. The fact that defendants have alleged only negligent misrepresentation and have not asserted intentional misconduct should not deprive them of the right to obtain contribution. However, defendants have failed to satisfy the pleading requirement of CPLR 3016 (b) that the circumstances constituting the wrong be stated in detail; neither the name of the person making the representations, nor the manner in which they were made, is set forth. Accordingly, the third-party complaint is dismissed with leave to replead a cause of action for contribution. McHam v Whitney, 143 Misc. 2d 441, 540 N.Y.S.2d 416, 1989 N.Y. Misc. LEXIS 249 (N.Y. Sup. Ct. 1989).

As in fraud cases, in an action for breach of fiduciary responsibilities by employees, a complaint was sufficient where it alleged that one employee arranged to be hired in order to learn the new employer's trade secrets and to lure certain other employees of the new employer to join the first employee in joining the employee of the original employer in returning to that employer, to enable it to compete with the new employer in handling United States securities work for European investors; as in cases of fraud, it was not possible to spell out every aspect of the employees' activities, since so much would have occurred in secret. Louis Capital Mkts., L.P. v REFCO Group Ltd., LLC, 801 N.Y.S.2d 490, 9 Misc. 3d 283, 233 N.Y.L.J. 112, 2005 N.Y. Misc. LEXIS 1225 (N.Y. Sup. Ct. 2005).

Because a minority shareholder's complaint, pursuant to N.Y. C.P.L.R. 3016(b), sufficiently alleged that a corporation's directors breached their fiduciary duty and were unjustly enriched by receipt of certain treasury shares at the expense of the corporation and its shareholders, the trial court should have denied the directors' motion to dismiss the complaint. Armentano v Paraco

Gas Corp., 90 A.D.3d 683, 935 N.Y.S.2d 304, 2011 N.Y. App. Div. LEXIS 8987 (N.Y. App. Div. 2d Dep't 2011).

Allegations of a church's complaint against a title insurer for breach of a fiduciary duty were insufficient to satisfy the requirements of N.Y. C.P.L.R. 3016(b) because of the absence of sufficient factual allegations to indicate the existence of a fiduciary relationship between the church and the insurer. Faith Assembly v Titledge of N.Y. Abstract, LLC, 106 A.D.3d 47, 961 N.Y.S.2d 542, 2013 N.Y. App. Div. LEXIS 1988 (N.Y. App. Div. 2d Dep't 2013).

21. — —Breach of contract, compared

Cause of action to recover damages for fraud is not made out when only fraud charged relates to breach of contract, and addition of allegation of scienter will not transform breach of contract action into one to recover damages for fraud. Kotick v Desai, 123 A.D.2d 744, 507 N.Y.S.2d 217, 1986 N.Y. App. Div. LEXIS 60889 (N.Y. App. Div. 2d Dep't 1986).

Plaintiff failed to state fraud action based on allegations that defendants had fraudulently induced it to enter into lease with one defendant with intention that second defendant would be real tenant, and that first defendant had failed to pay rent under lease, thus insulating second defendant from liability for failure to pay rent; not only did complaint fail to allege essential elements of fraud action or to set forth in detail circumstances constituting alleged fraud, no fraud action arises when sole fraud alleged relates to breach of contract. S.S.I.G. Realty v Bologna Holding Corp., 213 A.D.2d 617, 624 N.Y.S.2d 225, 1995 N.Y. App. Div. LEXIS 3213 (N.Y. App. Div. 2d Dep't 1995).

22. —Damages

In action by purchaser of bowling alley against seller for fraudulent misrepresentation of condition of bowling lanes, purchaser's allegations of deterioration to lanes and their need for extensive repairs satisfied requirement of CLS CPLR § 3016 that circumstances constituting

wrong shall be stated in detail; it is not necessary, to satisfy requirement of § 3016, that measure of damages be pleaded so long as facts are alleged from which damages may properly be inferred. Black v Chittenden, 69 N.Y.2d 665, 511 N.Y.S.2d 833, 503 N.E.2d 1370, 1986 N.Y. LEXIS 21266 (N.Y. 1986).

Fraud claim was manifestly insufficient and should have been dismissed because it was not pled with the particularity required by N.Y. C.P.L.R. 3016(b) as the pleading parties did not specify how they were injured as a result of their opponents' alleged misrepresentations. 1711 LLC v 231 W. 54th Corp., 7 A.D.3d 261, 776 N.Y.S.2d 43, 2004 N.Y. App. Div. LEXIS 6499 (N.Y. App. Div. 1st Dep't 2004).

Plaintiffs' motion to dismiss the counterclaim for fraudulent inducement was denied because defendant stated a counterclaim for fraudulent inducement by pleading the additional element of damages, in the form of expenses incurred, to prepare for a securities offering anticipated based on investment monies promised by plaintiffs. Solomon Capital, LLC v Lion Biotechnologies, Inc., 171 A.D.3d 467, 98 N.Y.S.3d 26, 2019 N.Y. App. Div. LEXIS 2633 (N.Y. App. Div. 1st Dep't 2019).

Defendant is not required to plead its damages with particularity as rule of procedure requires only that, for claims or defenses based on fraud, the circumstances constituting the wrong shall be stated in detail. Solomon Capital, LLC v Lion Biotechnologies, Inc., 171 A.D.3d 467, 98 N.Y.S.3d 26, 2019 N.Y. App. Div. LEXIS 2633 (N.Y. App. Div. 1st Dep't 2019).

Under more liberalized pleading practice, the failure to plead loss of profits as a theory of recovery does not preclude assertion of such claim at trial as the proof develops and in posttrial papers submitted to the court. Hughes v Nationwide Mut. Ins. Co., 98 Misc. 2d 667, 414 N.Y.S.2d 493, 1979 N.Y. Misc. LEXIS 2130 (N.Y. Sup. Ct. 1979).

23. —Statute of limitations

Purchasers of real property were entitled to summary judgment on seller's cause of action for rescission which alleged that purchasers had committed fraud by using undue influence to induce seller to sign contract, where action was brought more than 6 years after alleged fraud; cause of action accrued at point of alleged fraud, not at time of discovery, since pleadings did not allege that purchasers had intentionally deceived seller or acted with conscious disregard of seller's rights. Brown v Tonawanda Housing, Inc., 123 A.D.2d 493, 507 N.Y.S.2d 92, 1986 N.Y. App. Div. LEXIS 60248 (N.Y. App. Div. 4th Dep't 1986).

In divorce action commenced in 1998, court should have granted plaintiff's motion to dismiss defendant's counterclaim, which sought to rescind parties' post-nuptial agreement executed in 1985 on ground that it had been "procured through fraud, deceit and overreaching," since plaintiff failed to plead fraud claim with sufficient particularity, and claim was not raised within 6 years after alleged fraud was committed, or within 2 years of when it reasonably could have been discovered. Rosenbaum v Rosenbaum, 271 A.D.2d 427, 706 N.Y.S.2d 890, 2000 N.Y. App. Div. LEXIS 3817 (N.Y. App. Div. 2d Dep't 2000).

Trial court properly granted defendant's summary judgment motion pursuant to N.Y. C.P.L.R. 3212 to the extent of dismissing a fraud cause of action prior to a certain date, as defendant was not estopped from raising the statute of limitations as a defense, and the damages alleged were particularized as required by N.Y. C.P.L.R. 3016(b). Rosar Realty Corp. v Leavin, 7 A.D.3d 295, 776 N.Y.S.2d 258, 2004 N.Y. App. Div. LEXIS 6594 (N.Y. App. Div. 1st Dep't 2004).

24. —Applicability of statute

CLS CPLR § 3016(b) requirement of specificity in pleading in stating cause of action for common-law fraud does not apply to charge of fraud or fraudulent practices as basis for suspension or revocation of real estate broker's license under CLS Real P § 441-c, since notice in such proceeding is sufficient to comply with due process where broker is clearly and definitely apprised of factual transaction upon which charge is based. Grygiel v Shaffer, 154 A.D.2d 763, 546 N.Y.S.2d 211, 1989 N.Y. App. Div. LEXIS 12424 (N.Y. App. Div. 3d Dep't 1989).

The strict pleading requirements of N.Y. C.P.L.R. 3016 for causes of action sounding in common-law fraud do not apply to causes of action sounding in violation of N.Y. Gen. Bus. Law § 349. Joannou v Blue Ridge Ins. Co., 289 A.D.2d 531, 735 N.Y.S.2d 786, 2001 N.Y. App. Div. LEXIS 13045 (N.Y. App. Div. 2d Dep't 2001).

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).

Plaintiff’s endorsed complaint in their New York City Civil Court action did not need to comply with CLS CPLR § 3016(b) to extent that their action was for fraud. Southern Boulevard Sound v Felix Storch, Inc., 165 Misc. 2d 341, 629 N.Y.S.2d 635, 1995 N.Y. Misc. LEXIS 310 (N.Y. Civ. Ct. 1995), aff'd, modified, 167 Misc. 2d 731, 643 N.Y.S.2d 882, 1996 N.Y. Misc. LEXIS 189 (N.Y. App. Term 1996).

Inter alia, a manager of a group of hedge funds and a registered investment advisor were not entitled to dismiss pursuant to N.Y. C.P.L.R. § 3016 an action by the state attorney general alleging violations of, among other things, N.Y. Exec. Law § 63(12) because in an action brought pursuant to § 63(12), the elements of fraud did not need to be alleged. N.Y. v Samaritan Asset Mgt. Servs., 874 N.Y.S.2d 698, 22 Misc. 3d 669, 240 N.Y.L.J. 90, 2008 N.Y. Misc. LEXIS 6338 (N.Y. Sup. Ct. 2008).

N.Y. C.P.L.R. 3016(b)’s particularity requirements do not apply to a breach of contract claim where the plaintiff does not allege fraud. ACE Sec. Corp. v DB Structured Prods., Inc., 965 N.Y.S.2d 844, 40 Misc. 3d 562, 2013 N.Y. Misc. LEXIS 1979 (N.Y. Sup. Ct. 2013), rev'd, dismissed, 112 A.D.3d 522, 977 N.Y.S.2d 229, 2013 N.Y. App. Div. LEXIS 8429 (N.Y. App. Div. 1st Dep't 2013), dismissed, 2016 N.Y. Misc. LEXIS 1055 (N.Y. Sup. Ct. Mar. 29, 2016).

25. — —Surrogate’s Court

The intention of the legislature in enacting CPLR 3016(b) was simply to codify an established rule of pleading, recognized by all as inapplicable in probate contests, rather than to effectuate a major change in Surrogate's Court practice. Will of Schneider, 64 Misc. 2d 299, 314 N.Y.S.2d 587, 1970 N.Y. Misc. LEXIS 1320 (N.Y. Sur. Ct. 1970).

26. —No genuine issue of fact

In action to set aside deed, wherein plaintiff claimed that she unknowingly executed deed during closing of title on subject premises, defendant was entitled to summary judgment based on his production of deed by which plaintiff conveyed premises to him, where plaintiff's allegations of fraud were unsubstantiated by evidentiary facts and thus did not create genuine issue of fact; plaintiff's claim amounted, at best, to contention that she executed deed without reading it, inasmuch as she did not claim that defendant or anyone present at closing misrepresented identity of deed, and she conceded that defendant made down payment on premises. Gervasio v Di Napoli, 134 A.D.2d 235, 520 N.Y.S.2d 430, 1987 N.Y. App. Div. LEXIS 50431 (N.Y. App. Div. 2d Dep't 1987).

Because New York did not recognize an independent cause of action for the imposition of sanctions under N.Y. C.P.L.R. 8303-a or N.Y. Comp. Codes R. & Regs. tit. 22, § 130-1.1, and because an employer did not allege any misrepresentation or fraud by an employee under N.Y. C.P.L.R. 3016(b), the employer's counterclaims should have been dismissed for failure to state a cause of action. Cerciello v Admiral Ins. Brokerage Corp., 90 A.D.3d 967, 936 N.Y.S.2d 224, 2011 N.Y. App. Div. LEXIS 9588 (N.Y. App. Div. 2d Dep't 2011).

27. — —Res judicata

Res judicata barred fraud action against accounting firm and its principal by executrix of decedent's estate where decedent's prior action had been dismissed under CLS CPLR §§ 3016(b) and 3211(a)(7), actions were based on same transactions, and to extent that prior dismissal was based on absence of allegation that decedent had "undertake[n] an independent

appraisal of the risk he was assuming" in subject transactions, dismissal was on merits and not merely for technical pleading defect, because it was based on finding that decedent's failure to use due diligence precluded him from prevailing on his fraud claim against defendants, regardless of what other facts he might have alleged; even if prior dismissal did not preclude second complaint alleging that decedent had conducted due diligence investigation, present complaint failed to correct defect or supply such omission in earlier complaint. Lampert v Ambassador Factors Corp., 266 A.D.2d 124, 698 N.Y.S.2d 234, 1999 N.Y. App. Div. LEXIS 12101 (N.Y. App. Div. 1st Dep't 1999).

28. —Pleadings

Plaintiff's complaint in an action for alleged fraud dismissed, where the allegations were vague and conclusory, and failed to comply with CPLR 3016(b), and plaintiff was given leave to replead under CPLR 3211(e). Daukas v Shearson, Hammill & Co., 23 A.D.2d 833, 259 N.Y.S.2d 664, 1965 N.Y. App. Div. LEXIS 4201 (N.Y. App. Div. 1st Dep't 1965).

Although assertions in bills of particulars furnished by persons, challenging will on ground of fraud and undue influence, did not fulfill purpose of bill pf particulars by amplifying pleadings or limiting proof, in the interest of justice and so that there could be a resolution of the matter on the merits, Appellate Division would allow appellants, appealing from order precluding offering of any proof of fraud and undue influence, ten days in which to correct defects in response to the bill. In re Will of Shorall, 47 A.D.2d 576, 363 N.Y.S.2d 135, 1975 N.Y. App. Div. LEXIS 8666 (N.Y. App. Div. 3d Dep't 1975).

Accountants may be liable in negligence only to persons with whom they are in privity, and negligence causes of action could not be transformed into causes of action in fraud merely by the pleading of conclusory allegations. Dworman v Lee, 83 A.D.2d 507, 441 N.Y.S.2d 90, 1981 N.Y. App. Div. LEXIS 14800 (N.Y. App. Div. 1st Dep't 1981), aff'd, 56 N.Y.2d 816, 452 N.Y.S.2d 570, 438 N.E.2d 103, 1982 N.Y. LEXIS 3454 (N.Y. 1982).

The trial court erred in failing to grant defendants' motion to dismiss plaintiffs' causes of action for fraud, where plaintiffs' allegations were purely conclusory, and they did not allege any facts tending to connect their alleged losses with the alleged fraudulent representations. Glassman v Catli, 111 A.D.2d 744, 489 N.Y.S.2d 777, 1985 N.Y. App. Div. LEXIS 49986 (N.Y. App. Div. 2d Dep't 1985).

Allegation of fraud based on statement of future intention must allege facts sufficient to show that party, at time promissory representations were made, never intended to honor or act on those statements, and complaint will therefore be dismissed where it is devoid of any such allegations and is vague and conclusory. Pope v N.Y. Prop. Ins. Underwriting Ass'n, 112 A.D.2d 984, 492 N.Y.S.2d 796, 1985 N.Y. App. Div. LEXIS 52197 (N.Y. App. Div. 2d Dep't), aff'd in part, 66 N.Y.2d 857, 498 N.Y.S.2d 360, 489 N.E.2d 247, 1985 N.Y. LEXIS 18309 (N.Y. 1985).

Bank failed to allege facts with sufficient particularity to support complaint against law firm for aiding and abetting corporate client's fraud in falsely representing value of sale and lease transactions in order to induce bank to loan client funds where bank made only barest allegation that firm had or should have had knowledge as to how such transactions were carried out or whether allegedly misleading documents prepared for SEC were to be used to obtain bank loans, and bank could not show that firm owed it independent duty of disclosure based either on fiduciary relationship or ethical obligation; CLS CPLR § 3016 requires allegations as to proposed aider's knowledge of fraud and what aider could be said to have done with intention of advancing fraud's commission. National Westminster Bank USA v Weksel, 124 A.D.2d 144, 511 N.Y.S.2d 626, 1987 N.Y. App. Div. LEXIS 40587 (N.Y. App. Div. 1st Dep't), app. denied, 70 N.Y.2d 604, 519 N.Y.S.2d 1027, 513 N.E.2d 1307, 1987 N.Y. LEXIS 18202 (N.Y. 1987).

Plaintiff's cause of action based upon mistake, wherein plaintiff merely made conclusory allegation that plaintiff "inadvertently paid . . . premiums for life insurance and health insurance benefits" failed to set forth facts constituting alleged mistake with particularity required by CPLR 3016 (b); plaintiff's failure to submit detailed affidavit by person having personal knowledge of

facts constituted fatal defect in its position. Brintec Corp. v Akzo N.V., 171 A.D.2d 440, 567 N.Y.S.2d 24, 1991 N.Y. App. Div. LEXIS 2728 (N.Y. App. Div. 1st Dep't 1991).

Misrepresentations alleged by plaintiff all concerned alleged omissions or statements given by defendants to plaintiff in their role as plaintiff's treating physicians, and plaintiff had not alleged injuries separate from those alleged in support of plaintiff's malpractice claim; under these circumstances, plaintiff had not stated an independent cause of action for fraud pursuant to N.Y. C.P.L.R. 3016(b). Maki v Bassett Healthcare, 85 A.D.3d 1366, 924 N.Y.S.2d 688, 2011 N.Y. App. Div. LEXIS 4701 (N.Y. App. Div. 3d Dep't 2011), app. dismissed, 17 N.Y.3d 855, 930 N.Y.S.2d 550, 954 N.E.2d 1176, 2011 N.Y. LEXIS 2964 (N.Y. 2011), dismissed, 17 N.Y.3d 855, 930 N.Y.S.2d 550, 954 N.E.2d 1176, 2011 N.Y. LEXIS 2965 (N.Y. 2011), app. denied in part, 18 N.Y.3d 870, 938 N.Y.S.2d 852, 962 N.E.2d 276, 2012 N.Y. LEXIS 45 (N.Y. 2012).

Trial court properly excluded testimony regarding allegedly fraudulent signatures that were not identified in an opponent's petition seeking to invalidate a designating petition as fraud had to pled with particularity under N.Y. C.P.L.R. 3016(b). Matter of Felder v Storobin, 100 A.D.3d 11, 953 N.Y.S.2d 604, 2012 N.Y. App. Div. LEXIS 6123 (N.Y. App. Div. 2d Dep't 2012).

Trial court, inter alia, properly granted a motion filed by a shareholder's mother and sister's attorneys to dismiss the shareholder's causes of action against the attorneys because the complaint failed to plead with particularity that the attorneys engaged in a fraudulent conveyance, the allegations that the attorneys aided and abetted the sister in breaching certain fiduciary duties were conclusory and failed to allege facts from which it could be inferred that they participated in any such conduct, and the cause of action sounding in legal malpractice failed to allege any acts or omissions by the attorneys that would support such a claim. Dineen v Wilkens, 155 A.D.3d 607, 64 N.Y.S.3d 56, 2017 N.Y. App. Div. LEXIS 7639 (N.Y. App. Div. 2d Dep't 2017).

Transaction causation and loss causation are separate elements, and each must be adequately pleaded with particularity to survive a motion to dismiss. Loreley Fin. (Jersey) No. 4 Ltd. v UBS Ltd., 978 N.Y.S.2d 615, 42 Misc. 3d 858, 2013 N.Y. Misc. LEXIS 6151 (N.Y. Sup. Ct. 2013), aff'd

in part, app. dismissed, 123 A.D.3d 413, 998 N.Y.S.2d 172, 2014 N.Y. App. Div. LEXIS 8308 (N.Y. App. Div. 1st Dep't 2014).

In this fraud case, mere speculation about a meeting was insufficient under the rule, and an email did not indicate that the business was given any proprietary knowledge that the company lacked, and the company could not credibly claim that it was not in a position to conduct due diligence. Loreley Fin. (Jersey) No. 4 Ltd. v UBS Ltd., 978 N.Y.S.2d 615, 42 Misc. 3d 858, 2013 N.Y. Misc. LEXIS 6151 (N.Y. Sup. Ct. 2013), aff'd in part, app. dismissed, 123 A.D.3d 413, 998 N.Y.S.2d 172, 2014 N.Y. App. Div. LEXIS 8308 (N.Y. App. Div. 1st Dep't 2014).

29. — —Modification

Where a triable issue of fact was presented as to plaintiff’s good faith in acquiring a promissory note and mortgage on real property (see Personal Property Law § 403 subd 3, ¶ [a]), an order, denying plaintiff’s cross-motion for summary judgment in an action to foreclose the mortgage, should be modified under subsection (b) of this section, as well as CPLR § 3018(b), to provide that defendants might serve an amended answer to allege absence of good faith. Hamla Corp. v Ruffo, 26 A.D.2d 883, 274 N.Y.S.2d 395, 1966 N.Y. App. Div. LEXIS 3217 (N.Y. App. Div. 3d Dep't 1966).

Because a purchaser’s affidavit in support of a motion to stay arbitration sufficiently detailed circumstances constituting an alleged fraud under N.Y. C.P.L.R. 3016(b), and because a broker addressed the purchaser’s affidavit and the issue of fraud, the broker would suffer no prejudice by an amendment to the purchaser’s petition to include the claim of fraud. Matter of Kennelly v Mobius Realty Holdings LLC, 33 A.D.3d 380, 822 N.Y.S.2d 264, 2006 N.Y. App. Div. LEXIS 12144 (N.Y. App. Div. 1st Dep't 2006).

In action by plaintiffs who allegedly became afflicted with cancer as result of cigarette smoking, where complaint asserted that defendant cigarette manufacturers were jointly and severally liable and defendants sought dismissal under CLS CPLR § 3016(b) for failure to plead with particularity, plaintiffs were granted leave to serve amended complaint alleging what brand or

brands of cigarettes each of them had smoked, to enable defendants to knowledgeably respond to complaint. DaSilva v American Tobacco Co., 175 Misc. 2d 424, 667 N.Y.S.2d 653, 1997 N.Y. Misc. LEXIS 607 (N.Y. Sup. Ct. 1997).

30. — —Modification not allowed

In action against law firm for alleged fraudulent misrepresentation arising out of erroneous advice it gave to plaintiffs concerning investment in tax shelter, plaintiffs were not entitled to amend complaint to assert new cause of action in fraud where original complaint alleged that law firm's opinion was knowingly false based on facts stated in offering memorandum concerning tax shelter, and amended fraud claim alleged that facts stated in offering memorandum were themselves false and so known to firm since (1) original complaint did not sufficiently state circumstances respecting amended fraud claim so as to enable defendant to prepare its defense, and thus new claim did not relate back to original claim, (2) plaintiffs had prior notice of proposed claim but offered no reason for 3-year delay in seeking amendment, and (3) amendment would require supplemental discovery, resulting in prejudicial delay. Alpert v Shea Gould Climenko & Casey, 160 A.D.2d 67, 559 N.Y.S.2d 312, 1990 N.Y. App. Div. LEXIS 8701 (N.Y. App. Div. 1st Dep't 1990).

31. —Defenses

Summary judgment dismissing complaint should not be granted where there are likely to be defenses that depend upon knowledge in the possession of the party moving for judgment which might be disclosed by cross-examination or examination before trial, as when defendant alleges as a defense that contract was obtained through fraudulent and collusive bidding but does not allege evidentiary facts supporting the fraud because the circumstances constituting the fraud are peculiarly within the knowledge of the party against whom the defense is being asserted. Jered Contracting Corp. v New York City Transit Authority, 22 N.Y.2d 187, 292 N.Y.S.2d 98, 239 N.E.2d 197, 1968 N.Y. LEXIS 1340 (N.Y. 1968).

In a products liability action, plaintiffs' motion to amend the complaint by adding a fraud cause of action, alleging that the defendant manufacturer concealed the dangerous and defective nature of the product, was untimely made and was properly denied where the motion was made more than two years after plaintiffs obtained evidence which in the exercise of reasonable diligence should have apprised them of the claimed fraud and more than six years after the claimed fraud allegedly occurred, the statute of limitations for fraud was six years under CPLR §§ 203(f) and 213(8), and the proposed fraud claim was not saved by the relation back provisions of CPLR § 203(e) in that the original complaint did not sufficiently state circumstances constituting fraud as required by CPLR § 3016(b) to give adequate notice of the claimed fraudulent transaction. Martin v Edwards Laboratories, Div. of American Hospital Supply Corp., 60 N.Y.2d 417, 469 N.Y.S.2d 923, 457 N.E.2d 1150, 1983 N.Y. LEXIS 3502 (N.Y. 1983).

32. —Complaint dismissed

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).

Defendant's general allegation that plaintiff, a sales agent of defendant, conspired to and did divert orders from one company to another is clearly insufficient to state, under this section, the affirmative defense of fraud or breach of trust. Cyg-Knit Mills, Inc. v Denton Sleeping Garment Mills, Inc., 26 A.D.2d 800, 273 N.Y.S.2d 831, 1966 N.Y. App. Div. LEXIS 3409 (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).

Complaint alleging in conclusory terms that conspiring defendants entered into course of conduct and engaged in acts to harm plaintiff failed to state claim for relief. ABKCO Industries, Inc. v Lennon, 52 A.D.2d 435, 384 N.Y.S.2d 781, 1976 N.Y. App. Div. LEXIS 12014 (N.Y. App. Div. 1st Dep't 1976).

Patient’s complaint against physician, alleging that physician negligently injured nerve in her neck and upper body and concealed her condition, was insufficient to state cause of action for fraud. Simcuski v Saeli, 57 A.D.2d 711, 395 N.Y.S.2d 776, 1977 N.Y. App. Div. LEXIS 11766 (N.Y. App. Div. 4th Dep't 1977), rev'd, 44 N.Y.2d 442, 406 N.Y.S.2d 259, 377 N.E.2d 713, 1978 N.Y. LEXIS 1991 (N.Y. 1978).

Complaint to recover damages for fraud failed to state cause of action where plaintiff failed to plead reliance, failed to plead knowledge by defendants of falsity of their alleged representations, and failed to comply with requirement of particularity. M. B. L. Distributors, Inc. v Kahn, 58 A.D.2d 806, 396 N.Y.S.2d 256, 1977 N.Y. App. Div. LEXIS 12969 (N.Y. App. Div. 2d Dep't 1977).

In an action to recover damages for breach of fiduciary duty by a defendant bank as indenture trustee and for a judgment declaring a certain bond issue of the defendant corporation due and payable, there was no error in dismissal of the complaint where it insufficiently specified the circumstances constituting a breach of trust pursuant to CPLR § 3016(b) and where plaintiff failed to meet defendant corporation’s documentary defense that acceleration of the debt upon occurance of an event of default described in the indenture agreement was within the trustee’s discretion rather than automatic. Gould v J. Henry Schroder Bank & Trust Co., 78 A.D.2d 870, 433 N.Y.S.2d 32, 1980 N.Y. App. Div. LEXIS 13585 (N.Y. App. Div. 2d Dep't 1980).

Cause of action for fraud brought by construction company engaged in county project, against engineering firms involved in same project, was properly dismissed in absence of specific factual assertions as to company's allegations that defendant engineers engaged in pattern of fraud and deception designed to divert attention from their corrupt practices. Edward B. Fitzpatrick, Jr. Constr. Corp. v County of Suffolk, 138 A.D.2d 446, 525 N.Y.S.2d 863, 1988 N.Y. App. Div. LEXIS 2823 (N.Y. App. Div. 2d Dep't), app. denied in part, app. dismissed, 73 N.Y.2d 807, 537 N.Y.S.2d 477, 534 N.E.2d 315, 1988 N.Y. LEXIS 3446 (N.Y. 1988).

Court properly dismissed fraud action where allegations failed to specify circumstances constituting wrong, complaint was devoid of any facts to support allegation that defendants knowingly misrepresented or omitted any material facts to induce plaintiffs to purchase insurance policy, and action was based on contract entered into with defendants. Elsky v KM Ins. Brokers, 139 A.D.2d 691, 527 N.Y.S.2d 446 (N.Y. App. Div. 2d Dep't 1988).

In action for fraud, defendants' motion for summary judgment was properly granted–plaintiff previously brought action against defendant insurer seeking $86,000 money judgment, alleging complaint that it was entitled to that sum pursuant to multiperil insurance policy issued by defendant; jury found that plaintiff's property had been damaged, and that those damages were covered by insurance policy issued by defendant; jury also found that plaintiff had suffered loss of rent, which was likewise covered under policy; however, trial court found that plaintiff had failed to prove extent of its property damage, and granted judgment in favor of defendant with respect to that aspect of claim; that judgment was never appealed from; in current action, plaintiff seeks $120,000 money judgment against defendant, as well as against its agent, codefendant, alleging that codefendant promised to obtain insurance coverage "that would cover all of plaintiff's needs and requirements"; plaintiff further alleges that codefendant "fraudulently" failed to obtain adequate insurance and that, as result, plaintiff suffered damages of $120,000–plaintiff is precluded from litigating in present action any issue which was actually litigated and decided in prior action to which he was party, including issue concerning amount of his property damage claim; since court held, in prior action, that plaintiff's losses attributable to property

damage were not proved, plaintiff is now bound by that determination; defense of issue preclusion may thus be asserted by codefendant, even though he was not party to prior action– furthermore, plaintiff's complaint is defective, not only because it fails to state with particularity "circumstances constituting the wrong" (CPLR 3016 [b] but also because it fails to allege all of essential elements of cause of action for fraud; plaintiff failed to demonstrate that it possesses valid cause of action for fraud. 303 Realty Corp. v Albert, 154 A.D.2d 590, 546 N.Y.S.2d 417, 1989 N.Y. App. Div. LEXIS 13445 (N.Y. App. Div. 2d Dep't 1989).

Action for fraud should have been dismissed where complaint neither alleged breach of duty distinct from contractual duty between parties nor stated specific claims for fraud or misrepresentation. Van Neil v Berger, 219 A.D.2d 811, 632 N.Y.S.2d 48, 1995 N.Y. App. Div. LEXIS 10832 (N.Y. App. Div. 4th Dep't 1995).

Defendants failed to state counterclaim for "culpa in contrahendo" or fault in contractual negotiations (i.e. breach of covenant of good faith and fair dealing) where they did not identify exact misrepresentation made, person who made it, or when or where it was made, nor did they allege any specific damages caused thereby. Westdeutsche Landesbank Girozentrale v Learsy, 284 A.D.2d 251, 726 N.Y.S.2d 556, 2001 N.Y. App. Div. LEXIS 6697 (N.Y. App. Div. 1st Dep't 2001).

Lenders' fraud complaint against a bank failed to state a claim because the complaint was devoid of any allegation that the bank or its predecessor participated in or furnished "substantial assistance" to the achievement of the underlying fraud; the complaint failed to allege any facts or identify any duty owed to the lenders by bank or by its predecessor. The only actual fraud pleaded in the complaint with sufficient particularity, pursuant to N.Y. C.P.L.R. 3016(b) related to the presentation to the lenders of false retail purchase orders or invoices, and the display of the content of a warehouse which supposedly contained goods covered by the retail purchase orders or invoices. Winkler v Battery Trading, Inc., 89 A.D.3d 1016, 934 N.Y.S.2d 199, 2011 N.Y. App. Div. LEXIS 8411 (N.Y. App. Div. 2d Dep't 2011).

Petition that consisted only of bare, conclusory allegations, without any supporting detail, did not meet the specificity requirements for stating a cause of action for adding and abetting fraud. Matter of Woodson (Clarke), 136 A.D.3d 691, 24 N.Y.S.3d 706, 2016 N.Y. App. Div. LEXIS 698 (N.Y. App. Div. 2d Dep't 2016).

33. — —Conclusory allegations

Purchaser of bowling alley could not maintain action against seller for misrepresenting condition of bowling lanes where condition of lanes, at time of sale, was as apparent to buyer as to seller, there was no showing that seller possessed superior knowledge, and buyer's complaint failed to comply with requirement of particularity, especially as to damages. Black v Chittenden, 121 A.D.2d 819, 504 N.Y.S.2d 566, 1986 N.Y. App. Div. LEXIS 58773 (N.Y. App. Div. 3d Dep't), modified, 69 N.Y.2d 665, 511 N.Y.S.2d 833, 503 N.E.2d 1370, 1986 N.Y. LEXIS 21266 (N.Y. 1986).

Fraud action was properly dismissed for failure to state claim where plaintiffs failed to supply any details as to how alleged fraud was perpetrated, and complaint contained nothing but conclusory assertions without any facts to support finding that any fraudulent act was committed; in particular, complaint failed to set forth any facts alleging false representation or its equivalent. Penna v Caratozzolo, 131 A.D.2d 738, 516 N.Y.S.2d 788, 1987 N.Y. App. Div. LEXIS 48192 (N.Y. App. Div. 2d Dep't 1987).

Plaintiff failed to set forth any cause of action sounding in deceit or fraud where his complaint made only bare allegation that defendant (licensed optometrist) had treated plaintiff at location other than the one for which defendant was registered with Education Department. Boothe v Weiss, 133 A.D.2d 603, 519 N.Y.S.2d 710, 1987 N.Y. App. Div. LEXIS 51640 (N.Y. App. Div. 2d Dep't 1987).

Court properly dismissed fraud counterclaim contained in defendant's second amended answer since it was based on mere conclusory allegations where defendant averred that he relied on representations made by plaintiff and others but failed to state what those representations were.

Jones v Gelles, 140 A.D.2d 819, 529 N.Y.S.2d 200, 1988 N.Y. App. Div. LEXIS 5012 (N.Y. App. Div. 3d Dep't 1988).

Investor group’s conclusory allegations that corporate defendant misrepresented to investors that it would not directly negotiate separatepurchase of target company, and that investors relied to their detriment on representation and refrained from further dealings of their own with target, lacked necessary factual detail showing specific damages resulting from purported misrepresentations; complaint was insufficient to establish fraud claim since there was no allegation that, but for defendant’s alleged fraud, investors would have been able to strike deal on their own with target company. Gordon v Dino De Laurentiis Corp., 141 A.D.2d 435, 529 N.Y.S.2d 777, 1988 N.Y. App. Div. LEXIS 7257 (N.Y. App. Div. 1st Dep't 1988).

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 action, inter alia, to recover for misappropriation of trade secrets, defendants (plaintiff’s former employees and their new employer) were entitled to dismissal of causes of action based on fraud and breach of trust where (1) plaintiff made only conclusory allegations that its former employees purposefully delayed completion of assignment or arranged meetings with plaintiff’s competitors in order to take advantage of economic opportunities which rightfully belonged to plaintiff, but set forth no details as to how such economic advantage was achieved, and (2) defendants established that alleged misconduct did not result in any economic advantage to

them or cause any economic disadvantage to plaintiff. Precision Concepts, Inc. v Bonsanti, 172 A.D.2d 737, 569 N.Y.S.2d 124, 1991 N.Y. App. Div. LEXIS 5347 (N.Y. App. Div. 2d Dep't 1991).

Tenants failed to state cause of action for fraudulent inducement, even though they alleged that landlord fraudulently induced them to enter into settlement agreement surrendering claims for breach of warranty of habitability respecting previous apartments by making letter promise to make “every effort” to commence project to renovate exterior of their new apartment by certain unmet date, since tenants failed to allege that landlord entered into agreement with present intent not to carry out promise of future action; further, vague and conclusory allegations of misrepresentation and reliance were insufficient to satisfy CLS CPLR § 3016(b). Couri v Westchester Country Club, Inc., 186 A.D.2d 712, 589 N.Y.S.2d 491, 1992 N.Y. App. Div. LEXIS 11997 (N.Y. App. Div. 2d Dep't 1992), app. dismissed in part, app. denied, 81 N.Y.2d 912, 597 N.Y.S.2d 931, 613 N.E.2d 963, 1993 N.Y. LEXIS 709 (N.Y. 1993).

Court should have dismissed purchasers’ action against real estate brokerage firm for fraud arising out of firm’s alleged failure to disclose leakage problems with septic system, while representing that purchasers could rely on inspections performed by building inspector and that house had no problems, where purchasers alleged only that former town building inspector told one of them that she had conversation with “owner” of firm regarding “septic failure” on property and that firm was aware that subsequent town building inspector had been convicted of taking bribes in exchange for speedy issuance of building permits and certificates of occupancy; conversation with building inspector constituted inadmissable hearsay, and purchasers’ remaining assertions constituted no more than conclusory allegation of fraud. Hausler v Spectra Realty, Inc., 188 A.D.2d 722, 590 N.Y.S.2d 587, 1992 N.Y. App. Div. LEXIS 13530 (N.Y. App. Div. 3d Dep't 1992).

Physician was entitled to summary judgment dismissing cause of action for fraud where plaintiff only made conclusory allegations of “fraudulent billing,” “misstatements concerning patient’s condition post surgery,” and “indicating that surgery was necessary.” Callas v Eisenberg, 192 A.D.2d 349, 595 N.Y.S.2d 775, 1993 N.Y. App. Div. LEXIS 3489 (N.Y. App. Div. 1st Dep't 1993).

Conclusory allegations of fraud and deception as to subcontract, alleging that $1.1 million allocation in primary contract between defendant, as owner, and subcontractor, was part of some unspecified kickback scheme, did not meet specificity requirements of CLS CPLR § 3016(b). Pontos Renovation v Kitano Arms Corp., 226 A.D.2d 191, 640 N.Y.S.2d 525, 1996 N.Y. App. Div. LEXIS 3770 (N.Y. App. Div. 1st Dep't 1996).

Complaint was properly dismissed where plaintiffs' claim that settlement agreement was induced by fraud was deficient in that their allegations were asserted on information and belief without disclosure of sources, they failed to allege terms of pertinent agreement, and their allegations revealed that they unreasonably failed to investigate truth of alleged misrepresentation; moreover, plaintiffs' claims were premature since they depended on validity of agreements to be proved in other litigation. Kanbar v Aronow, 260 A.D.2d 182, 688 N.Y.S.2d 28, 1999 N.Y. App. Div. LEXIS 3626 (N.Y. App. Div. 1st Dep't 1999).

Trial court properly dismissed claims of fraud against advisors on the ground that the allegations of scienter were not pleaded with the requisite particularity, but were conclusory, failing to set forth facts from which scienter may have been inferred; the complaint alleged only that the advisors knew or recklessly failed to discover certain improprieties in the financial statements of the corporate entity which the advisors were purportedly to review on the buyer's behalf, and negligence claims could not have been deemed fraud solely because of the nomenclature used and conclusory allegations of fraud. Giant Group, Ltd. v Arthur Andersen LLP, 2 A.D.3d 189, 770 N.Y.S.2d 291, 2003 N.Y. App. Div. LEXIS 13012 (N.Y. App. Div. 1st Dep't 2003).

Dismissal of a fraud complaint was proper because the cause of action was not pleaded with the specificity required under N.Y. C.P.L.R. 3016(b); the complaint contained only conclusory allegations of fraud, without any facts to support a finding that any fraudulent act was committed. Sargiss v Magarelli, 50 A.D.3d 1117, 858 N.Y.S.2d 209, 2008 N.Y. App. Div. LEXIS 3851 (N.Y. App. Div. 2d Dep't 2008), aff'd in part, modified, 12 N.Y.3d 527, 881 N.Y.S.2d 651, 909 N.E.2d 573, 2009 N.Y. LEXIS 1744 (N.Y. 2009).

Because the buyers failed to satisfy the requirements of N.Y. C.P.L.R. 3016(b) by sufficiently detailing their fraud cause of action, the trial court erred in denying the company's motion to dismiss the action. Simmons v Washing Equip. Tech., 51 A.D.3d 1390, 857 N.Y.S.2d 412, 2008 N.Y. App. Div. LEXIS 3931 (N.Y. App. Div. 4th Dep't 2008).

Defendants' motions to dismiss should have been granted because the plaintiff's causes of action for fraud, which contained only bare and conclusory allegations without any supporting detail, failed to satisfy the requirements of N.Y. C.P.L.R. 3016(b). Stein v Doukas, 98 A.D.3d 1024, 951 N.Y.S.2d 173, 2012 N.Y. App. Div. LEXIS 6132 (N.Y. App. Div. 2d Dep't 2012).

34. — — —Illustrative cases

In fraud action by new home buyers against builder, some of its officers, and its real estate agents, defendants were entitled to summary judgment where, with regard to alleged defects in workmanship and work not performed, buyers failed to identify with any degree of particularity which defendants made alleged misrepresentations and when they were made, and buyers did nothing more than allege in vague, conclusory, and unsubstantiated fashion that defendants made such statements knowing that they were false and knowing that promised work would never be performed. McGovern v T.J. Best Bldg. & Remodeling, 245 A.D.2d 925, 666 N.Y.S.2d 854, 1997 N.Y. App. Div. LEXIS 13629 (N.Y. App. Div. 3d Dep't 1997).

Plaintiffs' bare assertion that defendants "negligently misrepresented to the plaintiffs the risk created by the use, discharge and deposit of the hazardous materials" failed to state action for negligent misrepresentation. Tarzia v Brookhaven Nat'l Lab., 247 A.D.2d 605, 669 N.Y.S.2d 230, 1998 N.Y. App. Div. LEXIS 1783 (N.Y. App. Div. 2d Dep't 1998).

In action for, inter alia, fraud and breach of contract to transfer equity interest in defendant corporation in exchange for extinguishment of corporation's debt to plaintiffs, fraud allegations were deficient where they did not assert breach of duty extraneous or distinct from contract, and deficiency was not cured by conclusory allegation that defendants never intended to perform

contract. Steinberg v DiGeronimo, 255 A.D.2d 204, 680 N.Y.S.2d 93, 1998 N.Y. App. Div. LEXIS 12527 (N.Y. App. Div. 1st Dep't 1998).

Mere conclusory assertion of recklessness and intent, appended to identical set of facts alleged in negligence claim, did not meet special pleading standards required by CLS CPLR § 3016(b). Marine Midland Bank v Grant Thornton LLP, 260 A.D.2d 318, 689 N.Y.S.2d 81, 1999 N.Y. App. Div. LEXIS 4371 (N.Y. App. Div. 1st Dep't 1999).

Conclusory allegations of fraud committed by executor who drafted decedent's will were insufficient, even though executor's son sold decedent's house 8 months after probate in violation decedent's expressed desire, in leaving house to him, that he continue to live there, where pertinent language of will was precatory and did not create legal obligation. Wigand v Murphy, 263 A.D.2d 724, 693 N.Y.S.2d 309, 1999 N.Y. App. Div. LEXIS 8038 (N.Y. App. Div. 3d Dep't 1999).

Three former members of a stock exchange claiming breach of fiduciary duty had not satisfied the pleading requirements of N.Y. C.P.L.R. 3016(b) with their bare allegations that the chief executive officer (CEO) of the exchange had indicated that a conversion from a not-for-profit corporation into a for-profit public corporation was a mere theoretical possibility. Since two of the former members alleged that they were privy by telephone to the CEO's statements, they should have been able to recite with more specificity the CEO's actual words or actions that were alleged to have been misleading. Hyman v New York Stock Exch., Inc., 46 A.D.3d 335, 848 N.Y.S.2d 51, 2007 N.Y. App. Div. LEXIS 12725 (N.Y. App. Div. 1st Dep't 2007).

Plaintiff investment companies' fraud claims were properly dismissed because conclusory allegations that the first company falsely represented to plaintiffs that it had approved a shareholders agreement did not comply with the requirement in N.Y. C.P.L.R. § 3016(b) that fraud had to be pleaded with particularity. Dragon Inv. Co. II LLC v Shanahan, 49 A.D.3d 403, 854 N.Y.S.2d 115, 2008 N.Y. App. Div. LEXIS 2408 (N.Y. App. Div. 1st Dep't 2008).

Former wife's action to vacate a stipulation of settlement that waived her equitable claim to any of the former husband's specified business interests was dismissed for failure to state a claim under N.Y. C.P.L.R. § 3211(a)(7) as she made only conclusory allegations of fraud under N.Y. C.P.L.R. § 3016 in stating the husband concealed a sale or impending sale of his business. Paolino v Paolino, 51 A.D.3d 886, 859 N.Y.S.2d 463, 2008 N.Y. App. Div. LEXIS 4383 (N.Y. App. Div. 2d Dep't 2008).

Trial court erred in granting those parts of the motion seeking summary judgment on the fraudulent misrepresentation action and seeking attorneys' fees where the purported misrepresentation was directly related to a specific provision of the contract, and the cause of action failed to satisfy the CPLR 3016(b) requirement to state the circumstances in detail. Wilsey v 7203 Rawson Rd., LLC, 204 A.D.3d 1497, 168 N.Y.S.3d 198, 2022 N.Y. App. Div. LEXIS 2826 (N.Y. App. Div. 4th Dep't 2022).

Plaintiff's fraud claims were properly dismissed because plaintiff's allegations consisted of conclusory assertions. Mesivta & Yeshiva Gedolah of Manhattan Beach v VNB N.Y., LLC, 197 A.D.3d 703, 153 N.Y.S.3d 132, 2021 N.Y. App. Div. LEXIS 4885 (N.Y. App. Div. 2d Dep't 2021).

Allegations in a client's complaint, coupled with the surrounding circumstances, did not give rise to a reasonable inference that defendants, an attorney and law firm, committed fraud or constructive fraud because the client failed to allege that defendants made a material misrepresentation of fact or intentionally concealed a material fact, and the client's allegations that the attorney's relationship with the client's former counsel created a conflict of interest that defendants had a duty to disclose were conclusory. Moreover, the affidavit submitted by the client in opposition to defendants' motion to dismiss did not remedy the defects in the complaint. Ofman v Richland, 234 A.D.3d 865, 225 N.Y.S.3d 679, 2025 N.Y. App. Div. LEXIS 310 (N.Y. App. Div. 2d Dep't 2025).

Terminated teacher's causes of action sounding in fraud, misrepresentation, and concealment were insufficiently pleaded because the causes of action were supported only by the teacher's conclusory allegations that the principal made material misrepresentations and omissions of fact

relating to the teacher's annual professional performance review and appeal from the teacher's discontinuance. However, the teacher failed to allege any specific act of material misrepresentation or failure to disclose material information relating to these claims. Ruiz v Armstrong, 85 Misc. 3d 237, 207 N.Y.S.3d 374, 2024 N.Y. Misc. LEXIS 742 (N.Y. Sup. Ct. 2024).

35. — —Intent to defraud

Defendants were entitled to dismissal of cause of action for fraud for failure to state cause of action where plaintiffs failed to allege in complaint, or to prove in evidentiary material submitted in support of complaint, that defendants had intent to defraud at time they made alleged misrepresentations concerning ownership of property and issuance of building permit for property, and record did not contain factual assertions from which such intent could be reasonably inferred. Lilling v Slauenwhite, 143 A.D.2d 645, 533 N.Y.S.2d 12, 535 N.Y.S.2d 428, 1988 N.Y. App. Div. LEXIS 13329 (N.Y. App. Div. 2d Dep't 1988).

Complaint alleging that defendant never intended to comply with its promise to "close" mortgage transaction on or before specified date was properly dismissed for failure to state prima facie case of fraud, in absence of factual allegations that defendant "never intended" to honor its promise at time promise was made; any inference of scienter drawn from fact that mortgage transaction did not close on specified date was insufficient to sustain plaintiffs' burden under CLS CPLR § 3016 to allege fraud with particularity and support each element with allegation of fact. Fink v Citizens Mortg. Banking, Ltd., 148 A.D.2d 578, 539 N.Y.S.2d 45, 1989 N.Y. App. Div. LEXIS 3912 (N.Y. App. Div. 2d Dep't 1989).

Real estate agent, whose commission agreement provided that she would be selling agent in connection with cooperative conversion, did not sufficiently state cause of action for fraud against sponsor of offering plan, who terminated agreement as soon as plan became effective, even though she alleged that she had been fraudulently induced to enter into commission agreement with terminable at will provision based on "untrue statements of material fact" by

sponsor, where her allegations of fraud merely restated her breach of contract claims, and she did not even allege that sponsor misrepresented its future intention to perform at time contract was executed. Sandra Greer Real Estate, Inc. v Johansen Organization, 182 A.D.2d 468, 581 N.Y.S.2d 792, 1992 N.Y. App. Div. LEXIS 5983 (N.Y. App. Div. 1st Dep't 1992).

Hospital was entitled to dismissal of fraud causes of action alleging that it breached duty to plaintiffs by twice falsely informing them that their newborn child was alive when in fact child was dead, since there were no allegations from which it could be inferred that hospital intentionally made any statements with intent to fraudulently deprive plaintiffs of their legal rights or to induce them to act or refrain from acting in connection with child, and plaintiffs did not allege that they sustained actual pecuniary loss. Rivera v Wyckoff Heights Hosp., 184 A.D.2d 558, 584 N.Y.S.2d 648, 1992 N.Y. App. Div. LEXIS 7919 (N.Y. App. Div. 2d Dep't 1992).

Action for fraud against accounting firm which prepared financial statements for publicly traded corporation required dismissal for failure to allege element of scienter, despite allegations that firm did not prepare statements in accordance with generally accepted auditing standards (GAAS) or with generally accepted accounting principles (GAAP) with regard to 40-year amortization period assigned to company’s renewable service contracts, where plaintiffs (insurance companies) were all sophisticated investors, and there was no knowing and direct participation in fraud by firm. John Hancock Mut. Life Ins. Co. v KPMG Peat Marwick, 232 A.D.2d 283, 648 N.Y.S.2d 911, 1996 N.Y. App. Div. LEXIS 10520 (N.Y. App. Div. 1st Dep't 1996), app. denied, 89 N.Y.2d 809, 655 N.Y.S.2d 889, 678 N.E.2d 502, 1997 N.Y. LEXIS 217 (N.Y. 1997).

Dismissal of plaintiff’s claims against defendant under this statute was proper as they were not pleaded with the requisite particularity. Defendant’s payment of legal fees to the attorneys who had represented her in a prior action brought by plaintiff did not demonstrate circumstances so commonly associated with fraudulent transfers that their presence gave rise to an inference of intent, regardless of whether the payment was for services already rendered or to be rendered

in the underlying action. Ray v Ray, 108 A.D.3d 449, 970 N.Y.S.2d 9, 2013 N.Y. App. Div. LEXIS 5096 (N.Y. App. Div. 1st Dep't 2013).

36. — — —Illustrative cases

Trial court erred in dismissing, pursuant to N.Y. C.P.L.R. 3211(a)(7), a college's claim against equipment purchasers alleging conversion, as the allegations supporting a breach of contract claim and the allegations giving rise to the conversion claim were not duplicative; however, the trial court properly dismissed the college's fraud claim, as the complaint was devoid of factual allegations that the purchasers knew, at the time the alleged misrepresentations were made, that they were false, and that at such time the purchasers had the intent to deceive, as required by N.Y. C.P.L.R. 3016(b). N.Y. Med. College v Histogenetics, Inc., 6 A.D.3d 410, 774 N.Y.S.2d 356, 2004 N.Y. App. Div. LEXIS 3811 (N.Y. App. Div. 2d Dep't 2004).

37. — —Knowing misrepresentation

Cause of action alleging fraudulent misrepresentation is dismissed; plaintiffs have not asserted that alleged oral misrepresentations were made with intention of nonperformance; there is no fraud if promise is made in good faith without any intention of nonperformance at time of its making, even though promisor subsequently changes his mind and fails or refuses to perform; also, facts constituting wrong are not alleged with specificity and particularity required by CPLR 3016(b). Hallaway Properties, Inc. v Bank of New York, 155 A.D.2d 897, 547 N.Y.S.2d 728, 1989 N.Y. App. Div. LEXIS 14735 (N.Y. App. Div. 4th Dep't 1989), app. denied, 75 N.Y.2d 711, 557 N.Y.S.2d 309, 556 N.E.2d 1116, 1990 N.Y. LEXIS 1042 (N.Y. 1990).

Allegations that defendants entered into leases knowing that their corporate entities were undercapitalized and that assets had been transferred out of them, leaving them insolvent, were insufficient to state cause of action sounding in fraud where plaintiff neither alleged knowing misrepresentation of material fact nor detrimental reliance thereon. 107 Realty Corp. v National

Petroleum U.S.A., Ltd., 181 A.D.2d 817, 581 N.Y.S.2d 375, 1992 N.Y. App. Div. LEXIS 3887 (N.Y. App. Div. 2d Dep't 1992).

Where a mortgage lender's client filed a fraud claim against the lender contending that she had no knowledge of a "yield spread premium" (YSP) paid to the mortgage broker and that the YSP was a bribe to induce the broker to obtain her agreement to a loan with an interest rate above the par or market rate, the trial court properly dismissed her claims because she failed to plead fraud with sufficient specificity as required under N.Y. C.P.L.R. 3016(b) and failed to allege any material misrepresentation by the lender and/or a material omission it knew to be false. Wint v ABN Amro Mortg. Group, Inc., 19 A.D.3d 588, 800 N.Y.S.2d 411, 2005 N.Y. App. Div. LEXIS 6888 (N.Y. App. Div. 2d Dep't 2005).

Fraud claim in employee's suit seeking damages arising from the employer's forfeiture of the employee's rights to a certain awards program was properly dismissed, for failure to plead it with particularity and for failure to allege an intentional misrepresentation upon which the employee relied to his detriment. Nikitovich v O'Neal, 40 A.D.3d 300, 836 N.Y.S.2d 34, 2007 N.Y. App. Div. LEXIS 5709 (N.Y. App. Div. 1st Dep't 2007).

Consumer's cause of action against a bank alleging fraud in issuing a loan to a third party without knowledge of the consumer should have been dismissed because it failed to comply with the pleading requirements of N.Y. C.P.L.R. 3016(b), and the consumer did not allege that any of the employees of the bank's predecessor made a knowingly false misrepresentation of fact to him, or omitted a material fact, for the purpose of inducing his reliance. Ladino v Bank of Am., 52 A.D.3d 571, 861 N.Y.S.2d 683, 2008 N.Y. App. Div. LEXIS 5350 (N.Y. App. Div. 2d Dep't 2008).

In an action to recover damages for fraud and wrongful ejectment, the trial court did not err in entering a judgment dismissing those causes of action as the president of the condominium board did not intentionally misrepresent any facts to plaintiff's tenant; and the unlawful entry and detainer statute was only available to one evicted from property of which he was in actual possession, but defendants established that plaintiff did not possess, occupy, or attempt to

possess or occupy his condominium unit during the time period at issue, and that plaintiff was not personally deprived of access to his unit. Weiss v Bretton Woods Condominium II, 203 A.D.3d 1100, 166 N.Y.S.3d 204, 2022 N.Y. App. Div. LEXIS 1903 (N.Y. App. Div. 2d Dep't 2022).

Insurer failed to sufficiently plead a right to rescind an officers' and directors' liability policy based on alleged misrepresentations in the corporation's financial statements where there was no reason to suppose that the insurer relied on those representations when it issued the policy. Nat'l Union Fire Ins. Co. v Xerox Corp., 792 N.Y.S.2d 772, 6 Misc. 3d 763, 2004 N.Y. Misc. LEXIS 2347 (N.Y. Sup. Ct. 2004), aff'd, 25 A.D.3d 309, 807 N.Y.S.2d 344, 2006 N.Y. App. Div. LEXIS 19 (N.Y. App. Div. 1st Dep't 2006).

38. — — —Illustrative cases

When a company sued the lead underwriter of its initial public offering for fraud, alleging an affirmative misrepresentation that the share price established for the company's shares was based on market conditions, should have identified the person(s) who made the misrepresentation, so the claim was properly dismissed with leave to replead, under N.Y. C.P.L.R. 3016(b). EBC I, Inc. v Goldman Sachs & Co., 7 A.D.3d 418, 777 N.Y.S.2d 440, 2004 N.Y. App. Div. LEXIS 7122 (N.Y. App. Div. 1st Dep't 2004), aff'd in part, modified, 5 N.Y.3d 11, 799 N.Y.S.2d 170, 832 N.E.2d 26, 2005 N.Y. LEXIS 1178 (N.Y. 2005).

N.Y. C.P.L.R. 3016(b) required plaintiffs, who were an executrix and a devisee, to allege in detail their claims of fraud and misrepresentation, but because plaintiffs failed to do so, their causes of action for fraud and misrepresentation had to be dismissed, even though the circumstances surrounding a transfer by the executrix's decedent, and the subsequent, rapid transfers from one grantee to another, were suspicious and seemed to show the existence of a forged deed. As an example of plaintiffs' failure to meet the heightened pleading requirements, the allegations as stated against one defendant, a title company, amounted to no more than a claim that the title company had completed its title searches carelessly; no allegation in the

complaint sufficiently pleaded any fraud or misrepresentation, and no actual damages were pleaded, as they were required to be pleaded. Pope v Saget, 29 A.D.3d 437, 817 N.Y.S.2d 1, 2006 N.Y. App. Div. LEXIS 6752 (N.Y. App. Div. 1st Dep't 2006), app. denied, 8 N.Y.3d 803, 830 N.Y.S.2d 699, 862 N.E.2d 791, 2007 N.Y. LEXIS 83 (N.Y. 2007).

Investors failed to plead fraud with the particularity required by N.Y. C.P.L.R. 3016(b) because defendants, in an action based on an investment loss, made no actionable misrepresentations or concealments as to the marketability of a product or the profitability of a company, resulting in the acceleration of a loan. Zanett Lombardier, Ltd. v Maslow, 29 A.D.3d 495, 815 N.Y.S.2d 547, 2006 N.Y. App. Div. LEXIS 6979 (N.Y. App. Div. 1st Dep't 2006).

In a case alleging nondisclosure of a property flooding condition, under the standard of N.Y. C.P.L.R. 3016(b), the allegations of fraud against any defendants other than the sellers were not pleaded with sufficient particularity, as there were no allegations concerning specific misrepresentations, who made such misrepresentations, and when they were made Daly v Kochanowicz, 67 A.D.3d 78, 884 N.Y.S.2d 144, 2009 N.Y. App. Div. LEXIS 6083 (N.Y. App. Div. 2d Dep't 2009).

Where plaintiff fell victim to a scam in which individuals posing as federal tax officials telephoned her, demanded payment for unpaid taxes, and directed her to make that payment by providing redemption codes from gift cards, the trial court properly dismissed her fraud claims against defendant, the company from which she purchased the gift cards, as plaintiff acknowledged that defendant was not involved with the scammers and pointed to no misrepresentations by it, instead asserting only that it had profited from the gift card sales and that its policy of not issuing refunds “motivated” the fraudulent acts of the scammers. He v Apple, Inc., 189 A.D.3d 1984, 139 N.Y.S.3d 409, 2020 N.Y. App. Div. LEXIS 8341 (N.Y. App. Div. 3d Dep't 2020).

39. — —Reliance

Court erred in denying defendant’s motion to dismiss cause of action for fraud and conspiracy to commit fraud since plaintiffs alleged neither scienter nor reliance, and civil conspiracy is not

recognized as independent tort. Walters v Pennon Assocs., Ltd., 188 A.D.2d 596, 591 N.Y.S.2d 74, 1992 N.Y. App. Div. LEXIS 14496 (N.Y. App. Div. 2d Dep't 1992).

Defendant was entitled to summary judgment dismissing cause of action for fraud where plaintiffs did not submit opposing affidavits, and their verified complaint and answers to interrogatories failed to set forth any factual assertions from which it could be inferred that alleged representations were known to be false and that there was justifiable reliance thereon. Ronan v Northrup, 245 A.D.2d 1119, 667 N.Y.S.2d 181, 1997 N.Y. App. Div. LEXIS 13937 (N.Y. App. Div. 4th Dep't 1997).

Client’s fraud claim against a lawyer and law firms was not pleaded with the detail required by N.Y. C.P.L.R. 3016(b) because the client failed to allege how he changed his position or otherwise relied on any purported misrepresentations or omissions to his detriment; further, the complaint did not set forth how the conduct caused the client to lose money. Waggoner v Caruso, 68 A.D.3d 1, 886 N.Y.S.2d 368, 2009 N.Y. App. Div. LEXIS 6574 (N.Y. App. Div. 1st Dep't 2009), aff'd, 14 N.Y.3d 874, 903 N.Y.S.2d 333, 929 N.E.2d 396, 2010 N.Y. LEXIS 978 (N.Y. 2010).

Even when liberally construing the allegations in the third-party complaint in the light most favorable to the putative borrowers, the third-party complaint failed to state a cause of action to recover damages for fraud against an attorney as the complaint failed to sufficiently allege that the putative borrowers justifiably relied on the alleged misrepresentations and omissions by the attorney in negotiating a settlement related to a prior action. Mohammad v Rehman, 236 A.D.3d 892, 230 N.Y.S.3d 312, 2025 N.Y. App. Div. LEXIS 1614 (N.Y. App. Div. 2d Dep't 2025).

Terminated salesman has failed sufficiently to plead fraud and misrepresentation under New York law, where allegations fail to demonstrate that he relied on employer’s allegedly fraudulent explanation for his discharge and that he was injured as result of such reliance, because circumstances constituting wrong are not stated in sufficient detail to meet more stringent standard of pleading fraud under CLS CPLR § 3016(b). Knudsen v Quebecor Printing (U.S.A.), 792 F. Supp. 234, 1992 U.S. Dist. LEXIS 4943 (S.D.N.Y. 1992)).

40. — —Illustrative cases

Nebulous assertions such as claim that decedent was unduly influenced by false statements of respondent during two particular years clearly did not fulfill the purpose of a bill of particulars concerning alleged fraud and undue influence practiced on testator by amplifying the pleadings or limiting the proof. In re Will of Shorall, 47 A.D.2d 576, 363 N.Y.S.2d 135, 1975 N.Y. App. Div. LEXIS 8666 (N.Y. App. Div. 3d Dep't 1975).

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)).

In an interpleader action in which the proceeds of a decedent’s investment account were claimed both by his widow and by the woman with whom he had been living at the time of his death, the latter of whom he had designated as the beneficiary of the account, the trial court erred in denying the decedent’s girlfriend’s motion to dismiss the widow’s claims, which were grounded on assertions of fraud, duress, undue influence, coercion by the girlfriend, and decedent’s lack of capacity to make a gift, where the decedent had executed the beneficiary designation in the presence of only his long-time financial advisor, who stated the decedent had showed no signs of agitation or irrationality, where the fact that decedent had been living with his girlfriend supported a conclusion that his designation of her as his beneficiary had a loving and rational basis, where the widow’s assertions that the decedent had experimented with illegal drugs, had engaged in an immoral relationship with his girlfriend, and had been undergoing

psychiatric treatment at the time of his death were insufficient to raise an issue of incapacity, and where the fact that the beneficiary was not present at the designation of the beneficiary designation document constituted evidence of the absence of undue influence, especially given that decedent had selected his own counselor and directed the preparation of the document without the knowledge of his girlfriend. Poluliah v Fidelity High Income Fund, 102 A.D.2d 720, 476 N.Y.S.2d 859, 1984 N.Y. App. Div. LEXIS 18879 (N.Y. App. Div. 1st Dep't 1984).

Action for fraud allegedly committed during earlier divorce case was properly dismissed where plaintiff's pleadings failed to specify in what manner any specific statements were fraudulent, how he had relied upon them, or how his injury was related to them, and where in divorce action he was represented by counsel and unequivocally assured court that he both understood and agreed to stipulation for judgment of divorce. Ressis v Herman, 122 A.D.2d 516, 505 N.Y.S.2d 266, 1986 N.Y. App. Div. LEXIS 59786 (N.Y. App. Div. 3d Dep't 1986), app. dismissed, 69 N.Y.2d 1017, 517 N.Y.S.2d 937, 511 N.E.2d 80, 1987 N.Y. LEXIS 16814 (N.Y. 1987).

Instructor failed to make out cause of action for fraud based on college's alleged misrepresentation that instructor's position was tenure-tracked, and on college's decision to modify requirements for position following completion of instructor's 3-year employment contract, since alleged fraud related directly to instructor's cause of action for breach of contract and thus could not serve as predicate for separate cause of action for fraud; furthermore, alleged representation was not of existing fact, but rather one of possible future contingency, which required consideration of many factors before it occurred. Brumbach v Rensselaer Polytechnic Institute, 126 A.D.2d 841, 510 N.Y.S.2d 762, 1987 N.Y. App. Div. LEXIS 41975 (N.Y. App. Div. 3d Dep't 1987).

In action seeking to impose constructive trust on shares and assets of corporation solely owned by plaintiff's parents, amended complaint insufficiently pleaded fraud where no facts were alleged to show that defendant father never intended to honor alleged promise to transfer 50 percent of shares to plaintiff, and complaint alleged only that such promise was made, that it was untrue, and that, on information and belief, father never intended to make transfer. Mance v

Mance, 128 A.D.2d 448, 513 N.Y.S.2d 141, 1987 N.Y. App. Div. LEXIS 44150 (N.Y. App. Div. 1st Dep't), app. dismissed in part, app. denied, 70 N.Y.2d 668, 518 N.Y.S.2d 961, 512 N.E.2d 544, 1987 N.Y. LEXIS 17315 (N.Y. 1987).

Plaintiff's second cause of action failed to set forth elements of fraud with required specificity (CPLR 3016 [b])–in any case, plaintiff completely failed in his burden to oppose summary judgment by laying bare his proof and demonstrating material issues of fact requiring trial; only genuine issue of fact raised by plaintiff was whether he was given three-hour lesson on use of computer software without charge by defendants and offered further free instruction or was given only 15-minute lesson, and his demands for further lessons rejected; although plaintiff's allegations raised issue of credibility, fact plaintiff may not have been given lessons is immaterial, since plaintiff has in no way demonstrated defendants were under duty to do so. Klapper v Wang Laboratories, Inc., 165 A.D.2d 693, 564 N.Y.S.2d 22, 1990 N.Y. App. Div. LEXIS 11057 (N.Y. App. Div. 1st Dep't 1990).

Court should have dismissed complaint alleging that plaintiff resigned from her other job in reliance on defendant's representations concerning offer of employment which it subsequently rescinded since plaintiff failed to offer any specific representations by defendant as to duration of offered employment or assurances concerning discharge therefrom. Monaco v St. Mary's Hosp., Inc., 184 A.D.2d 985, 585 N.Y.S.2d 589, 1992 N.Y. App. Div. LEXIS 8587 (N.Y. App. Div. 3d Dep't 1992).

Complaint was insufficient to set forth prima facie fraud claim where it failed to set forth specific and detailed factual allegations that defendant personally participated in or had knowledge of any alleged fraud. Handel v Bruder, 209 A.D.2d 282, 618 N.Y.S.2d 356, 1994 N.Y. App. Div. LEXIS 11387 (N.Y. App. Div. 1st Dep't 1994).

Individuals who received copy of private offering, and subsequently invested in corporation, were improperly granted leave to amend complaint to replead their cause of action sounding in fraud against law firm and its members who prepared private offering for corporation where proposed pleading contained very few particulars as to circumstances under which plaintiffs

invested in corporation, amount of money invested, and damages plaintiffs sustained as result of their investments. Metral v Horn, 213 A.D.2d 524, 624 N.Y.S.2d 177, 1995 N.Y. App. Div. LEXIS 2918 (N.Y. App. Div. 2d Dep't 1995).

Retired judge's claims of intentional misrepresentation regarding his reassignment from the matrimonial part to the civil part and its effect on his recertification were properly dismissed because he failed to aver any facts indicating that respondents' statements that his reassignment was not based on claims of bias were actually false. Ponterio v Kaye, 25 A.D.3d 865, 808 N.Y.S.2d 439, 2006 N.Y. App. Div. LEXIS 48 (N.Y. App. Div. 3d Dep't), app. denied, 6 N.Y.3d 714, 816 N.Y.S.2d 750, 849 N.E.2d 973, 2006 N.Y. LEXIS 1298 (N.Y. 2006).

Plaintiff did not plead its claim for fraud with specificity required by N.Y. C.P.L.R. 3016(b) and merely suggested fraud on the part of defendants when loading the oil to be delivered to plaintiff pursuant to contract. Sempra Energy Trading Corp. v BP Prods. N. Am., Inc., 52 A.D.3d 350, 860 N.Y.S.2d 71, 2008 N.Y. App. Div. LEXIS 5456 (N.Y. App. Div. 1st Dep't 2008).

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).

Local television programming provider properly alleged that a foreign programming provider participated in a scheme with the local provider's CEO whereby improper payments were made to the CEO in exchange for which the CEO committed the local provider to a contract to pay grossly inflated prices for cable television programming. Pramer S.C.A. v Abaplus Intl. Corp., 76 A.D.3d 89, 907 N.Y.S.2d 154, 243 N.Y.L.J. 114, 2010 N.Y. App. Div. LEXIS 4820 (N.Y. App. Div. 1st Dep't 2010).

Complaint alleging mail fraud under the Racketeer Influenced and Corrupt Organizations Act (RICO) should have been dismissed because the complaint failed to plead the RICO causes of

action with sufficient particularity. Board of Mgrs. of Beacon Tower Condominium v 85 Adams St., LLC, 136 A.D.3d 680, 25 N.Y.S.3d 233, 2016 N.Y. App. Div. LEXIS 696 (N.Y. App. Div. 2d Dep't 2016).

Fraud action was properly dismissed as plaintiff failed to set forth any allegations of material representations made by defendants to plaintiff, and further because, having averred that he failed to read the subject documents, plaintiff was prevented from establishing justifiable reliance. Stortini v Pollis, 138 A.D.3d 977, 31 N.Y.S.3d 90, 2016 N.Y. App. Div. LEXIS 2870 (N.Y. App. Div. 2d Dep't 2016).

In homeowners' suit against an alarm system company for fraud, negligence, and breach of warranty, the court denied the company's motion to dismiss even though the homeowners did not claim that the company's salesman knew that it was not true that if telephone lines were cut the system would no longer work as the homeowners were not required to speculate as to the extent of the salesman's knowledge and the facts alleged in the complaint were sufficient to put the company on notice of the alleged misconduct. Cirillo v Slomin's Inc., 196 Misc. 2d 922, 768 N.Y.S.2d 759, 2003 N.Y. Misc. LEXIS 855 (N.Y. Sup. Ct. 2003).

Plaintiff's common law fraud claim was dismissed as he failed to adequately allege that defendants made any material representations that were false or that defendants knew the representations were false with an intent to deceive. Goldberg v Gray, 2016 U.S. Dist. LEXIS 100802 (N.D.N.Y. Aug. 2, 2016).

41. — — —Accounting

Accounting firm was entitled to dismissal of bank's action for fraudulent preparation of financial statements (on which bank relied in extending loans to firm's client) where bank merely alleged that firm's unqualified opinion letters were recklessly and wantonly made, and were known by firm to be false, without additional details concerning alleged fraud. Empire of America, Federal Sav. Bank v Arthur Andersen & Co., 129 A.D.2d 990, 514 N.Y.S.2d 578, 1987 N.Y. App. Div. LEXIS 45676 (N.Y. App. Div. 4th Dep't 1987).

Action against accountants wherein plaintiff alleged that he was fraudulently induced to advance money to corporation on owner's personal guarantee, based on financial statements prepared by accountants which falsely represented owner's net worth by indicating that she owned certain securities, was properly dismissed for failure to satisfy pleading requirements of CLS CPLR § 3016; accountants' failure to discover that owner of corporation did not own securities amounted to negligence, but failed to establish cause of action for fraud where plaintiff alleged that accountants (1) were told by third party that securities were registered to husband of owner of corporation, and verified ownership by reviewing photocopy of general assignment running from her husband to her, but never saw securities or any evidence of ownership of them, and (2) prepared tax returns for owner of corporation which did not reflect any dividends or interest with respect to securities. Fleet Factors Corp. v Werblin, 138 A.D.2d 565, 526 N.Y.S.2d 147, 1988 N.Y. App. Div. LEXIS 3149 (N.Y. App. Div. 2d Dep't 1988), app. dismissed, 73 N.Y.2d 850, 537 N.Y.S.2d 483, 534 N.E.2d 321, 1988 N.Y. LEXIS 3551 (N.Y. 1988), app. denied, 74 N.Y.2d 602, 541 N.Y.S.2d 985, 539 N.E.2d 1113, 1989 N.Y. LEXIS 595 (N.Y. 1989).

Complaint alleging fraud by accountant is expected to identify particular manner in which item included in financial statement relied on has been intentionally or recklessly misrepresented; mere allegation that accountant might have either had actual knowledge that its opinion was not true or recklessly disregarded facts that would have led to that conclusion is insufficient, absent additional detail as to facts constituting alleged fraud. Lampert v Mahoney, Cohen & Co., 218 A.D.2d 580, 630 N.Y.S.2d 733, 1995 N.Y. App. Div. LEXIS 8742 (N.Y. App. Div. 1st Dep't 1995).

Where plaintiffs, a corporation and an individual, invested in a certain company that later went bankrupt, and plaintiffs then sued defendant, the company's auditor, for gross negligence relating to allegedly misleading statements regarding the company's financial viability and particularly the auditor's failure to detect problems with four transactions by the company, the trial court properly dismissed the claims, which sounded in fraud, for failure to state a cause of action, as plaintiffs failed to meet the pleading requirements of N.Y. C.P.L.R. 3016(b) by failing to plead with particularity any facts suggesting that the auditor, in reviewing and reporting on the

company's financial status, was aware of alleged problems with the four transactions. Rotterdam Ventures, Inc. v Ernst & Young LLP, 300 A.D.2d 963, 752 N.Y.S.2d 746, 2002 N.Y. App. Div. LEXIS 12684 (N.Y. App. Div. 3d Dep't 2002).

42. — — —Attorneys

Law firm and one of its attorneys were entitled to dismissal of fraud action brought on allegations that attorney knowingly notarized and filed documents with lapsed notary commission in effort to deceive court as to documents' authenticity where pleadings and affidavits did not support conclusion that plaintiff would have been successful in underlying case absent attorney's alleged fraud, and thus damages alleged were merely conclusory; in fact, CLS Exec § 142-a validated defectively notarized documents, and thus Supreme Court properly relied on them in dismissing underlying action. Parks v Leahey & Johnson, P.C., 81 N.Y.2d 161, 597 N.Y.S.2d 278, 613 N.E.2d 153, 1993 N.Y. LEXIS 660 (N.Y. 1993).

Dismissal of a claim of fraud by limited partners of a hedge fund against the fund attorney was proper, as the allegations in the complaint and the surrounding circumstances did not give rise to a reasonable inference that the attorney committed fraud or aided and abetted the fund's fraudulent activities; further, the allegations in the complaint were conclusory under N.Y. C.P.L.R. 3016(b) and did not provide evidence that the attorney had knowledge of the fraud. Eurycleia Partners, LP v Seward & Kissel, LLP, 12 N.Y.3d 553, 883 N.Y.S.2d 147, 910 N.E.2d 976, 2009 N.Y. LEXIS 1728 (N.Y. 2009).

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).

Wife failed to state cause of action for rescission of unspecified agreement on basis of fraud where she alleged that she transferred "certain rights, property and money" to husband in reliance on his purported promise that if she made those transfers, they could work toward reconciliation, since (1) it was not clear from complaint which of parties' 3 agreements wife was seeking to rescind, (2) she did not allege what property she supposedly transferred, (3) it was not ascertainable from complaint how she reasonably relied on supposed promise of renewed marital affection based on property transfer, and (4) wife merely stated that she relied on purported statement in attempting to reach 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).

Court properly dismissed fraud cause of action where it was merely alleged that defendants failed to fulfill promise to perform certain legal services on behalf of plaintiff. Affiliated Credit Adjustors, Inc. v Carlucci & Legum, 139 A.D.2d 611, 527 N.Y.S.2d 426, 1988 N.Y. App. Div. LEXIS 4389 (N.Y. App. Div. 2d Dep't 1988).

Attorney and his law firm were entitled to summary judgment dismissing client's cause of action for false representation where client's sweeping allegations that defendants "made representations to [p]laintiff which were knowingly false and/or were made with reckless disregard to the truth, with the intention of causing [p]laintiff to rely thereupon to its detriment" violated CLS CPLR § 3016(b) by failing to set forth substance of alleged misrepresentations, dates on which they were made, or persons to whom they were made. Mountain Lion Baseball, Inc. v Gaiman, 263 A.D.2d 636, 693 N.Y.S.2d 289, 1999 N.Y. App. Div. LEXIS 7842 (N.Y. App. Div. 3d Dep't 1999).

43. — — —Banks

In action to recover damages for fraud, plaintiff's allegations that bank defendants conspired with nonbank defendants to defraud plaintiff, in that bank defendants accepted for deposit certain checks payable to one defendant for deposit to account of another defendant, thereby aiding in concealment of true identity of company which plaintiff contracted with to provide nursing care services for his mother, do not allege facts sufficient to establish prima facie case of fraud, and plaintiff did not allege intent to defraud or existence of relationship giving rise to duty to disclose or detailing manner by which alleged fraudulent concealment was perpetrated by banks. Williams v Upjohn Health Care Services, Inc., 119 A.D.2d 817, 501 N.Y.S.2d 884, 1986 N.Y. App. Div. LEXIS 55759 (N.Y. App. Div. 2d Dep't 1986).

In action by bank to recover on loan agreements and personal guarantees, defendants were not entitled to amend answer to assert economic duress and fraudulent misrepresentation in connection with their execution of personal guarantees where (1) they failed to specify wrongful threats by bank that allegedly precluded their exercise of free will, or even to allege that bank was not within its rights to request their unlimited guarantees or to refuse further credit if such guarantees were not provided, (2) they failed to promptly repudiate guarantees and thereby waived their claims of economic duress, and (3) bank extended credit on basis of guarantees and they accepted benefits of extension of credit. Bank Leumi Trust Co. v D'Evori Int'l, Inc., 163 A.D.2d 26, 558 N.Y.S.2d 909, 1990 N.Y. App. Div. LEXIS 8096 (N.Y. App. Div. 1st Dep't 1990).

44. — — —Divorce and separation

In an action to set aside a Dominican Republic divorce decree and the separation agreement which it incorporated alleging that the power of attorney authorizing plaintiff's appearance in the divorce action and the separation agreement were without effect because both were procured by fraud in that the defendant represented his earnings and assets to be "a certain amount" when in fact they were "materially in excess of that so represented", and that the plaintiff's

waiver of support in the separation agreement was void and unenforceable because it violated the public policy of New York, the cause of action in fraud was not pleaded with sufficient particularity and was properly dismissed, since conclusory allegations as to the defendant's misrepresentations concerning his financial status fail to meet the statutory requirement that a cause of action based upon fraud be pleaded "in detail" (CPLR 3016, subd [b]), and, moreover, when confronted with defendant's motion to dismiss, plaintiff failed to come forth with any facts or circumstances constituting the claimed fraud as required by law. However, it was error to address the merits of the second cause of action after having dismissed the fraud claim, since plaintiff, by failing to successfully challenge the jurisdiction of the Dominican Republic court on the ground that her power of attorney was obtained by fraud, was precluded from assailing the validity of the separation agreement incorporated into the foreign decree on the ground that it contained an impermissible waiver of her right to support under New York law. Greschler v Greschler, 51 N.Y.2d 368, 434 N.Y.S.2d 194, 414 N.E.2d 694, 1980 N.Y. LEXIS 2896 (N.Y. 1980).

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).

Ex-wife's cause of action for fraud was not pleaded with sufficient particularity where it asserted that former husband did not disclose his financial circumstances and prospects, and induced her to enter into separation agreement on representation that she would never have to "worry or want for anything" and that he would always "take care" of her, notwithstanding terms of agreement; ex-wife did not offer any facts or circumstances constituting claimed fraud but only conclusory allegations as to misrepresentations relating to former husband's financial status which did not meet minimum statutory requirements. Kaufman v Kaufman, 127 A.D.2d 463, 511 N.Y.S.2d 24, 1987 N.Y. App. Div. LEXIS 42964 (N.Y. App. Div. 1st Dep't 1987).

Court properly dismissed cause of action for fraud, deceit, and conspiracy as against individual who allegedly conspired with plaintiff's former wife and her attorney to defraud plaintiff of his ½ interest in marital property, since complaint did not allege specific coercive behavior on part of such individual or that he made any representations, fraudulent or otherwise, to plaintiff. Montalbo v Montalbo, 134 A.D.2d 414, 521 N.Y.S.2d 38, 1987 N.Y. App. Div. LEXIS 50602 (N.Y. App. Div. 2d Dep't 1987), app. dismissed in part, app. denied, 72 N.Y.2d 1002, 534 N.Y.S.2d 664, 531 N.E.2d 296, 1988 N.Y. LEXIS 2753 (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).

Husband’s complaint and supporting affidavit failed to provide sufficient details of the wife’s alleged misrepresentations as required by CPLR 3016(b) as he failed to allege that his reliance on the alleged misrepresentations was justifiable. Even if the husband’s allegations were sufficient to withstand dismissal pursuant to CPLR 3211(a)(7), the terms of the post-judgment stipulation contradicted his allegations that the wife had informed him that the divorce was not yet final and misrepresented the value of the marital residence. Keller v Keller, 237 A.D.3d 1183, 231 N.Y.S.3d 855, 2025 N.Y. App. Div. LEXIS 2645 (N.Y. App. Div. 2d Dep't 2025).

In divorce action, wife’s claim that husband failed to disclose value of his assets was not, standing alone, sufficient to allege fraud or overreaching which would vitiate parties antenuptial agreement respecting property distribution. Freiman v Freiman, 178 Misc. 2d 764, 680 N.Y.S.2d 797, 1998 N.Y. Misc. LEXIS 554 (N.Y. Sup. Ct. 1998).

45. — — —Elections

Because the petitioners did not plead their fraud claims with the specificity required by N.Y. C.P.L.R. 3016(b), and because only 16 of the stricken signatures were invalid or executed on an improperly subscribed designating sheet, the trial court erred in invalidating a candidate’s designating petition and in removing the candidate’s name from the ballot. Matter of Robinson v Edwards, 54 A.D.3d 682, 865 N.Y.S.2d 223, 2008 N.Y. App. Div. LEXIS 6566 (N.Y. App. Div. 2d Dep't 2008).

46. — — —Insurance

Defense which alleged fraud as to insurance company’s solvency at time of making of contracts appointing insurance agent to sell insurance and collect premiums, which was raised by agent in action brought by insolvent insurance company’s liquidator to recover damages for breach of contract, commissions and premium payments collected by agent and which was insufficiently pleaded and factually unsupported would be dismissed. Harnett v National Motorcycle Plan,

Inc., 59 A.D.2d 870, 399 N.Y.S.2d 242, 1977 N.Y. App. Div. LEXIS 14045 (N.Y. App. Div. 1st Dep't 1977).

Action against insurance company for breach of fire insurance policy was barred by insured's failure to commence action within 2-year period as required by policy since (1) company was not equitably estopped from raising bar of period of limitation as defense based on its agreement to waive 180-day period for filing claim, inasmuch as insured did not allege that he was misled into believing that 2-year period for commencing action had been extended or waived, or that he failed to timely commence action due to justifiable reliance on any misrepresentation by company, and (2) insured's conclusory allegations that company fraudulently represented to him that his claim would ultimately be paid did not satisfy particularity requirements of CLS CPLR § 3016(b). Strupp v Heritage Mut. Ins. Co., 143 A.D.2d 433, 532 N.Y.S.2d 806, 1988 N.Y. App. Div. LEXIS 9309 (N.Y. App. Div. 2d Dep't 1988).

In this commercial dispute between insurance brokers, plaintiffs allege that defendants contracted with plaintiffs to obtain insurance for certain of plaintiffs' clients but instead converted funds of plaintiffs and plaintiffs' clients, did not obtain promised insurance, and otherwise committed fraud and misrepresentation; defendants interposed three counterclaims seeking damages from plaintiffs based on allegations that plaintiffs' claims are barred by fraudulent and illegal acts of its own employees–as presently constructed, counterclaims do not set forth with particularity elements of fraud claim, and they are not pleaded with sufficient factual detail; defendants' mere conclusory allegations of fraud are insufficient under CPLR 3016 (b); accordingly, counterclaims are dismissed with leave to replead–insofar as counterclaims allege cause of action on behalf of nonparty, they are improper. Bramex Associates, Inc. v CBI Agencies, Ltd, 149 A.D.2d 383, 540 N.Y.S.2d 243, 1989 N.Y. App. Div. LEXIS 5408 (N.Y. App. Div. 1st Dep't 1989).

Insured's allegations—that insurer's agent attempted to engage insured in fraudulent scheme to obtain kick-backs and that when insured refused to participate in scheme, insurer responded with various retaliatory measures, including delaying payment on claim and failing to renew her

policy—failed to state essential elements of cause of action to recover damages for fraud under CLS CPLR § 3016(b). Scavo v Allstate Ins. Co., 238 A.D.2d 571, 657 N.Y.S.2d 193, 1997 N.Y. App. Div. LEXIS 4422 (N.Y. App. Div. 2d Dep't 1997).

An insurer's claims of fraud relating to an alleged conspiracy committed by defendants to falsely procure a life insurance policy were wholly conclusory and were unsupported by factual allegations sufficient to satisfy the requirements of N.Y. C.P.L.R. 3016(b). Reliastar Life Ins. Co. v Leopold, 192 Misc. 2d 385, 745 N.Y.S.2d 810, 2002 N.Y. Misc. LEXIS 872 (N.Y. Sup. Ct. 2002).

Plaintiff's allegations of fraud against a company for allegedly maintaining a stranger owned life insurance scheme were insufficient to state a claim for fraud as required under Fed. R. Civ. P. 9(b) and N.Y. CPLR. § 3016(b). Kramer v Lockwood Pension Servs., 653 F. Supp. 2d 354, 2009 U.S. Dist. LEXIS 85285 (S.D.N.Y. 2009).

47. — — —Real estate

In an action by a lessee against a city-lessor seeking rescission or reformation of a contract due to fraud, mistake or misrepresentation, the city's motion for an order dismissing the complaint for legal insufficiency would be granted where the complaint, alleging that the city fraudulently or negligently induced the lessee to enter into a lease, was fatally deficient in that it failed to specify the city officials who purportedly misrepresented the facts or made a mistake in presenting the true facts and failed to plead any factual details as to the time and place of encounters with city officials; where a cause of action is based upon misrepresentation, fraud or mistake, the circumstances constituting the wrong must be stated in detail. New York Fruit Auction Corp. v New York, 81 A.D.2d 159, 439 N.Y.S.2d 648, 1981 N.Y. App. Div. LEXIS 10508 (N.Y. App. Div. 1st Dep't 1981), aff'd, 56 N.Y.2d 1015, 453 N.Y.S.2d 640, 439 N.E.2d 356, 1982 N.Y. LEXIS 3563 (N.Y. 1982).

Court properly dismissed complaint alleging that plaintiff real estate agents were induced to perform services for defendants by defendants' statements that they wanted to sell or net lease

building that they owned when in fact they really intended to take advantage of plaintiffs to “feel out” market, where details regarding time and context of defendants’ alleged statements were insufficient to give defendants fair opportunity to defend, and plaintiffs failed to identify actual losses they suffered. Glickman v Alper, 236 A.D.2d 230, 653 N.Y.S.2d 119, 1997 N.Y. App. Div. LEXIS 901 (N.Y. App. Div. 1st Dep't 1997).

General contractor for building renovation project failed to state cause of action for fraudulent conveyance of condominium units in building where (1) no facts were alleged in detail, as required by CLS CPLR § 3016(b), that would support inference of purpose of avoiding provisions of CLS Lien Art 2, other intent to defraud, or inference that 2 gratuitous conveyances left transferor insolvent or inadequately capitalized, and (2) conversion of building to condominiums was not conveyance that would support cause of action for fraudulent conveyance. Wildman & Bernhardt Constr., Inc. v BPM Assocs., LP, 273 A.D.2d 38, 708 N.Y.S.2d 400, 2000 N.Y. App. Div. LEXIS 6321 (N.Y. App. Div. 1st Dep't 2000).

In action arising from alleged breach of “Restart Agreement” whereby certain contractors agreed to extend credit to developers and developers agreed that money owed to those contractors would be secured by mortgages on property which would be subordinate only to mortgages recorded against property in favor of defendant bank, bank was entitled to dismissal of fraud claims asserted by contractors after developer, in order to obtain additional financing, gave mortgage on property to new lender and bank agreed to subordinate its mortgages, which allegedly resulted in contractors failing to receive their final payments, as fraud was not pleaded with sufficient particularly where contractors failed to articulate what representations were made by bank and how alleged representations were fraudulent or otherwise injured them. Lakeville Pace Mech., Inc. v Elmar Realty Corp., 276 A.D.2d 673, 714 N.Y.S.2d 338, 2000 N.Y. App. Div. LEXIS 10770 (N.Y. App. Div. 2d Dep't 2000).

Buyers failed to state claim for fraud on ground that sellers actively concealed fact that house’s second-floor kitchen violated local zoning ordinances where (1) contract provided that buyers were fully aware of condition of premises based on their own inspection and investigation, and

not based on any information or representations made by sellers, (2) there was no evidence that buyers made any effort to investigate legality of kitchens although they were aware of, and had questioned legality of, second-floor kitchen, and (3) existence of second-floor kitchen and fact of its illegality were not facts peculiarly within sellers' knowledge 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).

Purchaser was properly awarded summary judgment after he intervened in a mother's action against her son for a declaration that she was the owner of certain property based on the mother's claim that the signature on a deed purportedly transferring property from the mother to the son was a forgery because the mother's allegations of fraud were not set forth with sufficient particularity as required by N.Y. C.P.L.R. art. 3016(b) but instead merely took the form of conclusory allegations. Elder v Elder, 2 A.D.3d 671, 770 N.Y.S.2d 95, 2003 N.Y. App. Div. LEXIS 13814 (N.Y. App. Div. 2d Dep't 2003).

Tenants' motion to dismiss pursuant to N.Y. C.P.L.R. 3211 was properly granted, as the landlord failed to plead with specificity the fraudulent misrepresentation and fraudulent inducement claims as required under N.Y. C.P.L.R. 3016(b); the fraud claims alleged nothing more than the tenants' entry into a contract that they allegedly did not intend to honor, and intent to breach a contract did not establish fraud. 767 Third Ave. LLC v Greble & Finger, LLP, 8 A.D.3d 75, 778 N.Y.S.2d 157, 2004 N.Y. App. Div. LEXIS 7952 (N.Y. App. Div. 1st Dep't 2004).

In an action arising out of a real property buyer's discovery of contamination on the property from spills that took place before he bought it, the buyer's claims of fraud, misrepresentation, concealment, and breach of fiduciary duty against an environmental service company and its principals were properly dismissed because the buyer did not allege that they made misrepresentations for the purpose of inducing the buyer to rely upon them. Ozelkan v Tyree Bros. Envtl. Servs., Inc., 29 A.D.3d 877, 815 N.Y.S.2d 265, 2006 N.Y. App. Div. LEXIS 6887 (N.Y. App. Div. 2d Dep't 2006).

Because the failure to notify the Attorney General of a court-ordered transfer of church property did not render the order void under N.Y. Relig. Corp. Law § 12(9), and because the church did

not set forth the alleged fraud with the specificity required by N.Y. C.P.L.R. 3016(b), no ground existed under N.Y. C.P.L.R. 5015 for relief from the court order; therefore, the transferee was properly granted summary judgment in the church's action to set aside the transfer. True Zion Gospel Temple, Inc. v Roberson, 39 A.D.3d 850, 835 N.Y.S.2d 299, 2007 N.Y. App. Div. LEXIS 5187 (N.Y. App. Div. 2d Dep't 2007).

In light of the particularity required in pleading a fraud cause of action, N.Y. C.P.L.R. 3016(b), the buyer's conclusory allegation that the sellers under a real estate contract "concealed and obstructed" the home's alleged termite infestation and water damage from view, without any factual details as to the manner in which these conditions were concealed, was insufficient to state a cause of action Mancuso v Rubin, 52 A.D.3d 580, 861 N.Y.S.2d 79, 2008 N.Y. App. Div. LEXIS 5444 (N.Y. App. Div. 2d Dep't 2008).

Plaintiff failed to allege actionable misrepresentations by defendant because plaintiff did not allege facts from which it could be reasonably inferred that defendant never intended to offer a loan under the proposed terms in the term sheet. King Penguin Opportunity Fund III, LLC v Spectrum Group Mgt. LLC, 187 A.D.3d 688, 135 N.Y.S.3d 363, 2020 N.Y. App. Div. LEXIS 6432 (N.Y. App. Div. 1st Dep't 2020).

Claim for rent overcharges failed on summary judgment because the landlord acted in good faith in registering the tenant's apartment as exempt from rent stabilization regulation after receiving a J-51 tax abatement, the late registration of the apartment as rent-stabilized after notification by the Department of Housing and Community Renewal of a change in the law did not indicate a fraudulent scheme to deregulate the apartment, and the tenant failed to plead fraud in detail. Gridley v Turnbury Vil., 196 A.D.3d 95, 149 N.Y.S.3d 243, 2021 N.Y. App. Div. LEXIS 3705 (N.Y. App. Div. 2d Dep't 2021), app. denied, 2021 N.Y. LEXIS 2589 (N.Y. Dec. 14, 2021).

Allegations in a complaint that one of the defendants, while in the employ of plaintiffs, took, converted and carried away a sum of money which was used to buy and improve real estate upon which plaintiffs seek the imposition of a trust and other relief does not conform to the

requirements of subd (b) of CPLR Rule 3016. 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).

Unit owners could not proceed against the board or individual board members on the unit owners' claim that fraud was involved in the board's execution of an agreement to place cell phone towers on the roof of the unit owners' condominium. The unit owners did not plead with specificity or show that any fraud or illegal act was involved, as required by N.Y. C.P.L.R. 3016(b), and, indeed, the only allegation that could be properly pled was that the board acted in excess of the authority the board actually possessed when it entered into the agreement. Kaung v Board of Mgrs., 873 N.Y.S.2d 421, 22 Misc. 3d 854, 2008 N.Y. Misc. LEXIS 7006 (N.Y. Sup. Ct. 2008), aff'd in part, 70 A.D.3d 1004, 895 N.Y.S.2d 505, 2010 N.Y. App. Div. LEXIS 1605 (N.Y. App. Div. 2d Dep't 2010).

48. — — —Stockholders' derivative action

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).

49. Complaint sufficient

Valid cause of action for common-law fraud was stated by purchaser of corporation against seller's investment advisor and individual corporate employees based on their preparation and distribution of projections which allegedly misrepresented corporation's financial condition where complaint described scheme involving all defendants which was devised and executed for specific purpose of defrauding prospective purchaser by selling corporation's stock for more

than it was worth; issues of reliance on projections, reliance on contractual warranties given by corporation, and whether warranties were part of scheme, were questions of fact which could not be determined at pleading stage. CPC Int'l Inc. v McKesson Corp., 70 N.Y.2d 268, 519 N.Y.S.2d 804, 514 N.E.2d 116, 1987 N.Y. LEXIS 18546 (N.Y. 1987).

Specificity requirement of CLS CPLR § 3016 was satisfied by fraud claim asserting that merchant seller's persistent promises to send invoices induced merchant buyer to undertake obligation to third person for which it then stood responsible; such allegations should not be deemed duplicative of buyer's breach of contract claim for seller's failure to deliver goods contracted for. Bazak Intern. Corp. v Mast Industries, Inc., 73 N.Y.2d 113, 538 N.Y.S.2d 503, 535 N.E.2d 633, 1989 N.Y. LEXIS 200 (N.Y. 1989).

Because a former wife presented evidence that, prior to his death, her former husband might have misrepresented his assets in their divorce proceedings, and because the former wife commenced her fraud action within two years of discovery, the complaint and the accompanying affidavits were sufficient to withstand scrutiny under N.Y. C.P.L.R. 3016(b), N.Y. C.P.L.R. 213(8). Sargiss v Magarelli, 12 N.Y.3d 527, 881 N.Y.S.2d 651, 909 N.E.2d 573, 2009 N.Y. LEXIS 1744 (N.Y. 2009).

Complaints alleging affirmative fraudulent oral and written misrepresentations for purpose of inducing third-party plaintiff to enter into certain transaction, and alleging reliance and damage stated cause of action in fraud. Mallis v Kates, 56 A.D.2d 818, 393 N.Y.S.2d 18, 1977 N.Y. App. Div. LEXIS 11118 (N.Y. App. Div. 1st Dep't 1977).

A complaint in an action arising out of an alleged breach of fiduciary duty in the management of a partnership for the benefit of a trust was pleaded in sufficient detail, even though substantially all of the specific instances of misconduct were contained in a 36-page attorney's affidavit, submitted in an earlier proceeding, which was incorporated by reference in a single paragraph of the complaint. In re Estate of Brandt, 81 A.D.2d 268, 440 N.Y.S.2d 189, 1981 N.Y. App. Div. LEXIS 10526 (N.Y. App. Div. 1st Dep't 1981).

In an action for fraud, defendant’s motion for summary judgment would be dismissed where the complaint stated the circumstances constituting the alleged fraud in sufficient detail to comply with the requirements of CPLR § 3016 and since there were triable issues as to when the facts constituting the alleged fraud occurred and when they were discovered or could with reasonable diligence have been discovered so that it could not be determined on the papers submitted whether the action was barred by the six-year statute of limitations applicable to actions based upon fraud under CPLR § 213(8) or the two-year statute premised upon actual or imputed discovery of facts under CPLR § 203(f). Kings Antiques Corp. v Tucker, 88 A.D.2d 820, 451 N.Y.S.2d 96, 1982 N.Y. App. Div. LEXIS 17130 (N.Y. App. Div. 1st Dep't 1982).

In an action by an insured against its insurer alleging that defendants fraudulently and intentionally delayed and impeded the prompt and fair settlement of plaintiff’s claim arising from a tractor accident and conspired to do the same, defendants’ contention that plaintiff failed to set forth sufficient details in its amended complaint in contravention of CPLR § 3016(b), which requires that the circumstances constituting fraud be stated in detail, would be rejected, where it was impossible to state in detail the circumstances constituting fraud, including defendants’ knowledge as to whether the damage to plaintiff’s tractor was intentionally understated in their repair estimate so as to deprive plaintiff of the total amount due under the policy, in that the circumstances were peculiarly within the knowledge of defendants. P.S. Auctions, Inc. v Exchange Mut. Ins. Co., 105 A.D.2d 473, 480 N.Y.S.2d 610, 1984 N.Y. App. Div. LEXIS 20519 (N.Y. App. Div. 3d Dep't 1984).

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).

Defendant was not entitled to dismissal of plaintiff's pro se complaint stating cause of action for fraud and misrepresentation, even though complaint was unquestionably confused and repetitious, where complaint alleged that defendant (accountant to plaintiff's father's estate) knowingly underrepresented true value of estate by failing to include value of transfers made to father's second wife, that he failed to disclose his personal relationship with second wife, and that as result, plaintiff was unable to make intelligent assignment of her legacy to second wife. Rosen v Raum, 164 A.D.2d 809, 559 N.Y.S.2d 541, 1990 N.Y. App. Div. LEXIS 10552 (N.Y. App. Div. 1st Dep't 1990).

In action arising from defendant's alleged breach of computer sales and service contracts in connection with plaintiff's procurement of new data processing system, it was error to dismiss fraud claims where plaintiff alleged that it was induced to enter into contracts in reliance on defendants' advice and opinions, that defendants' inducements were deliberately misleading and fraudulent, and that defendants knew that plaintiff was relying on their special knowledge and skill. RKB Enters., Inc. v Ernst & Young, 182 A.D.2d 971, 582 N.Y.S.2d 814, 1992 N.Y. App. Div. LEXIS 5761 (N.Y. App. Div. 3d Dep't 1992).

Where a challenger to a designated candidate's petition failed to show by clear and convincing evidence that the petition was so permeated by fraud that it required invalidation, such relief was improperly granted by the trial court in a proceeding under N.Y. Elec. Law § 16-102; however, the candidate's claim on appeal that the charges in the challenger's pleading did not meet the requirements of N.Y. C.P.L.R. 3016(b) lacked merit, as they were sufficiently specific to apprise the candidate of the allegations being made. Bronson v Cartonia, 10 A.D.3d 469, 780 N.Y.S.2d 835, 2004 N.Y. App. Div. LEXIS 10354 (N.Y. App. Div. 3d Dep't), app. denied, 3 N.Y.3d 603, 782 N.Y.S.2d 697, 816 N.E.2d 570, 2004 N.Y. LEXIS 2108 (N.Y. 2004).

Trial court should have considered the evidentiary material submitted with the summary judgment motions, including affidavits, deposition transcripts, and numerous documents

regarding the fraud, misrepresentation, and concealment of relevant facts affirmative defenses, and it was error to dismiss those affirmative defenses for a lack of specificity under N.Y. C.P.L.R. 3016(b). Old Williamsburg Candle Corp. v Seneca Ins. Co., Inc., 66 A.D.3d 656, 886 N.Y.S.2d 480, 2009 N.Y. App. Div. LEXIS 7062 (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).

50. —Continuing course of conduct

Business owners sufficiently pled a fraud case, pursuant to N.Y. C.P.L.R. 3016(b), against corporate officers of financiers because the business owners claimed that the deceptive practices of sales representatives of the financiers and the officers concealed pages of business equipment leases at the time they were executed and thus hid material and onerous terms of the leases; the alleged fraud was not an isolated incident, but rather a nationwide scheme that took place over a number of years. The very nature of the scheme, as alleged, gave rise to the reasonable inference that the officers, as individuals and the key positions they held, knew of and/or were involved in the fraud. Pludeman v Northern Leasing Sys., Inc., 10 N.Y.3d 486, 860 N.Y.S.2d 422, 890 N.E.2d 184, 2008 N.Y. LEXIS 1182 (N.Y. 2008).

In action by plaintiffs who allegedly became afflicted with cancer as result of cigarette smoking, claims accusing defendant cigarette manufacturers of fraudulently concealing and misrepresenting relevant information from their advertisements were not subject to dismissal under CLS CPLR § 3016(b) based on plaintiffs’ failure to identify specific advertisements or other representations on which they relied, as complaint alleged continuing course of conduct

spanning period of decades. DaSilva v American Tobacco Co., 175 Misc. 2d 424, 667 N.Y.S.2d 653, 1997 N.Y. Misc. LEXIS 607 (N.Y. Sup. Ct. 1997).

51. —Knowing misrepresentation

Alleged representations of defendants to effect that plaintiff would successfully obtain zoning variance, on which contract was conditioned, merely constituted opinion or prediction of something expected to occur in future, and thus could not sustain claim for fraud; thus, court erred in granting plaintiff's motion for leave to amend complaint to add cause of action for fraud. Chase Invs. v Kent, 256 A.D.2d 298, 681 N.Y.S.2d 319, 1998 N.Y. App. Div. LEXIS 13210 (N.Y. App. Div. 2d Dep't 1998).

Trial court properly denied an ex-husband's motion to dismiss the complaint for fraud filed by his ex-wife as the complaint sufficiently set forth a cause of action for fraud whereby it sought to set aside the stipulated settlement agreement entered into between the parties in their divorce case upon the finding that the ex-husband had knowingly misrepresented that his income at the time the stipulation was entered into was $45,000 per annum when he actually earned $120,000 per annum. The ex-wife did not learn about the misrepresentation until the Internal Revenue Service informed her of taxes due on the higher income. Fine v Fine, 12 A.D.3d 399, 786 N.Y.S.2d 57, 2004 N.Y. App. Div. LEXIS 13359 (N.Y. App. Div. 2d Dep't 2004), app. dismissed, 4 N.Y.3d 794, 795 N.Y.S.2d 168, 828 N.E.2d 84, 2005 N.Y. LEXIS 149 (N.Y. 2005).

Trial court properly declined to dismiss a teacher's claim alleging fraudulent misrepresentation against a union, as the teacher pled that claim with the specificity required by N.Y. C.P.L.R. 3016(b), as the teacher alleged that the union knowingly made false representations concerning the teacher's retirement benefits in order to induce the teacher to retire before a new collective bargaining agreement was instituted. Blumberg v Patchogue-Medford Union Free School Dist., 18 A.D.3d 486, 795 N.Y.S.2d 81, 2005 N.Y. App. Div. LEXIS 5049 (N.Y. App. Div. 2d Dep't 2005).

Masonry subcontractor's fraud counterclaim against the general contractor (GC) was pleaded with sufficient particularity because the counterclaim alleged, inter alia, that the GC was aware that the substrate work was deficient, the GC misrepresented to the subcontractor that the substrate work was installed according to contract requirements, and the subcontractor relied on the misrepresentation when commencing installation of the masonry work. Pike Co., Inc. v Jersen Constr. Group, LLC, 147 A.D.3d 1553, 47 N.Y.S.3d 579, 2017 N.Y. App. Div. LEXIS 1128 (N.Y. App. Div. 4th Dep't 2017).

In a fraudulent misrepresentation action, the allegations that an employee was not paid for bonuses promised to her as part of her employment were sufficiently stated for purposes of a motion to dismiss. Guggenheimer v Bernstein Litowitz Berger & Grossmann LLP, 810 N.Y.S.2d 880, 11 Misc. 3d 926, 235 N.Y.L.J. 43, 2006 N.Y. Misc. LEXIS 346 (N.Y. Sup. Ct. 2006).

52. —Only defendant has knowledge

CLS CPLR § 3016(b) is not to be interpreted so strictly as to prevent otherwise valid cause of action in situations where it may be impossible to state in detail circumstances constituting fraud, such as where, if allegations were true, only defendant would have knowledge of details. Grumman Aerospace Corp. v Rice, 196 A.D.2d 572, 601 N.Y.S.2d 189, 1993 N.Y. App. Div. LEXIS 8103 (N.Y. App. Div. 2d Dep't 1993).

Plaintiffs, who allegedly invested monies on basis of offering memorandum containing performance bond guarantee, stated fraud cause of action against law firm as aider and abettor, even though firm did not prepare memorandum nor was involved in solicitation of investors, where it was alleged that partner in firm executed performance bond as surety while knowing that it was inadequate; absence of detailed factual allegations as to partner’s authority to act on behalf of firm was not fatal, for if he possessed such authority only he and firm would have knowledge of details. Franco v English, 210 A.D.2d 630, 620 N.Y.S.2d 156, 1994 N.Y. App. Div. LEXIS 12407 (N.Y. App. Div. 3d Dep't 1994).

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).

Complaint set forth circumstances constituting fraud in sufficient detail, although allegations were not directed at any one particular defendant, where fraudulent scheme involving all defendants was set forth in detail, and plaintiff was unable to provide more detail because such information was exclusively in defendants' possession. Niagara Mohawk Power Corp. v Freed, 265 A.D.2d 938, 696 N.Y.S.2d 600, 1999 N.Y. App. Div. LEXIS 10093 (N.Y. App. Div. 4th Dep't 1999).

Court properly refused to dismiss action by insurer against its insured's principals and others, including employee of insurer's adjuster primarily responsible for working on subject loss, for fraudulent claim under fire insurance policy where insurer's allegation that adjuster's employee pleaded guilty to federal mail fraud charges accusing him of devising scheme to falsely misrepresent extent of such loss to insurer gave insured's principals adequate notice of fraud of which they were accused; insurer could not be expected to state further details of principals' participation in such fraud, if any, where matter was peculiarly within principals' knowledge. Commerce & Indus. Ins. Co. v Globe Office Supply Co., 266 A.D.2d 165, 699 N.Y.S.2d 347, 1999 N.Y. App. Div. LEXIS 12364 (N.Y. App. Div. 1st Dep't 1999).

CLS CPLR § 3016(b) is not construed so strictly as to prevent otherwise valid cause of action where it would be impossible for plaintiff to state in detail all circumstances of fraud because knowledge of those details is in exclusive possession of defendants. Auguston v Spry, 282 A.D.2d 489, 723 N.Y.S.2d 103, 2001 N.Y. App. Div. LEXIS 3523 (N.Y. App. Div. 2d Dep't 2001).

When a bank sued a loan agent which persuaded the bank to participate in a loan for, inter alia, fraudulent misrepresentation and fraudulent failure to disclose material information, the bank was not required, under N.Y. C.P.L.R. 3016(b), or any other rule of law, to allege details of the asserted fraud it did not know or which were peculiarly within the agent's knowledge at the pleading stage, but only required that the misconduct complained of be set forth in sufficient detail to clearly inform the agent with respect to the incidents complained of, and was not so strictly interpreted as to prevent an otherwise valid cause of action in situations where it might be impossible to state in detail the circumstances constituting a fraud. P.T. Bank Cent. Asia v ABN AMRO Bank N.V., 301 A.D.2d 373, 754 N.Y.S.2d 245, 2003 N.Y. App. Div. LEXIS 103 (N.Y. App. Div. 1st Dep't 2003).

Fraud claims asserted by owners of individual condominium units against the condominium's owner, sponsor, accountants, and others were improperly dismissed under N.Y. C.P.L.R. 3016(b) because the complaint specifically alleged conduct clearly meant to enrich individual board members that was aided and abetted by managing agents and from which accountants derived significant professional fees; in addition, to the extent that detail was lacking, it was error to grant summary judgment without first allowing for discovery under N.Y. C.P.L.R. 3212(f) where defendants had exclusive knowledge of the details and it was impossible for the unit owners to obtain access to the information necessary to frame specific allegations. Caprer v Nussbaum, 36 A.D.3d 176, 825 N.Y.S.2d 55, 2006 N.Y. App. Div. LEXIS 12491 (N.Y. App. Div. 2d Dep't 2006).

53. —Illustrative cases

In an action to recover the balance due on an installment note given as part of a stock purchase agreement, the sellers' motion for summary judgment was properly denied where the purchaser's affirmative defense of fraud, alleging that as a person inexperienced in business affairs, he was induced to purchase the stock by the sellers' false representations as to income, raised a triable issue, and where the factual background of the fraud claim was sufficiently

detailed in the purchaser's affidavit, as required by CPLR 3016(b). Hobart v Schuler, 78 A.D.2d 916, 433 N.Y.S.2d 50, 1980 N.Y. App. Div. LEXIS 13678 (N.Y. App. Div. 3d Dep't 1980), aff'd, 55 N.Y.2d 1023, 449 N.Y.S.2d 479, 434 N.E.2d 715, 1982 N.Y. LEXIS 3186 (N.Y. 1982).

In an action by a hospital against an architectural firm alleging, inter alia, fraud and misrepresentation arising out of the construction of an addition to the hospital which developed leaks in the window wall, the trial court properly denied the architect's motion to dismiss the complaint for lack of particularity in alleging fraud, where the cause of action was supported in adequate detail in the complaint by the hospital's allegations of the architect's alleged misrepresentations and the hospital's reliance thereon, so as to give the architect notice of the allegations which the hospital intended to prove. Samaritan Hospital v McManus, Longe, Brockwehl, Inc., 92 A.D.2d 957, 460 N.Y.S.2d 842, 1983 N.Y. App. Div. LEXIS 17381 (N.Y. App. Div. 3d Dep't 1983).

Plaintiff's fifth cause of action, alleging fraud and seeking money damages, should not have been dismissed for lack of detailed description of circumstances constituting alleged fraud as required by CLS CPLR § 3016 since there was no claim of defect in plaintiff's fourth cause of action, also for fraud but seeking recision of agreement and return of down payment, and fifth cause of action repeated and realleged specific allegation contained in fourth cause of action. Raglan Realty Corp. v Tudor Hotel Corp., 149 A.D.2d 373, 540 N.Y.S.2d 240, 1989 N.Y. App. Div. LEXIS 5002 (N.Y. App. Div. 1st Dep't 1989).

Seller of interest in limited partnership stated cause of action for rescission of sale on grounds of fraud by alleging that he had been induced to sell at depressed price by defendant's representation that plaintiff's share could be sold to third party at specified price whereas defendant had actually received higher offers from third parties, that defendant was in fiduciary relationship with plaintiff, and that plaintiff had relied on defendant's representations to his detriment. Elias v Handler, 155 A.D.2d 583, 548 N.Y.S.2d 33, 1989 N.Y. App. Div. LEXIS 14377 (N.Y. App. Div. 2d Dep't 1989).

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).

Individual defendants, who were each 50 percent shareholders in bankrupt carpet corporation, were not entitled to dismissal of causes of action alleging fraud and conversion on ground that actions were not pleaded with requisite specificity, even though fraud allegations failed to identify and distinguish between 2 individual defendants, where plaintiff alleged that (1) individual defendants ran corporation to further their own personal interests, and (2) individual defendants falsely claimed that carpet was in stock, and accepted payment from plaintiff therefor, but never fulfilled order. Board of Managers of 411 East 53rd Street Condominium v Dylan Carpet, Inc., 182 A.D.2d 551, 582 N.Y.S.2d 1022, 1992 N.Y. App. Div. LEXIS 6277 (N.Y. App. Div. 1st Dep't 1992).

It was error for court to dismiss claim for aiding and abetting breach of fiduciary responsibility pursuant to CLS CPLR §§ 3016(b) and 3211(a) where complaint set forth details of scheme to defraud plaintiff in which defendant participated, and complaint further alleged that codefendants were employees of plaintiff and thus had fiduciary duty to plaintiff, that defendant had knowledge of codefendants' relationship to plaintiff and thus was aware that codefendants had fiduciary duty to plaintiff, and that plaintiff suffered damages as result of activities in which defendant purportedly conspired. Shearson Lehman Bros. v Bagley, 205 A.D.2d 467, 614 N.Y.S.2d 5, 1994 N.Y. App. Div. LEXIS 7051 (N.Y. App. Div. 1st Dep't 1994).

Plaintiffs' allegations against defendant for aiding and abetting alleged fraud were sufficiently detailed to satisfy standard of CLS CPLR § 3016 where they alleged that defendant knew of

false and misleading representations made by his brother in order to induce plaintiffs to invest in various real estate corporations, and that he participated in diversion of corporate assets for his own use and in furtherance of fraudulent scheme or plan, to harm or detriment of plaintiffs. Rizel v Brodner, 225 A.D.2d 410, 640 N.Y.S.2d 19, 1996 N.Y. App. Div. LEXIS 2717 (N.Y. App. Div. 1st Dep't 1996).

Plaintiff stated fraud action by alleging that it was induced by defendants' misrepresentations to reveal proprietary information to defendants, to expend funds for equipment and personnel to handle defendants' business, and to agree to be paid at lesser rate than it otherwise would have charged; plaintiff thus alleged "reliance" damages beyond those that may be recovered on contract theory, and did not merely allege that defendants misrepresented their intent to perform contract. Amherst Magnetic Imaging Assocs., P.C. v Community Blue, 239 A.D.2d 892, 659 N.Y.S.2d 657, 1997 N.Y. App. Div. LEXIS 6245 (N.Y. App. Div. 4th Dep't 1997).

Plaintiff's complaint satisfied the particularity requirements of N.Y. C.P.L.R. 3016(b) because he alleged that defendant, his cousin, orally represented to him that after plaintiff raised the capital for a company, plaintiff would be appointed to serve as the company's CFO; the cousin did not give plaintiff that position after the investment capital was obtained. Braddock v Braddock, 60 A.D.3d 84, 871 N.Y.S.2d 68, 2009 N.Y. App. Div. LEXIS 15 (N.Y. App. Div. 1st Dep't 2009).

Claims of fraud that arose from the alleged embezzlement of funds from an incapacitated person survived challenge by a dismissal motion for failing to state a cause of action because an inference of fraud arose from the allegations of the complaint. Heckl v Walsh, 122 A.D.3d 1252, 996 N.Y.S.2d 413, 2014 N.Y. App. Div. LEXIS 7815 (N.Y. App. Div. 4th Dep't), dismissed, 122 A.D.3d 1252, 995 N.Y.S.2d 519, 2014 N.Y. App. Div. LEXIS 7833 (N.Y. App. Div. 4th Dep't 2014).

Professional musician who donated his services as band member at charity rock concerts sufficiently stated cause of action for fraudulent use of his name and portrait in commercial reproduction of film and sound track of concerts as record album and videotape by alleging that he was told that performance was for charity only and that he never would have consented to

“palming off” of his performance for another musician’s own had he known that concerts were to be commercially exploited. Ippolito v Ono-Lennon, 139 Misc. 2d 230, 526 N.Y.S.2d 877, 1988 N.Y. Misc. LEXIS 70 (N.Y. Sup. Ct. 1988), modified, 150 A.D.2d 300, 542 N.Y.S.2d 3, 1989 N.Y. App. Div. LEXIS 7124 (N.Y. App. Div. 1st Dep't 1989).

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).

In action by physician against manufacturers, distributors and suppliers of silicone breast implants, fraud claims were stated with sufficient particularity where complaint asserted that defendants failed to disclose known problems, distributed implants to physicians without proper testing, failed to advise physicians of known risks, suppressed data tending to show adverse effects, and instructed their representatives to advise physicians to ignore Food and Drug Administration warnings and to ignore consequences of leakage. Vitolo v Dow Corning Corp., 166 Misc. 2d 717, 634 N.Y.S.2d 362, 1995 N.Y. Misc. LEXIS 484 (N.Y. Sup. Ct. 1995), aff'd, modified, 234 A.D.2d 361, 651 N.Y.S.2d 104, 1996 N.Y. App. Div. LEXIS 12984 (N.Y. App. Div. 2d Dep't 1996).

Air conditioning company’s complaint against a customer’s attorney and the attorney’s law firm to recover counsel fees incurred in litigation involving the company and the attorney’s customer was not subject to dismissal for failure to state a cause of action because the complaint, which alleged that defendants acted fraudulently during the company’s litigation with the customer, stated facts with sufficient particularity to bring it within the rule allowing a civil litigant to bring suit against his adversary to recover attorney fees when the litigant was involved in litigation with a third party through the wrongful act of his adversary. New York Cooling Towers, Inc. v Goidel,

805 N.Y.S.2d 779, 10 Misc. 3d 219, 234 N.Y.L.J. 19, 2005 N.Y. Misc. LEXIS 2054 (N.Y. Sup. Ct. 2005).

Because a company did not state the circumstances of its proposed breach of fiduciary duty claims in detail, it was unclear whether the claims were based on a founder's unauthorized expenditures or the stock purchase transaction; accordingly, the company's motion for leave to serve an amended answer was denied with leave to renew upon a proposed pleading stating in detail the circumstances constituting the breach of fiduciary duty claims. Hecht v Components Intl, Inc., 867 N.Y.S.2d 889, 22 Misc. 3d 360, 2008 N.Y. Misc. LEXIS 6578 (N.Y. Sup. Ct. 2008).

Negligent misrepresentation claim against the trustees of a group self-insured trust was pleaded with adequate specificity because the complaint alleged specific inaccuracies and undisclosed concerns. New York State Workers' Compensation Bd. v Compensation Risk Mgrs., LLC, 59 Misc. 3d 254, 67 N.Y.S.3d 792, 2017 N.Y. Misc. LEXIS 5199 (N.Y. Sup. Ct. 2017).

54. — —Accounting

Surety company which relied on public accounting firm's certification of corporate financial statements in determining whether to write surety bonds for corporation stated cause of action in fraud against firm where complaint set forth numerous material misrepresentations indicating that firm knowingly participated in corporation's fraud, or that its conduct in certifying corporation's financial statements grossly departed from generally accepted standards by which public auditor is obliged to conduct audit, especially since firm knew that corporation had extremely poor internal controls and history of fraud. Fidelity & Deposit Co. v Arthur Andersen & Co., 131 A.D.2d 308, 515 N.Y.S.2d 791, 1987 N.Y. App. Div. LEXIS 47800 (N.Y. App. Div. 1st Dep't 1987).

Plaintiffs stated cause of action for fraud or recklessness of defendant accounting firm in connection with its certification of nonparty's financial statements by alleging (1) generally accepted auditing standards from which defendant departed, how that departure rendered defendant's financial reports inaccurate, and why plaintiffs' reliance was reasonable, (2) how

defendant recklessly failed to independently verify and investigate documents of corporation it knew had severe internal control and reporting problems, and (3) how defendant failed to investigate accusations of gross under-reporting of liabilities. Simon v Ernst & Young, 223 A.D.2d 506, 637 N.Y.S.2d 375, 1996 N.Y. App. Div. LEXIS 750 (N.Y. App. Div. 1st Dep't 1996).

Plaintiff stated cause of action for gross negligence and recklessness sufficient to give rise to inference of fraud, and its claims were sufficiently particularized to satisfy CLS CPLR § 3016(b), where complaint alleged that defendant accounting firm, with notice of particular circumstances raising doubts as to veracity of information provided to it by its client (concerning inventory, credits against future accounts receivable based on advertising and volume rebates, and purchases of fixed assets), failed to independently verify such information which subsequently proved to be fictitious, and that plaintiff refrained from taking steps to collect funds already advanced or to otherwise protect its own interests in reliance on defendant’s audit reports. Foothill Capital Corp. v Grant Thornton, L.L.P., 276 A.D.2d 437, 715 N.Y.S.2d 389, 2000 N.Y. App. Div. LEXIS 11047 (N.Y. App. Div. 1st Dep't 2000).

Two companies that licensed trademarks to a corporation that became insolvent stated valid claims for fraud and aiding and abetting fraud against an accounting firm by showing that the accounting firm audited the corporation’s books, that the firm was aware of deficiencies in the corporation’s records, and that the firm took no action to investigate those deficiencies or report them in its audit report. Houbigant, Inc. v Deloitte & Touche LLP, 303 A.D.2d 92, 753 N.Y.S.2d 493, 2003 N.Y. App. Div. LEXIS 519 (N.Y. App. Div. 1st Dep't 2003).

55. — —Attorneys

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).

Plaintiff alleged facts with sufficient specificity to support fraud complaint against attorney, despite sparse detail concerning attorney's allegedly false valuation of plaintiff's mother's estate, and of what transpired between attorney and plaintiff's father, where allegations included attorney's knowledge of falseness of valuation, his knowledge of defalcations in assets, and his request that plaintiff waive right to obtain letters of administration, or to object to appointment of her father as administrator, in exchange for sum of money and cooperative apartment. Rogal v Wechsler, 135 A.D.2d 384, 522 N.Y.S.2d 123, 1987 N.Y. App. Div. LEXIS 52356 (N.Y. App. Div. 1st Dep't 1987).

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).

Court modified an order dismissing, pursuant to N.Y. C.P.L.R. 3211(a)(7), claims alleging legal malpractice, breach of fiduciary duty, fraud, and breach of contract because the complaint alleged in sufficient detail under N.Y. C.P.L.R. 3016(b) facts which, if proven, would show that attorneys colluded to freeze plaintiffs out of a corporation's management, forcing them to surrender, at a reduced price, their minority interest in the corporation; such allegations fell within the narrow exception of fraud, collusion, malicious acts, or other special circumstances under which a cause of action alleging attorney malpractice could be asserted absent a showing of actual or near-privity. Aranki v Goldman & Assocs., LLP, 34 A.D.3d 510, 825 N.Y.S.2d 97,

2006 N.Y. App. Div. LEXIS 13502 (N.Y. App. Div. 2d Dep't 2006), dismissed, 929 N.Y.S.2d 198, 31 Misc. 3d 1210(A), 2011 N.Y. Misc. LEXIS 1487 (N.Y. Sup. Ct. 2011).

Clients sufficiently pleaded a fraud claim against an attorney because the clients alleged the attorney, as part of a scheme involving purported investments in six real properties, advised the clients to form two corporate entities, induced the clients to transfer funds into her escrow account, and, rather than using those funds to invest in the real properties, converted the funds to her own use. Bibbo v Arvanitakis, 145 A.D.3d 657, 44 N.Y.S.3d 448, 2016 N.Y. App. Div. LEXIS 8056 (N.Y. App. Div. 2d Dep't 2016).

Trial court properly denied a motion by a buyer's attorney to dismiss the seller's action for fraud because the attorney misrepresented to the seller that the alleged guarantor had signed the guaranty in order to persuade the seller to sign the stipulation, the attorney knew the alleged guarantor had not signed the guaranty, and the seller relied on the guaranty in agreeing to execute the stipulation. Pszeniczny v Horn, 193 A.D.3d 1091, 147 N.Y.S.3d 624, 2021 N.Y. App. Div. LEXIS 2654 (N.Y. App. Div. 2d Dep't 2021).

In action by surety which issued financial guarantee bond on behalf of contractor and in favor of materialman on construction project, attorney who represented contractor was not entitled to dismissal of fraud cause of action due to lack of particularity, where complaint alleged that he told materialman's attorneys that his client was committed to effectuating terms of settlement of underlying lawsuit when in fact he was involved in fraudulent scheme to transfer his client's assets to new company in attempt to shield them from materialman's claim and probable judgment, and plaintiff surety further alleged that it had relied on defendant's false representations and was damaged thereby. Contractors Cas. & Sur. Co. v I.E.A. Elec. Group, Inc., 181 Misc. 2d 469, 693 N.Y.S.2d 915, 693 N.Y.S.2d 916, 1999 N.Y. Misc. LEXIS 307 (N.Y. Sup. Ct. 1999).

Trial court properly granted that branch of defendant attorney's motion which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against him. Although plaintiff alleged the attorney breached his attendant fiduciary duty, plaintiff failed to allege specific facts

upon which the existence of an attorney-client relationship or privity between the parties could be inferred. Parekh v Cain, 96 A.D.3d 812, 948 N.Y.S.2d 72, 2012 N.Y. App. Div. LEXIS 4648 (N.Y. App. Div. 2d Dep't 2012).

Law firm's argument that the former clients' proposed amended answer-with-counterclaims was necessarily devoid of merit as a whole for failure to comply with CPLR 3016(f) was rejected where the allegations that as a global matter, the firm's decision to litigate the underlying actions in federal court was unnecessary and cost ineffective, that the firm's legal services were of inferior quality with no benefit to the clients, and that the firm's billing was excessive and was unnecessary went to the entirety of the parties' dealings rather than to the individual contents of the account, such that specific denials addressed to the account's items are not required. Schlam Stone & Dolan LLP v Harsh Imports, Inc., 227 N.Y.S.3d 847, 2025 N.Y. Misc. LEXIS 199 (N.Y. Sup. Ct. 2025).

56. — —Elections

Where a challenger to a candidate's designating petition failed, in his action under N.Y. Elec. Law § 16-102, to plead with sufficient specificity pursuant to N.Y. C.P.L.R. 3016(b) his claims alleging fraud, and he also failed to sufficiently provide details as to the allegations supporting the claims, dismissal was proper. Waugh v Nowicki, 10 A.D.3d 437, 780 N.Y.S.2d 737, 2004 N.Y. App. Div. LEXIS 10343 (N.Y. App. Div. 2d Dep't), app. denied, 3 N.Y.3d 603, 782 N.Y.S.2d 698, 816 N.E.2d 571, 2004 N.Y. LEXIS 2106 (N.Y. 2004).

When an objector filed a petition under N.Y. Elec. Law § 16-102 to invalidate petitions designating a candidate for political office, the candidate's N.Y. C.P.L.R. 3016(b) motion to dismiss the objector's petition was properly denied because the objector's petition gave the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved. Matter of Stavisky v Koo, 54 A.D.3d 432, 863 N.Y.S.2d 87, 2008 N.Y. App. Div. LEXIS 6482 (N.Y. App. Div. 2d Dep't 2008).

As allegations that certain signatures were forgeries or fraudulent were sufficiently specific because a petition that sought to invalidate a candidate's nominating petition incorporated by reference specific objections filed with the county board of elections prior to the commencement of the proceeding, the candidate had adequate notice of the allegations, such that dismissal was not warranted. Matter of Haygood v Hardwick, 110 A.D.3d 931, 973 N.Y.S.2d 711, 2013 N.Y. App. Div. LEXIS 6743 (N.Y. App. Div. 2d Dep't 2013).

Supreme court properly granted a citizen's petition to invalidate an independent nominating petition nominating a candidate for county legislator because the candidate received adequate notice of the allegations supporting the claims that certain signatures had been forged or were fraudulent. LaMarca v Quirk, 110 A.D.3d 808, 973 N.Y.S.2d 254, 2013 N.Y. App. Div. LEXIS 6537 (N.Y. App. Div. 2d Dep't 2013).

57. — —Insurance

Trial court properly denied an insurer's motion to dismiss pursuant to N.Y. C.P.L.R. 3211(a)(7) a policy holder's breach of contract action, as the policy holder's claim that manipulation of a surplus resulted in an inequitable dividend allocation adequately stated a claim for breach, and properly dismissed a claims alleging fraudulent conveyances, failure to disclose, and fraud, as the policy holder failed to allege the type of wrongful conveyance contemplated by N.Y. Debt. & Cred. Law § 276, and because the policy holder did not allege the elements of fraud with sufficient particularity as required by N.Y. C.P.L.R. 3016(b). Rabouin v Metro. Life Ins. Co., 307 A.D.2d 843, 763 N.Y.S.2d 576, 2003 N.Y. App. Div. LEXIS 8751 (N.Y. App. Div. 1st Dep't 2003).

Trial court properly determined that an insurer's complaint seeking rescission of life insurance policies sufficiently alleged fraud with the requisite particularity; notably, the complaint specified not only the misstatement of the insured's net worth, but also the falsity of the medical statements and the proffering of fictitious accountant and medical records. Sec. Mut. Life Ins. Co. of N.Y. v Rodriguez, 65 A.D.3d 1, 880 N.Y.S.2d 619, 2009 N.Y. App. Div. LEXIS 3986 (N.Y. App. Div. 1st Dep't 2009).

Insurers alleged sufficient detail to comply with the pleading requirements of CPLR 3016(b) in In their action seeking a declaratory judgment that a radiologist and a group of professional service corporations were ineligible for no fault reimbursement because in submitting no fault claims, the corporations impliedly represented that they were wholly-owned by licensed physicians. AIU Ins. Co. v Deajess Med. Imaging, P.C., 882 N.Y.S.2d 812, 24 Misc. 3d 161, 241 N.Y.L.J. 42, 2009 N.Y. Misc. LEXIS 367 (N.Y. Sup. Ct. 2009).

58. — —Mortgages

Facts pleaded sufficiently stated common-law cause of action for fraud and misrepresentation where plaintiff asserted that offering plan for 8-unit cooperative building stated that first mortgage was self-liquidating when, in fact, mortgage required balloon payment on maturity. 1113 8th Ave. Owners Corp. v Rivieccio, 165 A.D.2d 714, 560 N.Y.S.2d 150, 1990 N.Y. App. Div. LEXIS 11198 (N.Y. App. Div. 1st Dep't 1990).

Mortgagee, who had assigned mortgage to bank as collateral on personal loan, and to whom mortgage had not been redelivered despite fact that personal loan had been repaid, alleged fraud with sufficient particularity to state cause of action for cancellation of mortgage satisfaction which bank had issued to mortgagors, where complaint stated that mortgagors had obtained satisfaction of mortgage by falsely representing to bank that mortgage debt had been fully paid, and that such representations were made with scienter; reliance by bank, to mortgagee’s detriment, was manifest, and it was of no moment that misrepresentation was not made directly to mortgagee. Desser v Schatz, 182 A.D.2d 478, 581 N.Y.S.2d 796, 1992 N.Y. App. Div. LEXIS 5971 (N.Y. App. Div. 1st Dep't 1992).

59. — —Real estate

Special Term properly denied defendants’ motion to dismiss plaintiffs’ fraud complaint alleging that defendants had advised them that plaintiffs’ landlord would be compensated only for any amount of escalation in real estate taxes and labor rates and would not reap any profit thereon,

that the statement was untrue when made and was known to be false by defendants, that plaintiffs relied upon defendants' representations when entering into their individual leases, and that defendants had demanded additional rent on account of increases in real estate taxes and labor rates, making a windfall profit in excess of 100% of the actual increase, since all elements of the cause of action were sufficiently set forth in the complaint. World Wide Adjustment Bureau v Edward S. Gordon Co., 111 A.D.2d 98, 489 N.Y.S.2d 231, 1985 N.Y. App. Div. LEXIS 51235 (N.Y. App. Div. 1st Dep't 1985).

Husband's complaint met pleading requirements of CLS CPLR § 3016 where it alleged that (1) wife and daughter fraudulently induced him to sign deed transferring to daughter his interest in property owned jointly with wife, and (2) he was not aware of signing deed and had no intention of executing such deed; notwithstanding husband's failure to set forth specific detailed circumstances by which wife and daughter's conduct fraudulently induced him to sign deed in issue, complaint was sufficient since circumstances surrounding transaction were peculiarly within knowledge of wife and daughter, in view of husband's lack of recollection. Mattera v Mattera, 125 A.D.2d 555, 509 N.Y.S.2d 831, 1986 N.Y. App. Div. LEXIS 62850 (N.Y. App. Div. 2d Dep't 1986).

Dismissal of fraudulent conveyance causes of action was properly denied insofar as it was sought for insufficiently detailed pleading where plaintiff alleged overall fraudulent scheme in detail, and fraudulent intent was fairly inferable from those details. Marine Midland Bank v Zurich Ins. Co., 263 A.D.2d 382, 693 N.Y.S.2d 552, 1999 N.Y. App. Div. LEXIS 7806 (N.Y. App. Div. 1st Dep't 1999).

Although the lessees' cause of action for breach of contract was sufficiently stated by the allegations of overcharges, the complaint satisfied the pleading requirements of N.Y. C.P.L.R. 3016(b) by alleging in fair detail the way in which the lessors or their agents purposely concealed three pages of a four-page equipment lease. Pludeman v Northern Leasing Sys., Inc., 40 A.D.3d 366, 837 N.Y.S.2d 10, 2007 N.Y. App. Div. LEXIS 6041 (N.Y. App. Div. 1st Dep't

2007), aff'd in part, 10 N.Y.3d 486, 860 N.Y.S.2d 422, 890 N.E.2d 184, 2008 N.Y. LEXIS 1182 (N.Y. 2008).

Landlord's allegations that its former tenant was appellants' alter ego, and that it transferred its assets to them while insolvent for no consideration so it would be judgment proof, in violation of N.Y. Debt. & Cred. Law §§ 276 and 276-a, were pled with sufficient particularity to satisfy N.Y. C.P.L.R. 3016(b). Gateway I Group v Park Ave. Physicians, P.C., 62 A.D.3d 141, 877 N.Y.S.2d 95, 2009 N.Y. App. Div. LEXIS 1982 (N.Y. App. Div. 2d Dep't 2009).

Former wife's complaint set forth sufficient allegations regarding her claim of fraud against her former husband and two of his companies based on her assertion that the particular circumstances of the former husband's misrepresentation regarding negotiations for the sale of certain warehouse property were exclusively within his knowledge. The former wife pled, with sufficient particularity, that her former husband misrepresented to her that he had not engaged in any active deals or pending negotiations for the sale of that property at the time they entered into a memorandum agreement in their divorce action, which set forth allegations of sufficient particularity that the former husband made those misrepresentations for the purpose of inducing her to enter into the memorandum agreement and the subsequent stipulation of settlement. Etzion v Etzion, 62 A.D.3d 646, 880 N.Y.S.2d 79, 2009 N.Y. App. Div. LEXIS 3643 (N.Y. App. Div. 2d Dep't 2009).

Because a borrower's fraud claim, alleging that the closing costs more than doubled, was pleaded with sufficient particularity to satisfy N.Y. C.P.L.R. 3016(b), it, and the borrower's demand for punitive damages, were reinstated. Dobroshi v Bank of Am., N.A., 65 A.D.3d 882, 886 N.Y.S.2d 106, 2009 N.Y. App. Div. LEXIS 6238 (N.Y. App. Div. 1st Dep't 2009).

Because the buyers did not allege that a real estate agent's alleged misrepresentations were known to be false, that there was a special relationship between the parties, or that their reliance upon the alleged misrepresentations was reasonable, their fraud and negligent misrepresentation causes of action did not meet the specificity requirements of N.Y. C.P.L.R.

3016(b). Colasacco v Robert E. Lawrence Real Estate, 68 A.D.3d 706, 890 N.Y.S.2d 114, 2009 N.Y. App. Div. LEXIS 8805 (N.Y. App. Div. 2d Dep't 2009).

Trial court should not have granted the lessor's motion to dismiss the double derivative claim alleging fraud against him on behalf of the corporation because the complaint sufficiently alleged that the lessor mismanaged the corporate funds, including by refinancing the mortgage and keeping the cash-outs for himself and the shareholder had standing to bring such a claim. Simon v FrancInvest, S.A., 178 A.D.3d 436, 115 N.Y.S.3d 7, 2019 N.Y. App. Div. LEXIS 8674 (N.Y. App. Div. 1st Dep't 2019).

60. Separation or divorce

Defendant was entitled to dismissal of complaint in matrimonial action since plaintiff failed to specify time and place of each act complained of as required by CLS CPLR § 3106(c), and failure could not be cured by bill of particulars. Shoulson v Shoulson, 203 A.D.2d 974, 612 N.Y.S.2d 1005, 1994 N.Y. App. Div. LEXIS 4383 (N.Y. App. Div. 4th Dep't 1994).

Trial court erred in granting that branch of the husband's motion to strike stated paragraphs in the wife's counterclaim in a divorce action for lack of specificity and thereupon directing the wife to serve and file an amended counterclaim; the allegations sufficiently apprised the husband of the accusations against him so as to enable him to prepare a defense. Maybaum v Maybaum, 89 A.D.3d 692, 933 N.Y.S.2d 43, 2011 N.Y. App. Div. LEXIS 7704 (N.Y. App. Div. 2d Dep't 2011).

Divorce court would dismiss wife's counterclaim with leave to replead where numerous allegations of misconduct contained such statements as "Fall of 1986," "From 1985 through 1986," and "Since January of 1985 until present," for such open-ended claims fail to meet requirements of specificity under CLS CPLR § 3016. Pavlo v Pavlo, 137 Misc. 2d 418, 520 N.Y.S.2d 991, 1987 N.Y. Misc. LEXIS 2643 (N.Y. Sup. Ct. 1987).

61. —Pleading

The complaint in a separation action which fails to specify the time and place of each act complained of does not comply with subd (c) of CPLR Rule 3016, and a bill of particulars is not a satisfactory alternative if the statute is to remain effective. Pustilnik v Pustilnik, 24 A.D.2d 868, 264 N.Y.S.2d 400, 1965 N.Y. App. Div. LEXIS 3098 (N.Y. App. Div. 2d Dep't 1965).

In a matrimonial action, the husband's first cause of action for a divorce or separation on the ground of cruel and inhuman treatment should not have been dismissed without leave to replead even though it was insufficient and vague in light of the specific pleading requirement of CPLR § 3016(c). Frank v Frank, 82 A.D.2d 908, 440 N.Y.S.2d 698, 1981 N.Y. App. Div. LEXIS 14621 (N.Y. App. Div. 2d Dep't 1981).

In a cause of action for divorce on the ground of cruel and inhumane treatment, an order of dismissal for failure to state a cause of action would be modified to grant leave to replead where the facts as pleaded were sufficient to state a cause of action for divorce under Dom Rel Law § 170 but the complaint failed to comply with the pleading requirement of CPLR § 3016, which requires that the time and place of each act complained of must be specified in the complaint, and plaintiff's allegations of misconduct throughout the 20 years of marriage did not comply with the statutory requirements. Kapchan v Kapchan, 93 A.D.2d 880, 461 N.Y.S.2d 419, 1983 N.Y. App. Div. LEXIS 17760 (N.Y. App. Div. 2d Dep't 1983).

In wife's action for divorce based on cruel and inhuman treatment, husband was entitled to new trial based on Supreme Court's error in admitting acts and words outside parameters of complaint, even though husband did not request bill of particulars, since jury's consideration of unpleaded acts of misconduct undermined notice function of CLS CPLR § 3016 and prejudiced substantial right of husband. Milensky v Milensky, 127 A.D.2d 901, 511 N.Y.S.2d 975, 1987 N.Y. App. Div. LEXIS 43402 (N.Y. App. Div. 3d Dep't 1987).

Husband's motion to dismiss was properly denied because the requirements of N.Y. C.P.L.R. 3016(c) were inapplicable a cause of action for divorce under N.Y. Dom. Rel. Law § 170(7), and

the wife's cause of action could be commenced at any time after the marriage had been broken down irretrievably for a period of at least six months. Tuper v Tuper, 98 A.D.3d 55, 946 N.Y.S.2d 719, 2012 N.Y. App. Div. LEXIS 4574 (N.Y. App. Div. 4th Dep't 2012), overruled in part, Trbovich v Trbovich, 122 A.D.3d 1381, 997 N.Y.S.2d 855, 2014 N.Y. App. Div. LEXIS 8112 (N.Y. App. Div. 4th Dep't 2014).

62. —Proof

In divorce action which was dismissed for failure of proof, court did not abuse its discretion in precluding testimony regarding specified alleged act of physical violence since (1) complaint did not assert that incident as basis for alleged cruel and inhuman treatment, as required by CLS CPLR § 3016(c), and that incident was not disclosed during examinations before trial, and (2) plaintiff did not seek amendment of complaint. Stemmer v Stemmer, 182 A.D.2d 1120, 583 N.Y.S.2d 706, 1992 N.Y. App. Div. LEXIS 7007 (N.Y. App. Div. 4th Dep't 1992).

63. —Complaint dismissed

A husband's complaint, which sought a divorce as premised on cruel and inhuman treatment, would be dismissed as insufficient and vague in view of the specific pleading requirement of CPLR § 3016(c). Stevens v Stevens, 92 A.D.2d 568, 459 N.Y.S.2d 726, 1983 N.Y. App. Div. LEXIS 16799 (N.Y. App. Div. 2d Dep't 1983).

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).

64. —Complaint sufficient

In a husband’s action for divorce on the ground of cruel and inhuman treatment, an order dismissing the complaint would be reversed where the acts alleged by plaintiff constituted a “course of conduct” which, if proven at trial, could be determined to endanger his physical and mental well-being so as to make continued cohabitation with his wife unsafe or improper under Dom Rel Law § 170(1), and where, notwithstanding that exact dates of specified acts were missing, the allegations were sufficient to apprise defendant wife of the accusations against her and to enable her to prepare a defense. Pfeil v Pfeil, 100 A.D.2d 725, 473 N.Y.S.2d 629, 1984 N.Y. App. Div. LEXIS 17713 (N.Y. App. Div. 4th Dep't 1984).

A complaint for divorce, on the ground of cruel and inhuman treatment, that described certain conduct by defendant as occurring “on two occasions in” a specified year, “in the Spring of” a specified year, and “in the period from Spring [of a specified year] and continuing until October” of the following year was sufficiently specific to comply with the requirements of CPLR § 3016(c), since the allegations specifically apprised defendant of the accusations against him so as to enable him to prepare a defense, and since a more literal reading of the statute would frustrate the ability of matrimonial litigants to present their claims, in that an expectation that they will have a more precise recollection of the date of all acts of misconduct is unrealistic. Kapchan v Kapchan, 104 A.D.2d 358, 478 N.Y.S.2d 689, 1984 N.Y. App. Div. LEXIS 19828 (N.Y. App. Div. 2d Dep't 1984).

Court improperly dismissed wife’s counterclaim for divorce on ground of adultery where wife alleged that her husband had engaged in adulterous relationship with specifically named individual at designated time and location; these allegations sufficiently complied with mandate of CLS CPLR § 3016 and adequately apprised husband of charges against him. Gross v Gross, 127 A.D.2d 742, 512 N.Y.S.2d 133, 1987 N.Y. App. Div. LEXIS 43226 (N.Y. App. Div. 2d Dep't 1987).

Court erred in granting wife’s motion to dismiss for failure to state action seeking divorce on ground of cruel and inhuman treatment, even though alleged misconduct occurred over relatively short period in marriage of long duration, where it was alleged that during 2-year

period, when parties lived together, wife was intoxicated on regular basis, and continually berated, ridiculed, and verbally abused husband, his family, and his profession, with further allegation that, on one occasion, wife struck husband with clenched fists, forcing him to lock himself in bathroom to end assault. M. M. v E. M., 248 A.D.2d 109, 669 N.Y.S.2d 543, 1998 N.Y. App. Div. LEXIS 1934 (N.Y. App. Div. 1st Dep't 1998).

Because a husband's claim of irretrievable breakdown under N.Y. Dom. Rel. Law § 170(7) did not require an allegation of misconduct under N.Y. C.P.L.R. 3016(c), there was no basis to dismiss his divorce action in its entirety. Vahey v Vahey, 940 N.Y.S.2d 824, 35 Misc. 3d 691, 2012 N.Y. Misc. LEXIS 1113 (N.Y. Sup. Ct. 2012).

65. —Illustrative cases

In a separation action where plaintiff at the close of her case moved to amend the complaint to conform to the proof and defendant moved to dismiss the complaint on the ground that it did not comply with CPLR 3016(c) in that it failed to set out the nature and circumstances of defendant's alleged misconduct and the time and place of each act complained of, it was held that in the absence of any showing of prejudice or surprise to the defendant there was no merit in his contention, although he could have so moved prior to trial and such a motion may have been granted. Jemzura v Jemzura, 29 A.D.2d 797, 286 N.Y.S.2d 936, 1968 N.Y. App. Div. LEXIS 4627 (N.Y. App. Div. 3d Dep't 1968), aff'd, 26 N.Y.2d 1021, 311 N.Y.S.2d 917, 260 N.E.2d 547, 1970 N.Y. LEXIS 1325 (N.Y. 1970).

Court properly dismissed husband's counterclaim for divorce on ground of cruel and inhuman treatment, even though he alleged that wife had physically injured him, where her unrebutted physician's affidavit stated that such injury could not have occurred in manner alleged by husband, his allegation that wife moved out of marital residence set forth possible divorce action based on abandonment, not on ground of cruel and inhuman treatment, and his remaining allegation failed to specify time and place of alleged cruel and inhuman conduct as required by

CLS CPLR § 3016(c). Martin v Martin, 224 A.D.2d 597, 639 N.Y.S.2d 697, 1996 N.Y. App. Div. LEXIS 1382 (N.Y. App. Div. 2d Dep't 1996).

66. Law of foreign country

The provisions of this rule do not apply where the general averment that the defamatory matter was published of and concerning the plaintiff is contradicted and rendered nugatory by other allegations of the complaint, such as a description of plaintiff's name, age, occupation, etc., differing from the description in the libelous article. Corr v Sun Printing & Publishing Ass'n, 177 N.Y. 131, 69 N.E. 288, 177 N.Y. (N.Y.S.) 131, 1904 N.Y. LEXIS 916 (N.Y. 1904).

Defendants' failure to raise Ontario law in their answers as required by N.Y. C.P.L.R. 3016(e) did not preclude the lower courts from judicially noticing Ontario law under N.Y. C.P.L.R. 4511(b) and in engaging in a choice-of-law analysis, as defendants raised the issue in their pretrial motions, and plaintiffs were not prejudiced because the split-domicile lawsuit presented an obvious choice-of-law dilemma. Edwards v Erie Coach Lines Co., 17 N.Y.3d 306, 929 N.Y.S.2d 41, 952 N.E.2d 1033, 2011 N.Y. LEXIS 1803 (N.Y. 2011).

Complaint alleging that certain article was published concerning plaintiff was good and not contradicted by an extrinsic fact because the first name of the person referred to in the article differed from that of the plaintiff. Carpenter v Glens Falls Post Co., 164 A.D. 396, 149 N.Y.S. 801, 1914 N.Y. App. Div. LEXIS 7782 (N.Y. App. Div. 1914).

Where allegedly libelous article is written in racy style, frequently cryptic in meaning, sometimes contradictory and only dubiously suggestive of matters defaming plaintiff, and in absence of specific allegation of falsity it is not determinable which parts of ambiguous article plaintiff may rely on as libelous, complaint which failed to contain necessary allegation of falsity or proper allegation of extrinsic fact or innuendo, was dismissed in its entirety with leave to amend. Lasky v Kempton, 285 A.D. 1121, 140 N.Y.S.2d 526, 1955 N.Y. App. Div. LEXIS 6855 (N.Y. App. Div. 1955).

The law of foreign countries should be stated in substance in the pleading which relies upon it. Gevinson v Kirkeby-Natus Corp., 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

Court properly determined that CLS CPLR §§ 4511(b) and 3016(e) should be read together obviating need to plead reliance on foreign law, so that Plaintiff was not prejudiced by lateness of defendant's motion, made under CLS CPLR § 3016 requesting that Ontario law be applied to her claim after time to vacate note of issue filed in case had expired; court has discretion to apply law of foreign country notwithstanding absence of advance notice or request to do so. Burns v Young, 239 A.D.2d 727, 657 N.Y.S.2d 502, 1997 N.Y. App. Div. LEXIS 5261 (N.Y. App. Div. 3d Dep't 1997).

Because a Serbian national's creditor never gave the requisite notice or established the substance of Soviet law, its affirmative defense, which alleged that outstanding issues with regard to the applicability of Soviet law precluded a grant of summary judgment on a Russian licensee's claim for wrongful attachment, failed. Bank of N.Y. v Nickel, 14 A.D.3d 140, 789 N.Y.S.2d 95, 2004 N.Y. App. Div. LEXIS 15495 (N.Y. App. Div. 1st Dep't 2004), app. dismissed, 4 N.Y.3d 846, 797 N.Y.S.2d 423, 830 N.E.2d 322, 2005 N.Y. LEXIS 777 (N.Y. 2005), app. dismissed, 4 N.Y.3d 843, 797 N.Y.S.2d 414, 830 N.E.2d 312, 2005 N.Y. LEXIS 791 (N.Y. 2005).

Failure of plaintiff, West German bank, to set forth substance of German law in its pleading in action to enforce German judgment based on defendant's failure to repay loans made by plaintiff, is not fatal to plaintiff's motion for summary judgment, since plaintiff has annexed to its motion papers pertinent statutes, case law as well as interpretations of law by German attorneys and is thus adequately apprised both court and defendant of German law relied on. Dresdner Bank AG. v Edelmann, 129 Misc. 2d 686, 493 N.Y.S.2d 703, 1985 N.Y. Misc. LEXIS 2671 (N.Y. Sup. Ct. 1985), aff'd, 117 A.D.2d 1024, 499 N.Y.S.2d 565, 1986 N.Y. App. Div. LEXIS 53307 (N.Y. App. Div. 1st Dep't 1986).

Although CLS CPLR § 4511(b) permits court to take judicial notice of law of foreign country if notice is given in pleadings or prior to presentation of evidence at trial, pleading must be

sufficient to provide adversarial party with opportunity to prepare necessary response, especially considering requirement of CLS CPLR § 3016(e) that in pleading where cause of action or defense is based on law of foreign country, substance of foreign law relied upon shall be stated. Elghanayan v Elghanayan, 148 Misc. 2d 552, 560 N.Y.S.2d 955, 1990 N.Y. Misc. LEXIS 500 (N.Y. Sup. Ct. 1990).

In action for accounting, finding of conversion, and imposition of constructive trust arising out of oral partnership agreement, mere allegation in complaint that parties agreed that interpretation of agreement would be governed by "laws and customs of Iran" was insufficient to provide defendants with opportunity to prepare necessary response, and warranted dismissal of complaint, since substance of foreign law and customs was not set forth as required by CLS CPLR § 3016(e). Elghanayan v Elghanayan, 148 Misc. 2d 552, 560 N.Y.S.2d 955, 1990 N.Y. Misc. LEXIS 500 (N.Y. Sup. Ct. 1990).

CPLR 3016 (e) provides that in pleadings "[w]here a cause of action or defense is based upon the law of a foreign country . . . the substance of the foreign law relied upon shall be stated." Although CPLR 4511 (b), which permits the court to take judicial notice of the law of foreign countries, provides that "[n]otice shall be given in the pleadings or prior to the presentation of any evidence at the trial", the pleading must be sufficient to provide the adversarial party with an opportunity to prepare the necessary response. Accordingly, in an action for an accounting, a finding of conversion, and imposition of a constructive trust arising out of an oral partnership agreement, the mere allegation in the complaint that the parties agreed that interpretation of the terms of the agreement "would be, at all times, governed by the laws and customs of Iran" is insufficient to provide defendants with an opportunity to prepare the necessary response in that the substance of the foreign law and customs is not set forth, and the defendants' motion to dismiss the complaint pursuant to CPLR 3016 (e) is granted. Elghanayan v Elghanayan, 148 Misc. 2d 552, 560 N.Y.S.2d 955, 1990 N.Y. Misc. LEXIS 500 (N.Y. Sup. Ct. 1990).

In determining legality of contract to circumvent official exchange rate of Nigeria, defendant's noncompliance with CLS CPLR § 3016(e) could be remedied by trial court's taking judicial

notice of foreign law without being requested to do so (CLS CPLR § 4511(b)), and without presentation of expert testimony. Ekwunife v Erike, 171 Misc. 2d 554, 658 N.Y.S.2d 166, 1997 N.Y. Misc. LEXIS 183 (N.Y. App. Term 1997).

67. Sale and delivery of goods or performing labor or services

Plaintiff was entitled to summary judgment in action to recover for labor and services performed where his verified complaint set forth items of his claim and value of each, defendant's verified answer failed to specify items disputed and nature of dispute as required by CLS CPLR § 3016(f), and in opposition to summary judgment motion, defendant submitted only affidavit of counsel, who did not have personal knowledge of facts. Marinelli v Shifrin, 260 A.D.2d 227, 688 N.Y.S.2d 72, 1999 N.Y. App. Div. LEXIS 3998 (N.Y. App. Div. 1st Dep't 1999).

The itemization requirements do not apply to action to foreclose mechanic's lien resulting from breach of contract, even though work, labor and materials furnished, are involved. Rosen v Elridge, 41 Misc. 2d 670, 246 N.Y.S.2d 278, 1964 N.Y. Misc. LEXIS 2236 (N.Y. Sup. Ct. 1964).

68. —Pleading

Where counterclaim fails to number the items of defendant's claim, as required by CPLR 3016, plaintiff is not bound to make the specific denials by CPLR 3016. Aluminum Bldg. Products Corp. v Martin Katz Corp., 30 A.D.2d 571, 291 N.Y.S.2d 192, 1968 N.Y. App. Div. LEXIS 3857 (N.Y. App. Div. 2d Dep't 1968).

Existence of counterclaim alleging that plaintiff supplier delivered nonconforming goods, causing defendant to sustain delay damages, did not mandate denial of plaintiff's summary judgment motion pertaining to CLS CPLR § 3016(f) cause of action alleging that defendant paid only small portion of balance due for 28 deliveries, as counterclaim was predicated on only one delivery, and defendant did not sufficiently show that its damages would equal or exceed amount of plaintiff's judgment or that counterclaim was inseparable from plaintiff's cause of action. Bonded

Concrete v T.J. Madden Constr. Co., 237 A.D.2d 785, 655 N.Y.S.2d 153, 1997 N.Y. App. Div. LEXIS 2434 (N.Y. App. Div. 3d Dep't 1997).

Defendant's motion to amend his answer to include requisite itemization as required by CLS CPLR § 3016(f) in action to recover for labor and services performed was properly denied where supported only by affidavit of counsel, who did not have personal knowledge of facts. Marinelli v Shifrin, 260 A.D.2d 227, 688 N.Y.S.2d 72, 1999 N.Y. App. Div. LEXIS 3998 (N.Y. App. Div. 1st Dep't 1999).

Given a corporation's denial of a business relationship with the creditor in an accounts stated suit, the corporation's failure specifically to dispute individual invoices was of no import, and summary judgment in favor of the creditor was error. Ryan Graphics, Inc. v Bailin, 39 A.D.3d 249, 833 N.Y.S.2d 448, 2007 N.Y. App. Div. LEXIS 4289 (N.Y. App. Div. 1st Dep't 2007).

Although complaint to which plaintiff attached 10 invoices containing 23 items for services rendered on a form including unit price, total charge, legends, names, and symbols which required further explanation for comprehension did not comply with the requirements of CPLR § 3016, subd f, such complaint was sufficient as a pleading in action to recover for services rendered. Personal Pool of Manhattan, Inc. v Dinanno, 75 Misc. 2d 835, 348 N.Y.S.2d 914, 1973 N.Y. Misc. LEXIS 1382 (N.Y. Civ. Ct. 1973).

69. — —Triable issue of fact

Where, pursuant to subd (f) the plaintiffs' causes of action are supported by a schedule of the items of work, labor, and services performed, defendants' answers which were mere general denials are insufficient to raise any triable issues, and entitle plaintiffs to summary judgment. Duban v Platt, 23 A.D.2d 660, 257 N.Y.S.2d 109, 1965 N.Y. App. Div. LEXIS 4767 (N.Y. App. Div. 2d Dep't 1965), app. dismissed, 16 N.Y.2d 612, 261 N.Y.S.2d 63, 209 N.E.2d 108, 1965 N.Y. LEXIS 1390 (N.Y. 1965), aff'd, 17 N.Y.2d 526, 267 N.Y.S.2d 907, 215 N.E.2d 164, 1966 N.Y. LEXIS 1620 (N.Y. 1966).

Where the defendant files a general denial in an action for goods sold and delivered, such denial does not put at issue the value of the goods sold. Virginia B. R. R., Inc. v Seeley, 33 A.D.2d 871, 306 N.Y.S.2d 251, 1969 N.Y. App. Div. LEXIS 2548 (N.Y. App. Div. 3d Dep't 1969).

In an action for goods sold and delivered, the defendant's failure to deny specifically items in the schedule annexed to plaintiff's complaint, did not bar the denial of plaintiff's motion for partial summary judgment if a triable issue was raised on the motion. General Bldg. Supply Corp. v Shapn, Inc., 35 A.D.2d 550, 313 N.Y.S.2d 459, 1970 N.Y. App. Div. LEXIS 4068 (N.Y. App. Div. 2d Dep't 1970).

In two actions for goods sold and delivered, although the grant of the summary judgment motions as against corporate defendants was proper, the grant of summary judgment as against the individual defendants was not, where the affidavit submitted in each case in opposition to plaintiff's motion raised a triable issue of fact. Belcher Co. of New York, Inc. v Etzkowitz, 90 A.D.2d 783, 455 N.Y.S.2d 644, 1982 N.Y. App. Div. LEXIS 18992 (N.Y. App. Div. 2d Dep't 1982).

Plaintiff was not entitled to summary judgment on its action for defendant's failure to pay for fuel, services and materials supplied by plaintiff under agreement whereby defendant was to furnish delivery to plaintiff's clients, despite plaintiff's compliance with CLS CPLR § 3016 by attaching list to complaint, detailing invoice numbers, fees charged, invoice dates and product descriptions for goods sold and delivered, since fact issues existed as to whether plaintiff was attempting to charge defendant for products delivered to third parties and whether defendant had in fact overpaid plaintiff through its delivery service. Cibro Petroleum Products, Inc. v East Schodack Fuel & Contracting Corp., 135 A.D.2d 947, 522 N.Y.S.2d 358, 1987 N.Y. App. Div. LEXIS 52855 (N.Y. App. Div. 3d Dep't 1987).

In proceeding under CLS SCPA § 2110 to fix attorney's fee, attorney was not entitled to summary judgment fixing his fee at full sum demanded in his petition, even though answer of nominated executrix and legatee was insufficient, under CLS CPLR § 3016(f), to raise triable issue of fact as to reasonable value of attorney's services, where surrogate's inherent authority

to supervise attorney fees may be exercised even where all parties have knowingly consented to payment of requested fee. In re Driscoll, 273 A.D.2d 381, 709 N.Y.S.2d 597, 2000 N.Y. App. Div. LEXIS 7048 (N.Y. App. Div. 2d Dep't 2000).

70. —Description insufficient

Where plaintiff's complaint in a cause of action for goods sold and delivered and labor and services performed failed to properly itemize the items of claim, defendant would not be required to answer pursuant to CPLR 3016, subd f. Guy Constr., Inc. v Entress, 29 A.D.2d 835, 287 N.Y.S.2d 618, 1968 N.Y. App. Div. LEXIS 4574 (N.Y. App. Div. 4th Dep't 1968).

Although defendant's first counterclaim did not comply with the permissive procedure provided by CPLR 3016(f) in that there was insufficient specificity of the items claimed to have been sold and delivered, where on the motion for summary judgment defendants supplied detailed invoices breaking down each item listed in the complaint and there were no denials in plaintiff's reply, summary judgment should have been granted. New York Kandy Kard Corp. v Barton's Candy Corp., 32 A.D.2d 513, 298 N.Y.S.2d 562, 1969 N.Y. App. Div. LEXIS 4300 (N.Y. App. Div. 1st Dep't 1969).

In an action involving the sale and delivery of goods in which plaintiff's itemized statement contained only a generic description of the goods contained in the allegations of the complaint and contained no description of the goods apart from invoice numbers in the itemized schedule of claim annexed to the complaint, plaintiff's failure to fully conform to the statutory mandate of CPLR § 3016, and the defendant's general denial served to put in issue the question of the delivery or nondelivery of goods barred summary judgment, where the "keystone" of the defenses set forth by the defendants was that no goods were in fact sold and delivered, and that the invoices were false. Slavenburg Corp. v Rudes, 86 A.D.2d 517, 445 N.Y.S.2d 759, 1982 N.Y. App. Div. LEXIS 15033 (N.Y. App. Div. 1st Dep't 1982).

In action to recover for accounting and tax preparation services rendered, complaint did not satisfy requirements of CLS CPLR § 3016(f), even though it contained broad general description

of work allegedly performed (preparation of tax returns and representation before Internal Revenue Service), since it gave no specific description of services rendered, but mere schedule of services provided, consisting only of list of dates, with notation beside each, enumerating hourly rate and number of hours worked that day by given employee. Teal, Becker & Chiaramonte, CPAs, P.C. v Sutton, 197 A.D.2d 768, 602 N.Y.S.2d 956, 1993 N.Y. App. Div. LEXIS 9811 (N.Y. App. Div. 3d Dep't 1993).

Counterclaim by law firm for services rendered in connection with representation of plaintiff in divorce proceeding did not meet requirement of CLS CPLR § 3016(f) to set forth and number items of each claim and reasonable value of price of each where it was undisputed that plaintiff paid over $11,500 on his account, but counterclaim set forth all charges on account and did not identify unpaid items. Green v Harris Beach & Wilcox, 202 A.D.2d 993, 609 N.Y.S.2d 505, 1994 N.Y. App. Div. LEXIS 3361 (N.Y. App. Div. 4th Dep't 1994).

Trial court erred in granting a seller’s motion for summary judgment in its action to recover the amount allegedly due on goods it had sold and delivered to the buyer and a guarantor (the defendants) because the itemized statement annexed to the complaint did not specify the items to which the buyer’s payments had been applied, the defendants were entitled to rely on the affirmative defense of payment by reason of inconsistencies in the seller’s proof and unexplained notations on the invoices the seller submitted in support of its motion; however, a triable issue of fact existed as to whether the guarantor’s signature on the credit application was effective to superadd her personal liability to the buyer’s. Crescent Packing Corp. v Tropical Mkt., Inc., 60 Misc. 3d 32, 79 N.Y.S.3d 847, 2018 N.Y. Misc. LEXIS 2708 (N.Y. App. Term 2018).

71. —Description sufficient

A motion for summary judgment was properly granted to plaintiff, who itemized the labor and legal services performed and stated their agreed price or reasonable value in a verified complaint, since defendant’s general denial failed to raise a question of fact. Millington v Tesar,

89 A.D.2d 1037, 454 N.Y.S.2d 349, 1982 N.Y. App. Div. LEXIS 18306 (N.Y. App. Div. 3d Dep't), app. denied, 58 N.Y.2d 601, 458 N.Y.S.2d 1025, 444 N.E.2d 1012, 1982 N.Y. LEXIS 6489 (N.Y. 1982).

In an action to recover for labor, material and equipment allegedly supplied in which plaintiff, pursuant to CPLR § 3016(f), attached to its complaint a schedule setting forth under headings for labor, materials and equipment, the components making up each item for which recovery was sought, defendant’s answer was sufficiently specific where, although it did not deny the items on the schedule by item number as the official form suggests, it did specifically register defendant’s disagreement as to delivery, performance and reasonable value or agreed type by reference to the schedule headings. County Excavation, Inc. v Middleton, 90 A.D.2d 660, 456 N.Y.S.2d 252, 1982 N.Y. App. Div. LEXIS 18738 (N.Y. App. Div. 3d Dep't 1982).

Special Term erred in granting partial summary judgment to seller of goods in contract action against buyer, on ground that buyer had failed in its answer to indicate specifically which items or aspects of claim it disputed, where seller failed to satisfy requirements of CLS CPLR § 3016, in that seller simply provided list of invoice numbers, dates, and total amounts owed on each invoice, instead of providing list of items covered by each invoice so as to afford buyer opportunity to indicate specifically which items it disputed; thus, general denial contained in buyer’s answer was sufficient and no item-by-item denial was required. United Tire & Rubber Co. v Contractor Tire Sales, Inc., 124 A.D.2d 280, 508 N.Y.S.2d 78, 1986 N.Y. App. Div. LEXIS 61323 (N.Y. App. Div. 3d Dep't 1986), dismissed, In re Abrams, 69 N.Y.2d 823, 513 N.Y.S.2d 1029, 506 N.E.2d 539, 1987 N.Y. LEXIS 15479 (N.Y. 1987), dismissed, 69 N.Y.2d 823, 513 N.Y.S.2d 1029, 506 N.E.2d 540, 1987 N.Y. LEXIS 15484 (N.Y. 1987).

In a dispute involving a home improvement contract, the homeowner’s answer alleging that the contractor had falsely represented that the cost of repairing and finishing off the attic and other rooms was in an amount less than normally charged for such work and materials, and therefore defendant elected to rescind the contract upon discovery of these fraudulent representations, was in substantial compliance with the rule requiring that statements in a pleading be sufficiently

particular to give the court and parties notice of the transactions intended to be proved and the material elements of the defense. Gardner & North Roofing & Siding Corp. v Champagne, 55 Misc. 2d 413, 285 N.Y.S.2d 693, 1967 N.Y. Misc. LEXIS 1010 (N.Y. Sup. Ct. 1967).

Realtor stated cause of action to collect brokerage commission even though it failed to specify all details of alleged agreement between parties since it did allege brokerage agreement and that realtor's efforts were "procuring cause" of sale. Sholom & Zuckerbrot Realty Corp. v Coldwell Banker Commercial Group, Inc., 138 Misc. 2d 799, 525 N.Y.S.2d 541, 1988 N.Y. Misc. LEXIS 197 (N.Y. Sup. Ct. 1988).

Because a hedge fund pleaded the underlying defamation with the specificity required by N.Y. C.P.L.R. 3016(a), its tortious interference claim survived the brokers' motion to dismiss. Amaranth LLC v J.P. Morgan Chase & Co., 71 A.D.3d 40, 888 N.Y.S.2d 489, 2009 N.Y. App. Div. LEXIS 7787 (N.Y. App. Div. 1st Dep't 2009), app. denied, 14 N.Y.3d 736, 898 N.Y.S.2d 74, 925 N.E.2d 73, 2010 N.Y. LEXIS 3832 (N.Y. 2010).

72. —Illustrative cases

Where papers on motion for summary judgment on counterclaim presented questions of fact, summary judgment could not be granted on counterclaim even though plaintiff's reply did not make the specific denials to defendant's first counterclaim required by CPLR 3016, subd f. Aluminum Bldg. Products Corp. v Martin Katz Corp., 30 A.D.2d 571, 291 N.Y.S.2d 192, 1968 N.Y. App. Div. LEXIS 3857 (N.Y. App. Div. 2d Dep't 1968).

Under circumstances, challenge to sufficiency of complaint was acceptable in lieu of affixing proposed answer to motion to vacate default judgment, where defendant claimed in affidavit that some items in complaint had been paid, that many services billed had not been performed, that manner of performance of some services resulted in damage, and that total of items alleged as unpaid in schedule exceeded amount demanded by complaint, so that defendant could not determine what to dispute. Richards, Fagone & Associates, Inc. v Center Stage Stores, Inc., 44 A.D.2d 857, 354 N.Y.S.2d 739, 1974 N.Y. App. Div. LEXIS 5127 (N.Y. App. Div. 3d Dep't 1974).

Where defendant was required, in order to place in dispute items for which plaintiff sought to recover and which were set forth in schedule attached to verified complaint with particularity, to set forth in answer specific items questioned and in what respect, answer consisted of general denial and six affirmative defenses and counterclaims only one of which was addressed to item contained in schedule, and defendant's only other opposition to motion for partial summary judgment consisted of attorney's affidavit which was lacking in probative value, plaintiff was entitled to recover amount demanded less amount claimed by defendant in responsive counterclaim. Offset Paperback Mfrs., Inc. v Banner Press, Inc., 47 A.D.2d 733, 365 N.Y.S.2d 214, 1975 N.Y. App. Div. LEXIS 8997 (N.Y. App. Div. 1st Dep't 1975), aff'd, 39 N.Y.2d 770, 384 N.Y.S.2d 780, 349 N.E.2d 880, 1976 N.Y. LEXIS 2709 (N.Y. 1976).

In an action to recover for work, labor and services, though defendant's general denial of plaintiff's third cause of action did not comply with rule requiring that "defendant by his verified answer shall indicate specifically those items he disputes and whether in respect of delivery or performance, reasonable value or agreed price" and thus was insufficient to raise a triable issue so as to avoid summary judgment, such was not a ground for striking entire answer. Two Clinton Square Corp. v Gorin Stores, Inc., 51 A.D.2d 643, 377 N.Y.S.2d 845, 1976 N.Y. App. Div. LEXIS 10986 (N.Y. App. Div. 4th Dep't 1976).

In an action brought by an attorney to recover fees for legal research and writing he performed for other attorneys, in which plaintiff sought recovery of fees relating to two projects by reference to an annexed schedule pursuant to CPLR § 3016(f) itemizing the alleged services and the agreed-upon price, irrespective of the propriety of the use of CPLR § 3016(f) in the ordinary attorney-client situation, there was no reason to preclude its use where the fee arrangement was among attorneys for the performance of legal research and writing. Krouner v Aulisi, 108 A.D.2d 982, 484 N.Y.S.2d 968, 1985 N.Y. App. Div. LEXIS 43310 (N.Y. App. Div. 3d Dep't 1985).

Court erred in denying seller's summary judgment motion in action to recover purchase price of merchandise sold and delivered where buyer failed to dispute factual allegations of complaint as required by CLS CPLR § 3016(f). Milwaukee Electric Tool Corp. v McGrath & Durk, Inc., 133

A.D.2d 535, 519 N.Y.S.2d 905, 1987 N.Y. App. Div. LEXIS 50022 (N.Y. App. Div. 4th Dep't 1987).

Summary judgment should have been awarded to seller of petroleum products for unpaid purchase price of products delivered to buyer where (1) seller alleged that account was stated between parties for deliveries, each separately stated and numbered as Schedule A attached to complaint, pursuant to CLS CPLR § 3016(f), (2) buyer's answer, verified by attorney, consisted of general denial, further denial that products itemized in schedule were of reasonable value or agreed price as set forth, and counterclaim concerning unrelated transaction, and (3) seller then moved for summary judgment, raising inadequacy of answer as defense to account stated and averring, by affidavit of general manager, that account was accurate; buyer's answer was not verified by person having knowledge of facts and did not constitute anything more than general denial. Cibro Petroleum Products, Inc. v Onondaga Oil Co., 144 A.D.2d 152, 534 N.Y.S.2d 480, 1988 N.Y. App. Div. LEXIS 10130 (N.Y. App. Div. 3d Dep't 1988).

Complaint alleged all material elements of cause of action for sale and delivery of goods, wares and services; while complaint may not have conformed to CPLR 3016 (f), failure to meet specificity requirement does not render complaint ineffective, but merely relieves defendants of having to deny, item by item, goods and services alleged to have been sold and delivered–proof established elements of plaintiff's claim; defendants did not dispute that they did not pay for goods and services, but only that evidence failed to satisfactorily demonstrate either that they were furnished or priced at reasonable or agreed-upon amount; plaintiff introduced store receipts and invoices detailing items and services ordered and delivered; defendants admitted receiving goods and services from plaintiff and that defendants frequently placed orders with plaintiff over phone; manager testified cost of items purchased at store was not negotiable and delivered goods were priced according to current market conditions; defendants did not offer any evidence to contradict this testimony or otherwise show prices were unreasonable; as plaintiff established necessary elements supporting its claim for goods and services sold and

delivered, it is entitled to recover their value. Agway, Inc. v Curtin, 161 A.D.2d 1040, 557 N.Y.S.2d 605, 1990 N.Y. App. Div. LEXIS 6556 (N.Y. App. Div. 3d Dep't 1990).

In action to recover damages for goods allegedly sold and delivered to defendants, plaintiff was not entitled to summary judgment on ground that defendants' general denial of plaintiff's particularized schedules of goods sold and delivered failed to comply with CLS CPLR § 3016(f) and was insufficient to raise triable issue; defendants' denial of ownership of stores to which goods were delivered went to entirely of parties' dealings, rather than to individualized contents of accounts stated, and no proof was presented by plaintiff that defendants actually purchased goods or placed orders for them. Maines Paper & Food Serv. v Restaurant Mgmt. by D.C. Corp., 229 A.D.2d 748, 646 N.Y.S.2d 388, 1996 N.Y. App. Div. LEXIS 7819 (N.Y. App. Div. 3d Dep't 1996).

In an action filed by a company that provided printing services to recover on nine invoices it submitted to a corporation, the unsworn statement signed by the corporation's president and submitted in response to the printing company's motion for summary judgment did not raise a meritorious defense and was not evidence because it did not specify which of the nine invoices the corporation was disputing or the reasons why it was disputing the invoices, and because the corporation failed to present a meritorious defense in opposition to the printing company's motion for summary judgment, evidence the corporation presented in support of its motion to vacate a default judgment which showed a reasonable excuse for failing to appear at a hearing on the printing company's motion for summary judgment was academic and the trial court's judgment denying the corporation's motion to vacate the default judgment was upheld. Merrill/New York Co. v Celerity Sys., 300 A.D.2d 206, 752 N.Y.S.2d 301, 2002 N.Y. App. Div. LEXIS 12828 (N.Y. App. Div. 1st Dep't 2002).

Fund was entitled to dismissal of a partnerships' anticipatory repudiation claim because, contrary to the partnership's contention, a letter which suspended withdrawals from an investment was not an anticipatory repudiation of the agreement; rather, the letter notified investors that, in light of market conditions and liquidity concerns, withdrawals were being

suspended for the foreseeable future and, thus, was not an unequivocal expression by the fund of an intent to forego its obligation to make a payment on the partnership's redemption request by the deadline required by the operating agreement. Palmetto Partners, L.P. v AJW Qualified Partners, LLC, 83 A.D.3d 804, 921 N.Y.S.2d 260, 2011 N.Y. App. Div. LEXIS 3025 (N.Y. App. Div. 2d Dep't 2011).

73. Personal injury

Complaint for personal injuries arising out of automobile accident covered by the no-fault law which fails to allege that the injuries are serious so as to meet the threshold qualification of maintenance of action for common-law damages would be subject to motion to dismiss, and plaintiff met with such motion would more than likely seek leave to amend complaint to insert the key word "serious" in which event defendant would probably seek to convert motion from one testing sufficiency of pleading into motion for summary judgment. Sullivan v Darling, 81 Misc. 2d 817, 367 N.Y.S.2d 199, 1975 N.Y. Misc. LEXIS 2485 (N.Y. Sup. Ct. 1975), disapproved, Sanders v Rickard, 51 A.D.2d 260, 380 N.Y.S.2d 811, 1976 N.Y. App. Div. LEXIS 10686 (N.Y. App. Div. 3d Dep't 1976).

Where defendant's fuel truck was delivering oil to building when plaintiff tripped over fuel hose which extended from the truck across public sidewalk to the building, the truck was in "use" and the "no-fault" law, including requirement of allegation of serious injury, was applicable. Yanis v Texaco, Inc., 85 Misc. 2d 94, 378 N.Y.S.2d 570, 1975 N.Y. Misc. LEXIS 3277 (N.Y. Civ. Ct. 1975).

Assuming that plaintiff seeking to recover for injuries sustained in automobile accident has made sufficient allegations of serious injury under the no-fault law to withstand motion to dismiss and that defense is not established to a sufficient degree to warrant the court to direct judgment in favor of defendant, resolution of any question of fact as to whether plaintiff has suffered a serious injury should await the trial. Rosemont Enterprises, Inc. v McGraw-Hill Book Co., 85 Misc. 2d 583, 380 N.Y.S.2d 839, 1975 N.Y. Misc. LEXIS 3321 (N.Y. Sup. Ct. 1975).

74. —Elements

Allegations in a complaint that plaintiff was “prevented from performing his occupation and usual duties” as a result of his injury are insufficient to state a cause of action for economic loss greater than basic economic loss. Spohn v Mansberger, 97 A.D.2d 942, 468 N.Y.S.2d 733, 1983 N.Y. App. Div. LEXIS 20740 (N.Y. App. Div. 4th Dep't 1983).

Plaintiff had to show a serious injury under N.Y. Ins. Law §§ 5102 and 5104. even though a default had been entered against defendant as to liability; the allegation of serious injury was a necessary element of a prima facie case under N.Y. Ins. Law § 5104 for purposes of N.Y. C.P.L.R. § 3016(g). Abbas v Cole, 44 A.D.3d 31, 840 N.Y.S.2d 388, 2007 N.Y. App. Div. LEXIS 8552 (N.Y. App. Div. 2d Dep't 2007).

Complaint was defective under the no-fault insurance law in that it contained no specific averment of “serious injury.” Agnostakios v Laureano, 85 Misc. 2d 203, 379 N.Y.S.2d 664, 1976 N.Y. Misc. LEXIS 1983 (N.Y. Civ. Ct. 1976).

75. —Alternate theory

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).

76. —Complaint dismissed

Bicyclist who was hit by automobile was “covered person” under Automobile Insurance Reparations Act and, in order to maintain action against automobile driver, had to allege serious

injury or economic loss greater than basic economic loss as defined in that Act. Oeschger v Fullforth, 51 A.D.2d 864, 380 N.Y.S.2d 171, 1976 N.Y. App. Div. LEXIS 11479 (N.Y. App. Div. 4th Dep't 1976).

Affidavit of plaintiff's attorney which contained an unsubstantiated statement that plaintiff's injuries sustained in collision of his motorcycle with automobile constituted serious injury within meaning of the Insurance Law was not enough to raise a triable issue of fact. Simone v Streeben, 56 A.D.2d 237, 392 N.Y.S.2d 500, 1977 N.Y. App. Div. LEXIS 10422 (N.Y. App. Div. 3d Dep't 1977).

Health insurer was entitled to dismissal of optometrist's cause of action for intentional infliction of emotional distress where insurer's communications with optometrist's patients were part of its random routine antifraud review, and optometrist failed to allege sufficient facts to support claim that insurer's conduct was extreme and outrageous. Trachtman v Empire Blue Cross & Blue Shield, 251 A.D.2d 322, 673 N.Y.S.2d 726, 1998 N.Y. App. Div. LEXIS 6355 (N.Y. App. Div. 2d Dep't 1998).

Complaint, in action for damages arising out of alleged negligent use of a motor vehicle, alleging that as a result of the defendant's negligence, plaintiff sustained "serious personal injuries" and suffered "great bodily injury" was not sufficient under the Comprehensive Automobile Insurance Reparations Act in that plaintiff did not allege those facts which exempted him from limitations contained in that act, which provides that there shall be no right of recovery for noneconomic loss, except in the case of a serious injury, or for basic economic loss. Monahan v Twyman, 79 Misc. 2d 44, 359 N.Y.S.2d 518, 1974 N.Y. Misc. LEXIS 1579 (N.Y. Sup. Ct. 1974).

77. —Complaint sufficient

In an action to recover damages for personal injuries sustained in a motor vehicle collision, in which plaintiff alleged that he had sustained a "serious injury," pursuant to CPLR § 3016(g), as defined in Ins Law § 671, dismissal of the complaint on the ground that plaintiff had not sustained such an injury within the meaning of the statute was erroneous where plaintiff's

verified bill of particulars indicated that he walked with a limp as a result of the accident and where defendants had not demonstrated that they were entitled to judgment as a matter of law on the question of whether plaintiff had sustained a “permanent consequential limitation of use of a body organ or member,” within the meaning of Ins Law § 671(4). Savage v Delacruz, 100 A.D.2d 707, 474 N.Y.S.2d 850, 1984 N.Y. App. Div. LEXIS 17690 (N.Y. App. Div. 3d Dep't 1984).

Trial court properly granted an injured party leave to amend her complaint in a personal injury action to assert an allegation of economic loss in excess of basic loss pursuant to N.Y. C.P.L.R. 3016(g), as the original pleading, as well as the ensuing disclosure, gave defendants ample notice of the occurrences and plaintiff’s particularized losses, N.Y. C.P.L.R. 203(f), and the only prejudice accruing to defendants was the potential for increased liability, and that exposure alone cannot constitute sufficient reason to deny the motion. Secore v Allen, 27 A.D.3d 825, 811 N.Y.S.2d 170, 2006 N.Y. App. Div. LEXIS 2339 (N.Y. App. Div. 3d Dep't 2006).

78. Gross negligence or intentional infliction of emotional harm by certain directors, officers, or trustees

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).

II. Under Former Civil Practice Laws

79. Libel or slander; generally

Pleading libel in abbreviated form, pursuant to RCP 96 did not foreclose defendant from impeaching sufficiency of complaint on ground that the article complained of, when fairly read, did not libel the plaintiff. Drug Research Corp. v Curtis Publishing Co., 7 N.Y.2d 435, 199 N.Y.S.2d 33, 166 N.E.2d 319, 1960 N.Y. LEXIS 1398 (N.Y. 1960).

RCP 96 was not available to supply a deficiency in what might otherwise be a good cause of action. Drug Research Corp. v Curtis Publishing Co., 7 N.Y.2d 435, 199 N.Y.S.2d 33, 166 N.E.2d 319, 1960 N.Y. LEXIS 1398 (N.Y. 1960).

RCP 96 changed common-law rule as to allegations in a complaint for libel; it was only necessary to allege generally that the libel or slander was published or spoken concerning the plaintiff. Jacquelin v Morning Journal Ass'n, 39 A.D. 515, 57 N.Y.S. 299, 1899 N.Y. App. Div. LEXIS 802 (N.Y. App. Div. 1899); Stokes v Morning Journal Ass'n, 72 A.D. 184, 76 N.Y.S. 429, 1902 N.Y. App. Div. LEXIS 1216 (N.Y. App. Div. 1902); Peters v Morning Journal Ass'n, 74 A.D. 305, 77 N.Y.S. 597, 1902 N.Y. App. Div. LEXIS 1835 (N.Y. App. Div. 1902); Morrison v News Syndicate Co., 247 A.D. 397, 287 N.Y.S. 451, 1936 N.Y. App. Div. LEXIS 8276 (N.Y. App. Div. 1936); Eastern Paper & Box Co. v Catz American Co., 279 A.D. 650, 108 N.Y.S.2d 131, 1951 N.Y. App. Div. LEXIS 3330 (N.Y. App. Div. 1951). Krumholz v Raffer, 91 N.Y.S.2d 743, 195 Misc. 788, 1949 N.Y. Misc. LEXIS 2707 (N.Y. Sup. Ct. 1949); Wesley v Bennett, 13 Super Ct (6 Duer) 688; Malone v Stilwell, 15 Abb. Pr. 421, 1863 N.Y. Misc. LEXIS 195 (N.Y.C.P. 1863); Parker v Raymond, 3 Abb. Pr. (n.s.) 343, 1867 N.Y. Misc. LEXIS 95 (N.Y. Sup. Ct. Nov. 1, 1867).

If separate publication of defamatory matters gives rise to only a single cause of action and a person defamed may not make each distinct charge contained in the publication the subject of a separate cause of action and a pleading containing twenty-one separate causes of action based on one publication properly dismissed on ground that it was prolix, repetitious and redundant.

Kern v News Syndicate Co., 6 A.D.2d 404, 178 N.Y.S.2d 274, 1958 N.Y. App. Div. LEXIS 4634 (N.Y. App. Div. 1st Dep't 1958).

80. —Sufficiency of pleading

Plaintiff could state in general terms that newspaper article referring to Doris Keane as the latest love of Fatty Arbuckle, referred to her, a married woman whose real name was Doris Keane Sydney, in an action for libel against the newspaper. Sydney v MacFadden Newspaper Pub. Corp., 242 N.Y. 208, 151 N.E. 209, 242 N.Y. (N.Y.S.) 208, 1926 N.Y. LEXIS 976 (N.Y. 1926).

A complaint in an action for slander which alleged that the plaintiff was president of a corporation, and that the defendant, with intent to damage the plaintiff in his good name, said that the plaintiff had cheated an employee of the corporation, was sufficient, within the liberal system of pleading authorized by §§ 481 and 535 of the old Code of Civil Procedure, to show that the charges were made against the plaintiff, as an officer of the corporation, while dealing with one of its employees. Crandall v Jacob, 22 A.D. 400, 48 N.Y.S. 279, 1897 N.Y. App. Div. LEXIS 2364 (N.Y. App. Div. 1897).

The allegation in the complaint in an action for libel that the article was published of and concerning the plaintiff, is not sufficient under this rule to justify the plaintiff, under the peculiar circumstances of the case, in proving any facts which would show that he was the individual referred to and the defect in the complaint was not cured by the answer, as matter alleged in justification is not an admission of any fact essential to the plaintiff’s recovery. Hauptner v White, 81 A.D. 153, 80 N.Y.S. 895, 1903 N.Y. App. Div. LEXIS 855 (N.Y. App. Div. 1903).

Under RCP 96 both in libel and slander the application of the defamatory matter to the plaintiff had been made a question of fact; such fact might be alleged in general terms, and if traversed by the answer, plaintiff at trial had to prove that the words referred to him. Nunnally v Tribune Ass'n, 111 A.D. 485, 97 N.Y.S. 908, 1906 N.Y. App. Div. LEXIS 204 (N.Y. App. Div.), aff'd, 186 N.Y. 533, 78 N.E. 1107, 186 N.Y. (N.Y.S.) 533, 1906 N.Y. LEXIS 1183 (N.Y. 1906).

It was not necessary to allege, in the words of RCP 96 that the defamatory words were published concerning the plaintiff, if from the facts stated in the complaint it necessarily appeared that such was the case. Rivers v New York Evening Journal Pub. Co., 120 A.D. 574, 104 N.Y.S. 1081, 1907 N.Y. App. Div. LEXIS 1257 (N.Y. App. Div. 1907).

A complaint in a libel action which sets forth an article stating that a certain play was presented by the “Walter N. Lawrence Company” and later mentioning a “Mr. Lawrence,” but containing no allegation that the alleged libelous matter was published concerning the plaintiff, or that the plaintiff is the person to whom reference is made, held bad. Lawrence v Sun Printing & Publishing Ass'n, 135 A.D. 368, 120 N.Y.S. 384, 1909 N.Y. App. Div. LEXIS 3974 (N.Y. App. Div. 1909).

Broad denial in complaint of truth of matters stated in alleged libel did not prevent plaintiff from availing herself of a statutory right to allege generally that libel was written and published of and concerning the plaintiff, also that she was one of the persons therein intended to be referred to. Higgins v Samisch, 193 A.D. 882, 183 N.Y.S. 85, 1920 N.Y. App. Div. LEXIS 5682 (N.Y. App. Div. 1920).

Complaint in libel of a real estate corporation was sufficient under RCP 96. Hernando Plantation Co. v Slovak Press, Inc., 223 A.D. 286, 228 N.Y.S. 194, 1928 N.Y. App. Div. LEXIS 6194 (N.Y. App. Div. 1928).

Absence of allegation in complaint for libel that publication was of and concerning plaintiff immaterial in view of other allegations. Sol Gerstein, Inc. v New York Evening Journal, Inc., 236 A.D. 446, 260 N.Y.S. 10, 1932 N.Y. App. Div. LEXIS 5991 (N.Y. App. Div. 1932).

A complaint which charges the publication by defendants of an article in which the plaintiff was represented as having stated that he “was a rat,” is sufficient under this rule to enable plaintiff to show that it was published concerning him. Karft v Araujo, 238 A.D. 324, 264 N.Y.S. 271, 1933 N.Y. App. Div. LEXIS 9498 (N.Y. App. Div. 1933).

An allegation that the exhibition of a moving picture was an alleged misrepresentation of the plaintiff's own life was a sufficient compliance with this rule. Brown v Paramount Publix Corp., 240 A.D. 520, 270 N.Y.S. 544, 1934 N.Y. App. Div. LEXIS 10691 (N.Y. App. Div.), app. denied, 241 A.D. 897, 271 N.Y.S. 1094, 1934 N.Y. App. Div. LEXIS 10369 (N.Y. App. Div. 1934).

Complaint, which alleged that defendant maliciously published in a newspaper an article containing the following false and defamatory matter, to wit: "She had been a nurse in a hospital where Morrison had been taken as a drunk," stated facts sufficient to indicate that the alleged libel was uttered concerning plaintiff within the intendment of RCP 96. Morrison v News Syndicate Co., 247 A.D. 397, 287 N.Y.S. 451, 1936 N.Y. App. Div. LEXIS 8276 (N.Y. App. Div. 1936).

Safe manufacturer's reproduction in full, for advertising purposes of news story of destructive fire which included plaintiff's name, address, and business with the additional statement as to the "dangerous risk" of keeping business records in inadequate safes was not libelous per se nor rendered actionable by any suggested relation to plaintiff's occupation as a motel operator. Flores v Mosler Safe Co., 7 A.D.2d 226, 182 N.Y.S.2d 126, 1959 N.Y. App. Div. LEXIS 9973 (N.Y. App. Div. 3d Dep't), aff'd, 7 N.Y.2d 276, 196 N.Y.S.2d 975, 164 N.E.2d 853, 1959 N.Y. LEXIS 902 (N.Y. 1959).

Exact language of libel must be alleged, or else complaint is insufficient. Langert v Scalamandre, 9 A.D.2d 647, 191 N.Y.S.2d 389, 1959 N.Y. App. Div. LEXIS 6775 (N.Y. App. Div. 1st Dep't 1959).

Newspaper article that district attorney conducted star chamber hearing of accused, and in excluding public from hearing lowered iron curtain, is susceptible to defamatory meaning, and therefore does not warrant dismissal of complaint in libel based thereon as without defamatory import as a matter of law. Fischer v Post-Standard Co., 14 A.D.2d 130, 217 N.Y.S.2d 947, 1961 N.Y. App. Div. LEXIS 9353 (N.Y. App. Div. 3d Dep't 1961).

A cause of action in libel, could not be created by pleading that the article counted upon was published “of and concerning the plaintiff,” but RCP 96 gave this latter phrase the effect of the allegation of all extrinsic facts showing the application of the article to the plaintiff, and where the facts alleged were not at variance with the allegation that the article was published of and concerning the plaintiff, that allegation had to be given its due effect as one of fact. Lehmann v Tribune Ass'n, 75 N.Y.S. 1034, 37 Misc. 506, 1902 N.Y. Misc. LEXIS 158 (N.Y. Sup. Ct. 1902).

In an action for slander, it was not sufficient for the pleader to state the tenor, import or effect of the alleged slanderous words, but the particular words spoken by the defendant had to be stated and it was required by RCP 96 that he state that the alleged defamatory matter “was published or spoken concerning” the plaintiff. Van Alstyne v Lewis, 84 N.Y.S. 764, 41 Misc. 355, 1903 N.Y. Misc. LEXIS 359 (N.Y. Sup. Ct. 1903).

A complaint in an action for defamation, which alleges that the article complained of, which stated that P, who was in jail under arrest upon a charge of murder, was said by one who saw him in the jail to be the plaintiff, was published of and concerning the plaintiff, state a cause of action. Soper v Associated Press, 101 N.Y.S. 342, 57 Misc. 445, 1906 N.Y. Misc. LEXIS 505 (N.Y. Sup. Ct.), aff'd, 115 A.D. 815, 101 N.Y.S. 343, 1906 N.Y. App. Div. LEXIS 3072 (N.Y. App. Div. 1906).

A partnership, unlike a corporation, has no legal existence apart from the members composing it; and, in an action by the copartners for libel, it is sufficient to allege and prove that the article complained of was published concerning the individual plaintiffs. Bergstrom v Ridgway-Thayer Co., 103 N.Y.S. 1093, 53 Misc. 95, 1907 N.Y. Misc. LEXIS 166 (N.Y. Sup. Ct.), aff'd, 119 A.D. 888, 105 N.Y.S. 1107 (N.Y. App. Div. 1907).

Complaint charging libel by publication of plaintiff’s photograph in a humorous cartoon and printed matter was insufficient for failure to allege that the printed matter referred to, or was spoken of and concerning plaintiff. McNulty v Press Pub. Co., 241 N.Y.S. 29, 136 Misc. 833, 1930 N.Y. Misc. LEXIS 1158 (N.Y. Sup. Ct. 1930).

Complaint alleging that libelous matter was spoken of plaintiff and quoting language which itself referred to plaintiff as leader of movement condemned, was sufficient. Hartmann v Winchell, 63 N.Y.S.2d 225, 187 Misc. 54, 1946 N.Y. Misc. LEXIS 2345 (N.Y. Sup. Ct.), aff'd, 271 A.D. 777, 66 N.Y.S.2d 272, 1946 N.Y. App. Div. LEXIS 2986 (N.Y. App. Div. 1946).

Where publication is not libelous on its face, but libelous only by reason of extrinsic facts and circumstances, then it is necessary to allege extrinsic facts in complaint to show application to plaintiff. S. & R. Motors, Inc. v Gowens Motors, Inc., 139 N.Y.S.2d 212, 207 Misc. 890, 1955 N.Y. Misc. LEXIS 3434 (N.Y. Sup. Ct. 1955).

Where plaintiff in libel action had to rely on extrinsic facts to establish libel, special damages also had to be pleaded, notwithstanding there was formal compliance with RCP 96. S. & R. Motors, Inc. v Gowens Motors, Inc., 139 N.Y.S.2d 212, 207 Misc. 890, 1955 N.Y. Misc. LEXIS 3434 (N.Y. Sup. Ct. 1955).

In an action by a plaintiff husband against wife’s attorneys for attempting to extort money from him by inserting erroneous scandalous matter against him in her complaint and by threatening to cause and causing lurid publicity throughout the United States, the complaint states a cause of action for abuse of process although it does not state a cause of action for malicious prosecution or libel since exact defamatory words are not pleaded. Cardy v Maxwell, 9 Misc. 2d 329, 169 N.Y.S.2d 547, 1957 N.Y. Misc. LEXIS 2091 (N.Y. Sup. Ct. 1957).

A complaint in an action for libel or slander must set forth whether publications were oral or in writing. Brown v Reed, 10 Misc. 2d 8, 167 N.Y.S.2d 41, 1957 N.Y. Misc. LEXIS 2593 (N.Y. Sup. Ct. 1957).

The failure to set forth actual words constituting alleged defamatory matter renders defective a complaint in an action for defamation and it is not sufficient to summarize language or to state the substance or general effect of words used. Brown v Reed, 10 Misc. 2d 8, 167 N.Y.S.2d 41, 1957 N.Y. Misc. LEXIS 2593 (N.Y. Sup. Ct. 1957).

Complaint alleging defendant's publication of false and defamatory statements regarding plaintiff's business was sufficient even though it did not state extrinsic facts showing application of defamatory matter to the plaintiff. J. P. Fredericks, Inc. v El Diario Publishing Co., 17 Misc. 2d 514, 167 N.Y.S.2d 97, 1957 N.Y. Misc. LEXIS 2592 (N.Y. Sup. Ct. 1957).

Where a complaint attempts to plead an action in slander, it is insufficient where it fails to set forth the exact language used. Burrus v Scott, 13 Misc. 2d 24, 178 N.Y.S.2d 416, 1958 N.Y. Misc. LEXIS 2831 (N.Y. Sup. Ct. 1958).

Where a published statement was susceptible of two meanings, one being that plaintiff, an attorney and a notary public, connived disgracefully in obtaining an improperly notarized and falsified affidavit, such words are calculated to injure plaintiff in his professional and public office and are libelous per se. Richter v Columbia Broadcasting System, Inc., 17 Misc. 2d 220, 186 N.Y.S.2d 322, 1959 N.Y. Misc. LEXIS 3983 (N.Y. Sup. Ct. 1959), aff'd, 10 A.D.2d 826, 200 N.Y.S.2d 345, 1960 N.Y. App. Div. LEXIS 10648 (N.Y. App. Div. 1st Dep't 1960).

Statement in article that a witness in a court proceeding testified that plaintiff and his wife had refused to reveal the whereabout of converted money, and that the witness expressed the opinion that their conduct was contumacious, is not libelous per se, and complaint is insufficient absent allegation of special damages. Reoux v Glens Falls Post Co., 18 Misc. 2d 1097, 190 N.Y.S.2d 598, 1959 N.Y. Misc. LEXIS 3039 (N.Y. Sup. Ct. 1959), aff'd, 11 A.D.2d 919, 203 N.Y.S.2d 497, 1960 N.Y. App. Div. LEXIS 8384 (N.Y. App. Div. 3d Dep't 1960).

Complaint for libel committed in Switzerland is sufficient if it pleads all the essentials for such an action under Swiss law, notwithstanding that it fails to plead the essentials for such an action under New York law. Andretto Bank A. G. v Goodbody & Co., 20 Misc. 2d 392, 194 N.Y.S.2d 818, 1959 N.Y. Misc. LEXIS 2594 (N.Y. Sup. Ct. 1959), aff'd, 10 A.D.2d 696, 197 N.Y.S.2d 793, 1960 N.Y. App. Div. LEXIS 11000 (N.Y. App. Div. 1st Dep't 1960).

Under RCP 96 a complaint was sufficient which, after setting out the alleged libelous matter, alleged that such libel "referred to and meant plaintiff." Mattice v Wilcox, 13 N.Y.S. 330, 59 Hun

620, 1891 N.Y. Misc. LEXIS 1088 (N.Y. Sup. Ct.), aff'd, 129 N.Y. 633, 29 N.E. 1030, 129 N.Y. (N.Y.S.) 633, 1891 N.Y. LEXIS 1204 (N.Y. 1891).

RCP 96 did not help out a complaint so as to give an innocent statement a defamatory quality, but was only pertinent upon the application of a libelous article to the plaintiff. Knickerbocker v Press Pub. Co., 176 N.Y.S. 343 (N.Y. Sup. Ct. 1919), aff'd, 192 A.D. 945, 182 N.Y.S. 932, 1920 N.Y. App. Div. LEXIS 8032 (N.Y. App. Div. 1920).

Complaint alleging that defendant published libelous statements concerning plaintiffs was sufficient. Rooney v Feinstein, 76 N.Y.S.2d 77, 1947 N.Y. Misc. LEXIS 3533 (N.Y. Sup. Ct. 1947), aff'd, 274 A.D. 1004, 85 N.Y.S.2d 516, 1948 N.Y. App. Div. LEXIS 4462 (N.Y. App. Div. 1948).

81. — —No reference to plaintiff in alleged libel

Where the complaint stated that the plaintiff (Fleischmann) had never been engaged in the “swill-milk” business, and that the defendant published, “concerning the plaintiff,” a certain libel, setting it forth, the same being an attack on a “swill-milk establishment” kept by Gaff, Fleischmann & Co., there being no innuendoes in the complaint, held, that the complaint was defective, as not showing on its face that the libel had any reference to the plaintiff. Fleischmann v Bennett, 87 N.Y. 231, 87 N.Y. (N.Y.S.) 231, 1881 N.Y. LEXIS 344 (N.Y. 1881).

Libel relating to unidentified members of class, such as labor union members, see Kirkman v Westchester Newspapers, Inc., 287 N.Y. 373, 39 N.E.2d 919, 287 N.Y. (N.Y.S.) 373, 1942 N.Y. LEXIS 1099 (N.Y. 1942).

Complaint alleging publication of article defamatory of plaintiff’s product was insufficient to state cause of action for libel of plaintiff since plaintiff’s name was not mentioned in the article. Drug Research Corp. v Curtis Publishing Co., 7 N.Y.2d 435, 199 N.Y.S.2d 33, 166 N.E.2d 319, 1960 N.Y. LEXIS 1398 (N.Y. 1960).

Complaint for libel of manufacturer's product, as distinguished from libel of his integrity or business methods, is insufficient in the absence of an allegation of special damages. Drug Research Corp. v Curtis Publishing Co., 7 N.Y.2d 435, 199 N.Y.S.2d 33, 166 N.E.2d 319, 1960 N.Y. LEXIS 1398 (N.Y. 1960).

Statement during a television program that "Snooze", a new sleep aid, was "full of all kinds of habit-forming drugs", that "nothing short of a hospital cure will make you stop taking 'Snooze' ", and that "you'll feel like a run-down hound dog and lose weight" could readily be understood as charging the manufacturer of "Snooze" with fraud and deceit in putting on the market an unwholesome and dangerous product, and, as such, was libelous per se and actionable without any plea of special damages. Harwood Pharmacal Co. v National Broadcasting Co., 9 N.Y.2d 460, 214 N.Y.S.2d 725, 174 N.E.2d 602, 1961 N.Y. LEXIS 1322 (N.Y. 1961).

Although a writing charging persons with being "crooks" and "gold brick men" did not refer to the plaintiff by name, if the complaint alleged that the words referred to him in conformity with RCP 96, the complaint was not bad on the ground that the article was not sufficiently descriptive. Townes v New York Evening Journal Pub. Co., 109 A.D. 852, 96 N.Y.S. 822, 1905 N.Y. App. Div. LEXIS 3674 (N.Y. App. Div. 1905).

Where the plaintiff is not named in an article libelous per se, but is indicated by circumstances described in the article, and the complaint contains a general allegation, pursuant to this rule, that the article was published concerning her, she may at trial show extrinsic facts which would connect her with the article. Nunnally v New Yorker Staats Zeitung, 111 A.D. 482, 97 N.Y.S. 911, 1906 N.Y. App. Div. LEXIS 203 (N.Y. App. Div.), aff'd, 186 N.Y. 532, 78 N.E. 1107, 186 N.Y. (N.Y.S.) 532, 1906 N.Y. LEXIS 1181 (N.Y. 1906).

Although no specific person is named in an article as guilty of the offenses charged, the plaintiff may allege that it was published of and concerning her, and the complaint is good, as under such allegation direct proof may be made that she was the person referred to. Nunnally v New Yorker Zeitung Publishing & Printing Co., 117 A.D. 1, 101 N.Y.S. 1041, 1907 N.Y. App. Div. LEXIS 178 (N.Y. App. Div. 1907).

Where an article is libelous per se but does not identify the person libeled, it is unnecessary to allege in the complaint any extrinsic fact for the purpose of showing its application to the plaintiff where the complaint contains an allegation that the defamatory matter was published of and concerning the plaintiff. Van Heusen v Argenteau, 124 A.D. 776, 109 N.Y.S. 238, 1908 N.Y. App. Div. LEXIS 2197 (N.Y. App. Div. 1908), rev'd, 194 N.Y. 309, 87 N.E. 437, 194 N.Y. (N.Y.S.) 309, 1909 N.Y. LEXIS 1282 (N.Y. 1909).

Where the complaint in an action for libel sets out in full the alleged libelous article in which several characters were introduced, one of whom is called Isaac Slobodin, and alleges merely that the article was published of and concerning the plaintiff, but does not specify which of the several characters mentioned in the article was intended to represent him, a demurrer thereto will be sustained. Slobodin v Sun Printing & Publishing Ass'n, 135 A.D. 359, 120 N.Y.S. 386, 1909 N.Y. App. Div. LEXIS 3971 (N.Y. App. Div. 1909).

Complaints state good cause of action based on article written by defendant and published in newspaper circulated in village in which plaintiffs are public officials; article recited that acquisition of certain property for community hall was “another scheme to bleed the taxpayers” and that it “might be better to . . . get ready for the golden age . . . when men . . . run our village right and not be dictated to by gangsters or Chambers of Commerce.” De Hoyos v Thornton, 259 A.D. 1, 18 N.Y.S.2d 121, 1940 N.Y. App. Div. LEXIS 6035 (N.Y. App. Div.), app. dismissed, 284 N.Y. 632, 29 N.E.2d 939, 284 N.Y. (N.Y.S.) 632, 1940 N.Y. LEXIS 1272 (N.Y. 1940).

Complaint insufficient where alleged defamatory words are not slanderous per se and no allegation that they were spoken of plaintiff in connection with his character or conduct of his activities. Rosenwasser v Fabrizzi, 5 A.D.2d 881, 172 N.Y.S.2d 776, 1958 N.Y. App. Div. LEXIS 6628 (N.Y. App. Div. 2d Dep't 1958).

Complaint states good cause of action for libel which alleges publication of news article to effect that song sung in musical comedy production was originally composed, not by plaintiffs, whose names appear prominently in the program as authors and composers thereof, but by an eighteen-year-old boy. Fact that the libelous matter did not specifically mention plaintiffs by

name does not render complaint insufficient. Brown v New York Evening Journal, Inc., 255 N.Y.S. 403, 143 Misc. 199, 1932 N.Y. Misc. LEXIS 1360 (N.Y. Sup. Ct.), aff'd, 235 A.D. 840, 257 N.Y.S. 903, 1932 N.Y. App. Div. LEXIS 9945 (N.Y. App. Div. 1932).

In action alleging disparagement of plaintiff's hospital rather than defamation of plaintiff himself, verdict was directed for defendant since plaintiff failed to prove special damages. Richman v New York Herald Tribune, Inc., 7 Misc. 2d 563, 166 N.Y.S.2d 103, 1957 N.Y. Misc. LEXIS 3008 (N.Y. Sup. Ct. 1957).

In order to institute a libel action, the words used had to refer to the plaintiff but RCP 96 provided that the plaintiff need not plead any extrinsic fact that the matter was published concerning him but might state it in general terms. Richman v New York Herald Tribune, Inc., 7 Misc. 2d 563, 166 N.Y.S.2d 103, 1957 N.Y. Misc. LEXIS 3008 (N.Y. Sup. Ct. 1957).

A complaint which sets forth an alleged libelous article and alleges that plaintiff was injured thereby is sufficient though it does not connect her with the article and she was not named in it. Hussey v New York Recorder Co., 35 N.Y.S. 49, 89 Hun 609 (N.Y. Sup. Ct. 1895).

In action by breeder of cats for libel based on publication, which referred to cats owned by plaintiff but did not mention or identify plaintiff, complaint which did not allege that publication reflected on plaintiff's integrity or business ethics and which failed to plead special damages, was insufficient. Mack v Baker, 134 N.Y.S.2d 875, 1954 N.Y. Misc. LEXIS 2839 (N.Y. Sup. Ct. 1954).

Where allegedly libelous article does not name or directly refer to plaintiff, complaint is insufficient if it does not allege facts showing that the words used would be understood as referring to and tending to defame plaintiff. Anderson v Music Trades Corp., 209 N.Y.S.2d 137, 1960 N.Y. Misc. LEXIS 3913 (N.Y. Sup. Ct. 1960).

Where a libel does not necessarily refer to plaintiff he must in some issuable form allege that it was intended to be applicable to him. 11 N.Y. St. 277.

That a physician stated in a certificate of death that plaintiff's child "died of constructive and contributory negligence of parent," is not sufficient without alleging that the plaintiff, the mother, was the parent meant. 11 N.Y. St. 277.

It is actionable per se to say of a person ?those people up-stairs keep a whore house.? An allegation that those words were spoken concerning plaintiff is sufficient and will admit proof that plaintiff was one of ?those people upstairs.? Cook v Reif, 52 Super Ct (20 Jones & S) 302.

82. — —Special damages

Where a complaint does not plead special damages, it states no cause of action where the alleged defamatory words are not slanderous per se. Weiss v Nippe, 5 A.D.2d 789, 170 N.Y.S.2d 642, 1958 N.Y. App. Div. LEXIS 7240 (N.Y. App. Div. 2d Dep't 1958).

Where words applied to plaintiff do not constitute slander per se, pleading and proof of special damages are required. Swartz v Shine's, Inc., 8 Misc. 2d 152, 167 N.Y.S.2d 477, 1957 N.Y. Misc. LEXIS 2489 (N.Y. City Ct. 1957).

Complaint based on slander must allege special damages where words spoken are not slanderous per se. Rosenwasser v Fabrizzi, 8 Misc. 2d 608, 167 N.Y.S.2d 751, 1957 N.Y. Misc. LEXIS 2641 (N.Y. Sup. Ct. 1957), aff'd, 5 A.D.2d 881, 172 N.Y.S.2d 776, 1958 N.Y. App. Div. LEXIS 6628 (N.Y. App. Div. 2d Dep't 1958).

A complaint based on slander must allege special damages or such extrinsic facts as would give defamatory meaning to an otherwise harmless utterance and in the absence of such allegation it must be dismissed where the words spoken are not slanderous per se. Rosenwasser v Fabrizzi, 8 Misc. 2d 608, 167 N.Y.S.2d 751, 1957 N.Y. Misc. LEXIS 2641 (N.Y. Sup. Ct. 1957), aff'd, 5 A.D.2d 881, 172 N.Y.S.2d 776, 1958 N.Y. App. Div. LEXIS 6628 (N.Y. App. Div. 2d Dep't 1958).

Causes of action sounding in libel and slander are insufficient against unincorporated association where complaint fails to allege facts showing that all individual members of association authorized or ratified alleged tort but no special damages need be alleged where

article published exposed the plaintiff to public contempt, ridicule, etc. Brown v Reed, 10 Misc. 2d 289, 169 N.Y.S.2d 593, 1957 N.Y. Misc. LEXIS 2118 (N.Y. Sup. Ct. 1957).

Where statements complained of in libel action not actionable per se and plaintiff has not pleaded special damages except in conclusory form, such cause of action dismissed. Toal v Zito, 11 Misc. 2d 260, 171 N.Y.S.2d 393, 1958 N.Y. Misc. LEXIS 3973 (N.Y. Sup. Ct. 1958).

Where defendant's counterclaim is founded in slander, in the absence of allegations establishing criminal innuendo or special damages, such counterclaim dismissed. Bruno v Schukart, 12 Misc. 2d 383, 177 N.Y.S.2d 51, 1958 N.Y. Misc. LEXIS 2880 (N.Y. Sup. Ct. 1958).

Where action brought based on libel stating lack of judgment or error, it is not libelous per se and where complaint does not contain allegation and proof of special damage, complaint dismissed. Hirschhorn v Group Health Ins., Inc., 13 Misc. 2d 338, 175 N.Y.S.2d 775, 1958 N.Y. Misc. LEXIS 3352 (N.Y. Sup. Ct. 1958), aff'd, 9 A.D.2d 905, 194 N.Y.S.2d 1002, 1959 N.Y. App. Div. LEXIS 5573 (N.Y. App. Div. 2d Dep't 1959).

83. —Slander of title

Where a cause of action brought for slander of title to a vessel although it is not essential that the words themselves charged as actionable be printed, the cause of action is insufficient where special damages are not pleaded and it is not shown that the alleged damage was the natural and immediate consequence of the words charged as actionable. Glaser v Kaplan, 5 A.D.2d 829, 170 N.Y.S.2d 522, 1958 N.Y. App. Div. LEXIS 7058 (N.Y. App. Div. 2d Dep't), reh'g denied, 5 A.D.2d 873, 172 N.Y.S.2d 550, 1958 N.Y. App. Div. LEXIS 6675 (N.Y. App. Div. 2d Dep't 1958).

84. Separation or divorce; generally

General allegations characterizing relations between plaintiff and defendant are insufficient in action for separation. Otton v Otton, 196 A.D. 403, 188 N.Y.S. 255, 1921 N.Y. App. Div. LEXIS 5538 (N.Y. App. Div. 1921).

Plaintiff failed to comply with RCP rule 280 requiring specific allegations of the nature, circumstances and time and place of the defendant's misconduct. Greene v Greene, 244 A.D. 219, 278 N.Y.S. 954, 1935 N.Y. App. Div. LEXIS 5794 (N.Y. App. Div. 1935).

In this action for a separation, portions of the complaint were insufficient because of a failure to comply with RCP 280, and the allegations of fact contained in a certain paragraph failed to sustain a cause of action for abandonment. Harten v Harten, 259 A.D. 519, 19 N.Y.S.2d 975, 1940 N.Y. App. Div. LEXIS 6190 (N.Y. App. Div. 1940).

Complaint for separation should allege facts, instead of merely stating conclusions of law. Paper v Paper, 263 A.D. 831, 31 N.Y.S.2d 589, 1941 N.Y. App. Div. LEXIS 5180 (N.Y. App. Div. 1941).

Complaint complying with RCP 280 was sufficient. Moore v Moore, 276 A.D. 1016, 95 N.Y.S.2d 503, 1950 N.Y. App. Div. LEXIS 5572 (N.Y. App. Div. 1950).

Complaint based upon course of conduct, without alleging time or place of any acts of misconduct, is insufficient. Carbone v Carbone, 109 N.Y.S.2d 853, 200 Misc. 437, 1951 N.Y. Misc. LEXIS 2755 (N.Y. Sup. Ct. 1951).

A charge of cruelty relating to a general course of conduct in which plaintiff set out particular acts relied on and approximate dates thereof sufficiently apprised defendant of the misconduct he was accused of so as to comply with RCP 280. Maas v Maas, 5 Misc. 2d 840, 161 N.Y.S.2d 685, 1957 N.Y. Misc. LEXIS 3277 (N.Y. Sup. Ct. 1957).

A counterclaim for judgment of separation must allege facts not conclusions. Mordkowitz v Mordkowitz, 13 Misc. 2d 495, 177 N.Y.S.2d 328, 1958 N.Y. Misc. LEXIS 3479 (N.Y. Sup. Ct. 1958).

Paragraph of complaint alleging “that the defendant had been guilty of cruel and inhuman conduct toward the plaintiff, and of such other conduct toward plaintiff as to render it both unsafe and improper for plaintiff to cohabit with the defendant” was stricken as conclusory and insufficient. Blessing v Blessing, 21 Misc. 2d 58, 195 N.Y.S.2d 878, 1960 N.Y. Misc. LEXIS 3653 (N.Y. Sup. Ct. 1960).

Allegations that during a particular month while plaintiff and defendant were visiting New York City defendant attacked and severely injured plaintiff, and that for some time defendant had returned home continuously under the influence of intoxicating liquor, and upon his arrival home was boisterous, threatened plaintiff, struck her, called her obscene names, and refused to provide money for food and repeatedly threatened her with personal violence, approximately stated the time and place of the acts complained of with reasonable certainty to permit plaintiff to allege other facts to develop a course of conduct, and were sufficient to defeat motion to dismiss complaint. Blessing v Blessing, 21 Misc. 2d 58, 195 N.Y.S.2d 878, 1960 N.Y. Misc. LEXIS 3653 (N.Y. Sup. Ct. 1960).

Complaint is insufficient where it does not give the circumstances of the act complained of. Rebstock v Rebstock, 144 N.Y.S. 289 (N.Y. Sup. Ct. 1913).

Complaint cannot be helped out by intendment. Rebstock v Rebstock, 144 N.Y.S. 289 (N.Y. Sup. Ct. 1913).

A complaint in an action for separation from bed and board, which shows that the defendant was guilty of cruel and inhuman treatment, need not allege that the acts were committed without fault of the plaintiff. Harvey v Harvey, 175 N.Y.S. 177 (N.Y. Sup. Ct. 1919).

Dates of cruelty and charges of cruelty must be stated. Rothman v Rothman, 67 N.Y.S.2d 96, 1946 N.Y. Misc. LEXIS 3188 (N.Y. Sup. Ct. 1946).

Complaint combining allegation of abandonment with statement that defendant has failed “to properly support” plaintiff, sufficed as allegation of abandonment. Robles v Robles, 81 N.Y.S.2d 853, 1948 N.Y. Misc. LEXIS 2976 (N.Y. Sup. Ct. 1948).

Where wife, in husband's action for separation, counterclaimed for separation on grounds of abandonment and nonsupport, and wife had been denied a decree of separation in a prior action, RCP 280 required her to allege in her counterclaim that the abandonment and nonsupport on which she relied occurred subsequent to the prior adverse decree. Naphtali v Naphtali, 138 N.Y.S.2d 735, 1955 N.Y. Misc. LEXIS 2675 (N.Y. Sup. Ct. 1955), app. denied, 2 A.D.2d 811, 156 N.Y.S.2d 966, 1956 N.Y. App. Div. LEXIS 4508 (N.Y. App. Div. 2d Dep't 1956).

85. —Complaint setting up husband's adultery

Complaint alleging that defendant was living in an open state of adultery and setting forth conduct in relation thereto as may be reasonably said to affect the plaintiff physically or mentally or seriously impair her health states a cause of action for separation. Hofmann v Hofmann, 232 N.Y. 215, 133 N.E. 450, 232 N.Y. (N.Y.S.) 215, 1921 N.Y. LEXIS 496 (N.Y. 1921).

Pleading specificity requirement under N.Y. C.P.L.R. § 3016 did not apply to plaintiff corporation's wrongful interference with prospective advantage claim because the complaint did not assert a claim for defamation and alleged wrongful conduct beyond defamatory statements by two corporations and their principal. Rochester Linoleum & Carpet Ctr., Inc. v Cassin, 61 A.D.3d 1201, 878 N.Y.S.2d 219, 2009 N.Y. App. Div. LEXIS 2833 (N.Y. App. Div. 3d Dep't 2009).

86. —Complaint alleging nonsupport

In action for separation based upon nonsupport, complaint must allege facts showing that support furnished by defendant is inadequate, and should also allege with reasonable certainty the times during which defendant failed to furnish adequate support. Harmen v Harmen, 12 A.D.2d 784, 209 N.Y.S.2d 568, 1961 N.Y. App. Div. LEXIS 13440 (N.Y. App. Div. 2d Dep't 1961).

87. —Joining causes of action for divorce

A cause of action for divorce may be inconsistent with a cause of action for a separation, in that they may not be united in the same complaint. Hofmann v Hofmann, 232 N.Y. 215, 133 N.E. 450, 232 N.Y. (N.Y.S.) 215, 1921 N.Y. LEXIS 496 (N.Y. 1921).

88. —Right to bill of particulars

Where wife's complaint in a matrimonial action alleged in conclusory from that defendant applied insulting, degrading and abusive language toward her, without setting forth the specific language, and also that he threatened her with physical violence, without setting out the threats, the defendant is entitled to a bill of particulars as to the nature of these charges. Shanik v Shanik, 140 N.Y.S.2d 33, 207 Misc. 685, 1955 N.Y. Misc. LEXIS 3060 (N.Y. Sup. Ct. 1955).

Particulars will not be ordered where the defendant, in a defense to an action for divorce, has alleged acts upon which she bases her charge of cruel and inhuman treatment with reasonable certainty within the information which she possesses. Geimer v Geimer, 161 N.Y.S. 415 (N.Y. Sup. Ct. 1916).

An allegation in an answer in an action for divorce, charging the plaintiff with adultery "at divers times and places" and with "various individuals," without mentioning the name of a correspondent, or any specific place or time of the commission of the act, is not sufficient, and further particulars will be ordered, although the defendant claims that she expects to establish the adultery of the plaintiff by a course of conduct and by circumstantial evidence. Geimer v Geimer, 161 N.Y.S. 415 (N.Y. Sup. Ct. 1916).

Plaintiff in action for separation must set forth with reasonable certainty the time and place of each act complained of, and bill of particulars will be ordered where this is not done, but where plaintiff sets forth the times and places of each act complained of with reasonable certainty, she may set forth a general course of conduct to substantiate her cause of action of which no particulars will be required. Gruber v Gruber, 167 N.Y.S. 42 (N.Y. Sup. Ct. 1917).

89. —Effect of failure to comply with rule

Where no distinct acts of cruelty are alleged either in the complaint for a separation or affidavit, a motion for alimony and counsel fees should be denied. Mackintosh v Mackintosh, 44 A.D. 118, 60 N.Y.S. 679, 1899 N.Y. App. Div. LEXIS 2194 (N.Y. App. Div. 1899).

Plaintiff directed to serve amended complaint separately stating and numbering causes of action, and in compliance with RCP 280. Sklar v Sklar, 249 A.D. 198, 291 N.Y.S. 851, 1936 N.Y. App. Div. LEXIS 5071 (N.Y. App. Div. 1936).

A motion in a separation action for alimony and counsel fee was denied, where the complaint did not specify the nature and circumstances of defendant's misconduct or set forth the time and place of the acts complained of, and the affidavits failed to show the probability of plaintiff's success at the trial or the necessity at present of an allowance for support pendente lite. Seligmann v Seligmann, 255 A.D. 277, 7 N.Y.S.2d 428, 1938 N.Y. App. Div. LEXIS 4715 (N.Y. App. Div. 1938).

Husband's counterclaim in a separation action which fails to specify the nature, time, place and circumstances of each alleged act of misconduct must be dismissed, and cannot be cured through amplification by a bill of particulars. Kurcz v Kurcz, 13 A.D.2d 954, 216 N.Y.S.2d 736, 1961 N.Y. App. Div. LEXIS 9928 (N.Y. App. Div. 1st Dep't 1961).

Complaint, mingling cruelty, abandonment and nonsupport, in mass of verbiage, conclusions and superfluous allegations, was struck out and ordered amended. Purvin v Purvin, 51 N.Y.S.2d 492, 1944 N.Y. Misc. LEXIS 2557 (N.Y. Sup. Ct. 1944).

Where wife in action for separation did not plead husband's unproven charges of adultery or her undenied charge that he attempted unnatural sexual relations with her as acts of cruelty, court will not consider them. Brooks v Brooks, 120 N.Y.S.2d 335, 1953 N.Y. Misc. LEXIS 1623 (N.Y. Sup. Ct. 1953).

90. Judgment, generally

Where judgment by default was entered against comaker of note and coindorser who alone had been served with summons, holder of note could not sue comaker who opened her default and served answer under CPA § 1185 (§ 1502(b) herein). Chippewa Credit Corp. v Strozewski, 259 A.D. 187, 19 N.Y.S.2d 457, 1940 N.Y. App. Div. LEXIS 6085 (N.Y. App. Div. 1940).

91. —Sufficiency

Where the plaintiff states that he recovered judgment against three of the defendants and served a summons on a fourth who was not originally served, but who was a defendant in that action, it is sufficient. HARPER v Bangs, 18 How. Pr. 457, 1859 N.Y. Misc. LEXIS 245 (N.Y. Super. Ct. 1859).

92. —Confession of judgment by one defendant

Where an action against joint debtors, in which one of the defendants was not served, was not pressed to judgment, and thereafter the defendant served in the former action confessed judgment, such judgment did not bar a subsequent action against the nonconfessing debtor alone for the balance then remaining unpaid on the joint indebtedness, in view of CPA §§ 542 (§ 3218(d) herein), 1185 (§ 1502(b) herein), 1186. Boyce Hardware Co. v Saunders, 196 N.Y.S. 259, 119 Misc. 365, 1922 N.Y. Misc. LEXIS 1479 (N.Y. Sup. Ct. 1922).

93. Sale of goods, or performance of labor or services, generally

The word “items” as used in provision concerning sale and delivery of goods in CPA § 255-a generally meant the particulars in such detail that the account could have been readily examined and its correctness tested entry by entry. Innis, Pearce & Co. v G. H. Poppenberg, Inc., 213 A.D. 789, 210 N.Y.S. 761, 1925 N.Y. App. Div. LEXIS 8593 (N.Y. App. Div. 1925).

Defendant was not required to comply with provision relating to sale and delivery of goods in CPA § 255-a as to specific denial of every item of plaintiff’s claim where the complaint did not

number the separate items of the schedule. Innis, Pearce & Co. v G. H. Poppenberg, Inc., 213 A.D. 789, 210 N.Y.S. 761, 1925 N.Y. App. Div. LEXIS 8593 (N.Y. App. Div. 1925).

Complaint had to comply in form and substance with provision relating to sale and delivery of goods in CPA § 255-a before plaintiff could invoke its provisions. Royal Indemnity Co. v Hill, 281 A.D. 1001, 120 N.Y.S.2d 511, 1953 N.Y. App. Div. LEXIS 4050 (N.Y. App. Div. 1953).

Object of provision relating to sale and delivery of goods in CPA § 255-a was to narrow and define the field of controverted facts, primarily for the benefit of plaintiff and incidentally to save the time of the court. Dynamo & Motor Exchange, Inc. v Brown Auto Hospital, Inc., 250 N.Y.S. 468, 139 Misc. 867, 1931 N.Y. Misc. LEXIS 1346 (N.Y. Sup. Ct. 1931).

94. —Sufficiency of defendant's specifications

In action for price, it was error to strike paragraphs of the answer which complied with the requirements of the last sentence of provision concerning sale and delivery of goods in CPA § 255-a. Weinstein v Ken-Wel Sporting Goods Co., 231 A.D. 51, 246 N.Y.S. 270, 1930 N.Y. App. Div. LEXIS 6996 (N.Y. App. Div. 1930).

In action for reasonable value of medical services defendant's answer sufficed to raise triable issue as to plaintiff's employment and value of service, and order granting plaintiff's motion for judgment on pleadings and directing assessment was error. In re Ayres' Estate, 278 A.D. 957, 105 N.Y.S.2d 348 (N.Y. App. Div. 1951).

To create an issue, the defendant by a verified answer is called upon to indicate specifically the items, if any, which he disputes in respect to delivery, reasonable value or agreed price. Denial on information and belief of each and every allegation in the complaint is insufficient. Raymond v Davy, 289 N.Y.S. 972, 160 Misc. 388, 1936 N.Y. Misc. LEXIS 1236 (N.Y. City Ct. 1936), aff'd, 3 N.Y.S.2d 661, 167 Misc. 127, 1937 N.Y. Misc. LEXIS 1204 (N.Y. App. Term 1937).

In action for goods sold, where complaint alleged sale and delivery of merchandise, with attached schedule lacking any description whatever of merchandise, defendant was not required

to deny specifically disputed items. Crawford Bros., Inc. v Holdridge, 144 N.Y.S.2d 202, 208 Misc. 447, 1955 N.Y. Misc. LEXIS 3704 (N.Y. Sup. Ct. 1955).

95. —Effect of failure to deny specifically

Provision concerning sale and delivery of goods of CPA § 255-a complied with by plaintiff but defendant's answer not in proper form, plaintiff's application for preference in trial under rules, was allowed. Sinram Bros. v Naples Realty Co., 224 A.D. 369, 231 N.Y.S. 173, 1928 N.Y. App. Div. LEXIS 10011 (N.Y. App. Div. 1928).

Provision concerning sale and delivery of goods in CPA § 255-a did not provide that a defendant who failed to "indicate specifically the items, if any, which he disputes" was thereby deprived of all opportunity to defend, but only that "delivery, or performance, reasonable value, or agreed price" were deemed to be admitted unless the denial was in the prescribed form. Edwin F. Guth Co. v Gurland, 246 A.D. 67, 284 N.Y.S. 333, 1935 N.Y. App. Div. LEXIS 8680 (N.Y. App. Div. 1935).

By failing to deny in answer specific items contained in schedule attached to complaint, defendant failed to raise any triable issue. Bertolf Bros., Inc. v Leuthardt, 261 A.D. 981, 26 N.Y.S.2d 114, 1941 N.Y. App. Div. LEXIS 8417 (N.Y. App. Div. 1941).

Plaintiff's noncompliance with other statutory requirements estopped him from objecting to defendant's noncompliance with provision concerning sale and delivery of goods of CPA § 255-a. Heilbroner v Wagner, 56 N.Y.S.2d 434, 185 Misc. 537, 1945 N.Y. Misc. LEXIS 2038 (N.Y. City Ct. 1945).

Where plaintiff complied with provision of CPA § 255-a concerning sale and delivery of goods, and defendant failed to indicate specifically items disputed in respect of delivery or performance, reasonable value or agreed price, plaintiff's motion for judgment on pleadings was granted. Spiegel, Inc. v Fashion Play Togs, Inc., 83 N.Y.S.2d 762, 1948 N.Y. Misc. LEXIS 3432 (N.Y. Sup. Ct. 1948).

Where plaintiff failed to number the items of its claim for goods sold and delivered and failed to set out the reasonable value or agreed price of each, he lost the benefits conferred by provision concerning sale and delivery of goods in CPA § 255-a but his complaint would not be dismissed for insufficiency on that account. Acme Smoking Pipe Co. v George Sachs Products, Inc., 115 N.Y.S.2d 861, 1952 N.Y. Misc. LEXIS 1768 (N.Y. Sup. Ct. 1952).

96. —Sufficiency of general denial

Where a complaint was properly framed under provision concerning sale and delivery of goods of CPA § 255-a, the effect was to take away from the defendant the right to traverse by a general denial the allegations of delivery, reasonable value or agreed price. Innis, Pearce & Co. v G. H. Poppenberg, Inc., 213 A.D. 789, 210 N.Y.S. 761, 1925 N.Y. App. Div. LEXIS 8593 (N.Y. App. Div. 1925).

The court will probably strike as a sham an answer only generally denying a complaint for goods sold which is accompanied by a specific schedule, and further answering by defenses as to a third party which have no bearing on plaintiff’s right to recover. International Milk Co. v Cohen, 219 A.D. 308, 219 N.Y.S. 593, 1927 N.Y. App. Div. LEXIS 10905 (N.Y. App. Div.), app. dismissed, 245 N.Y. 564, 157 N.E. 858, 245 N.Y. (N.Y.S.) 564, 1927 N.Y. LEXIS 725 (N.Y. 1927).

Where complaint complied with provision of CPA § 255-a concerning sale and delivery of goods, a general denial was insufficient. Dairymen's League Co-op. Ass'n v Levy Dairy Co., 225 A.D. 475, 233 N.Y.S. 433, 1929 N.Y. App. Div. LEXIS 11671 (N.Y. App. Div. 1929).

In an action for goods sold and delivered, wherein plaintiff annexed to its verified complaint a schedule setting forth the numbered items of its claim and the reasonable value and agreed price of each, held that a general denial by defendant was proper where he disputed neither delivery, nor the reasonable value, nor agreed price of any of the items, but denied the sale. S. L. & D. Dress & Costume Co. v Eckstein, 205 N.Y.S. 476, 123 Misc. 525, 1924 N.Y. Misc. LEXIS 965 (N.Y. App. Term 1924).

Where plaintiff attached a schedule of items to complaint, and defendant admitted all the allegations except the reasonable value, general denial was insufficient. Star Show Case Co. v Szekely, 238 N.Y.S. 308, 135 Misc. 723, 1929 N.Y. Misc. LEXIS 1027 (N.Y. Sup. Ct. 1929).

Where the answer to a complaint for goods sold and delivered drafted under this section sets up a general denial of sale, delivery and value, except as to payment, and denies that the items are as set forth in the complaint and schedule annexed, the denial is insufficient but a motion to strike out is not necessary. Lasker v Goldbaum, 257 N.Y.S. 355, 143 Misc. 775, 1932 N.Y. Misc. LEXIS 1087 (N.Y. App. Term 1932).

Unnumbered items, in schedule attached to complaint, need not be denied specifically. Rothschild Bros. v Redman, 75 N.Y.S.2d 600, 190 Misc. 1041, 1947 N.Y. Misc. LEXIS 3442 (N.Y. Sup. Ct. 1947).

In action for goods sold over period of two months, where schedule annexed to complaint contains 14 numbered items specifically described as to type of article, quantity, list price, discount and agreed price, such details are sufficient to enable defendant to identify particular items to be denied, and so general denial is insufficient. John Simmons Co. v Well Diggers, Inc., 135 N.Y.S.2d 538, 206 Misc. 874, 1954 N.Y. Misc. LEXIS 3025 (N.Y. Sup. Ct. 1954).

In action for goods sold, where complaint alleged sale and delivery of merchandise, with attached schedule lacking any description whatever of merchandise, defendant was not required to deny specifically disputed items. Crawford Bros., Inc. v Holdridge, 144 N.Y.S.2d 202, 208 Misc. 447, 1955 N.Y. Misc. LEXIS 3704 (N.Y. Sup. Ct. 1955).

97. —Amendment of answer to comply with section

Where defendants by inadvertence or mistake failed to indicate specifically the items which they disputed, as required by the provision concerning sale and delivery of goods in CPA § 255-a, their motion for reargument and for leave to serve an amended answer, after the granting of

plaintiff's motion for summary judgment, was properly granted. Fink v Wagner, 235 A.D. 850, 256 N.Y.S. 1016, 1932 N.Y. App. Div. LEXIS 10050 (N.Y. App. Div. 1932).

Research References & Practice Aids

Cross References:

Privileges in action for libel, CLS Civ R § 74.

Defamation by radio or television, CLS Civ R § 75.

Petitioner's schedule, CLS Dr & Cr §§ 63, 102, 123.

Action for separation, CLS Dom Rel § 200.

Liability of directors, officers and trustees, CLS N-PCL § 720-a.

Federal Aspects:

Pleadings and motions, Rules 7 to 16 of the Federal Rules of Civil Procedure, USCS Court Rules.

Claims for relief, Rule 8(a) of the Federal Rules of Civil Procedure, USCS Court Rules.

Affirmative defenses, Rule 8(c) of the Federal Rules of Civil Procedure, USCS Court Rules.

Pleading special matters, Rule 9 of the Federal Rules of Civil Procedure, USCS Court Rules.

Fraud or mistake; conditions of mind, Rule 9(b) of the Federal Rules of Civil Procedure, USCS Court Rules.

Judgment, Rule 9(e) of the Federal Rules of Civil Procedure, USCS Court Rules.

Determination of foreign law, Rule 44.1 of the Federal Rules of Civil Procedure, USCS Court Rules.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3016, Particularity in Specific Actions.

1 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 14.09, 15.02, 15.06; 2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 22.03, 24.04, 24.05, 24.06, 26.04, 27.03, 27.05, 28.10, 33.01.— 33.04,. 34.01, 34.02, 34.03, 37.08; 4 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 50.03, 50.07.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 302.05; 3 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶1409.04, 1410.06.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 12.01. (Actions Against Persons Jointly Liable) In general.

CPLR Manual § 19.08. Special rules governing pleading of specific issues.

CPLR Manual § 19.09. Particular pleading requirements in certain actions.

CPLR Manual § 19.10. Responsive pleadings.

CPLR Manual § 19.12. Cross-claims.

Matthew Bender's New York Practice Guides:

2 New York Practice Guide: Business and Commercial §§ 12.16, 12.18; 4 New York Practice Guide: Business and Commercial § 25.11.

1 New York Practice Guide: Domestic Relations §§ 2.02, 2.04, 3.04, 4.04, 4.13, 5.05, 12.02; 4 New York Practice Guide: Domestic Relations § 54.04.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 10.08. Admitting Record Under Exceptions to Admission Requirements.

LexisNexis AnswerGuide New York Civil Litigation § 10.09. Using Judicial Notice to Establish Facts.

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

LexisNexis AnswerGuide New York Negligence § 5.26. Drafting Complaint and Establishing Elements of Cause of Action.

LexisNexis AnswerGuide New York Negligence § 7.25. Defining Elements of Cause of Action and Necessary Allegations.

Matthew Bender’s New York Evidence:

Bender's New York Evidence § 105.05. Determining Which Party Bears Burden of Proof.

Bender's New York Evidence § 111.16. Judicial Notice Without Request—Permissive Judicial Notice; Effect of Request.

Bender's New York Evidence § 29.08B. Proof of fault or wrongful conduct, generally.

Matthew Bender’s New York Checlists:

Checklist for Preparing Initial Pleadings LexisNexis AnswerGuide New York Civil Litigation § 1.08.

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide New York Civil Litigation § 10.05.

Forms:

Bender’s Forms for the Civil Practice Form No. CPLR 3016:1 et seq.

LexisNexis Forms FORM 75-CPLR 3013:109.— Fraud.

LexisNexis Forms FORM 75-CPLR 3013:110.— Complaint in Action for Fraud and Misrepresentation Against Real Estate Seller and Broker.

LexisNexis Forms FORM 75-CPLR 3013:111.— Complaint in Action by Financial Service Company for Damages Against Accounting Firm on Grounds of Negligence and Fraud in Preparation of Financial Statements.

LexisNexis Forms FORM 75-CPLR 3013:120.— Verified Complaint for Divorce With Allegations for Equitable Distribution of Marital Property, Distributive Award and Special Relief.

LexisNexis Forms FORM 75-CPLR 3013:169.— Complaint for Negligence in an Automobile Accident Case; Official Form 12.

LexisNexis Forms FORM 75-CPLR 3013:170.— Complaint for Negligence in an Automobile Accident Case; Proposed Official Form 13.

LexisNexis Forms FORM 75-CPLR 3013:171.— Complaint for Negligence in an Automobile Accident Case Where Plaintiff is Unable to Determine Definitely Whether the Person Responsible is C.D. or E.F.; Official Form 13.

LexisNexis Forms FORM 75-CPLR 3013:171A.— Automobile Collision.

LexisNexis Forms FORM 75-CPLR 3013:172.— Complaint in Action by Passengers Against Drivers Based on Negligent Operation of Automobile.

LexisNexis Forms FORM 75-CPLR 3013:172A.— Complaint in Action for Personal Injuries Sustained in Rear-End Collision of Motor Vehicles.

LexisNexis Forms FORM 75-CPLR 3013:172B.— Complaint in Action for Negligence, Carelessness and Recklessness in Operating Automobile; Punitive Damages.

LexisNexis Forms FORM 75-CPLR 3013:173.— Complaint in Action for Negligence Failure to Give Police Patrol Car Right of Way.

LexisNexis Forms FORM 75-CPLR 3013:174.— Complaint in Action for Negligence Collapse of stool.

LexisNexis Forms FORM 75-CPLR 3013:175.— Complaint in Action for Negligence Fall Through Defective Steel Grating.

LexisNexis Forms FORM 75-CPLR 3013:176.— Complaint in Action for Wrongful Death on Behalf of Worker Killed When Ladder Came in Contact With High Voltage Power Line.

LexisNexis Forms FORM 75-CPLR 3013:177.— Complaint in Action Against Building Owner for Injuries Sustained by Worker Who Fell While Repairing Roof.

LexisNexis Forms FORM 75-CPLR 3013:178.— Complaint in Action Against Employer for Injuries Received in Fall From Scaffold.

LexisNexis Forms FORM 75-CPLR 3013:178A.— Complaint in Action by Injured Construction Worker Against Property Owner and General Contractor.

LexisNexis Forms FORM 75-CPLR 3013:179.— Complaint in Action for Negligence Against Homeowner by Person Injured Falling Down Unguarded Stairway Enclosed Area.

LexisNexis Forms FORM 75-CPLR 3013:179A.— Slip and Fall.

LexisNexis Forms FORM 75-CPLR 3013:180.— Complaint in Action for Negligence Against Operator of Ice Skating Show Where Spectator Was Injured by Collapse of Seats.

LexisNexis Forms FORM 75-CPLR 3013:181.— Complaint in Action for Negligence Against Truck Repairman for Failure to Repair Brakes and Steering Gear.

LexisNexis Forms FORM 75-CPLR 3013:182.— Complaint in Action Against City for Personal Injuries Resulting From Failure to Post or Maintain Signs Warning That Road Was Restricted to One-Way Traffic.

LexisNexis Forms FORM 75-CPLR 3013:183.— Complaint in Action Against County for Personal Injuries Arising Out of Plaintiff's Collision With Bus Operated for County on County Road.

LexisNexis Forms FORM 75-CPLR 3013:184.— Complaint Against School District in Negligence Action by Bus Passenger Injured in Collision.

LexisNexis Forms FORM 75-CPLR 3013:185.— Complaint in Action for Negligence by Bus Passenger Assaulted by Another Passenger Where Bus Company Failed to Prevent Assault.

LexisNexis Forms FORM 75-CPLR 3013:186.— Complaint in Action for Negligent Maintenance of Heating System.

LexisNexis Forms FORM 75-CPLR 3013:186A.— Complaint in Action for Personal Injuries Sustained When Heating System Released Poisonous Levels of Carbon Monoxide.

LexisNexis Forms FORM 75-CPLR 3013:187.— Complaint in Action for Negligence Based on Improper Construction and Maintenance of Pipes Conducting Steam and Hot Water.

LexisNexis Forms FORM 75-CPLR 3013:188.— Complaint in Action for Negligence Collapse of Crane; Theory of Res Ipsa Loquitur.

LexisNexis Forms FORM 75-CPLR 3013:211.— Complaint for Products Liability; Proposed Official Form 14.

LexisNexis Forms FORM 75-CPLR 3013:212.— Complaint in Action for Negligence, Strict Products Liability and Breach of Warranty Latent Defect in Motorcycle.

LexisNexis Forms FORM 75-CPLR 3013:213.— Complaint in Action for Negligence, Strict Products Liability and Breach of Warranty Against Car Manufacturer Based Upon Defective Manufacture and Assembly of Steering System.

LexisNexis Forms FORM 75-CPLR 3013:214.— Complaint in Action Against Manufacturer and Seller of Tent for Strict Products Liability.

LexisNexis Forms FORM 75-CPLR 3013:215.— Complaint in Action Against Manufacturer of Power Saw for Strict Products Liability.

LexisNexis Forms FORM 75-CPLR 3013:216.— Complaint in Wrongful Death Action for Strict Products Liability and Breach of Warranty Against Retailer, Distributor and Manufacturer of Refrigerator with Latent Defects.

LexisNexis Forms FORM 75-CPLR 3013:216A.— Complaint in Action for Injuries Caused by Chemical Fumes That Escaped from X-Ray Equipment.

LexisNexis Forms FORM 75-CPLR 3013:216B.— Complaint in Action Against Landlord for Injuries Sustained by Infant Due to Exposure to Lead Paint.

LexisNexis Forms FORM 75-CPLR 3016:1.— Complaint in Action for Libel Against Magazine Publishing Fictitious Story in Which Plaintiff, Thinly Disguised, Is a Character Held Up to Disrepute.

LexisNexis Forms FORM 75-CPLR 3016:10.— Complaint in Action for Slander Where Defendant Failed to Show Qualified Privilege.

LexisNexis Forms FORM 75-CPLR 3016:11.— Complaint in Action for Libel Alleging Special Damages Where Statement Is Not Libelous Per Se.

LexisNexis Forms FORM 75-CPLR 3016:11A.— Complaint in Action for Libel Per Se Arising From Newspaper’s Use of Altered Photograph of Plaintiff in Manner Implying Plaintiff Was a Criminal.

LexisNexis Forms FORM 75-CPLR 3016:12.— General Form of Complaint in Action for Damages for Fraud.

LexisNexis Forms FORM 75-CPLR 3016:13.— Allegations in Complaint in Action for Fraud Where Representations Recklessly Made by Defendant Without Knowledge of Their Truth or Falsity.

LexisNexis Forms FORM 75-CPLR 3016:14.— Allegations in Complaint in Action for Damages for Fraud Where Fraudulent Representations Contained in Advertising Matter.

LexisNexis Forms FORM 75-CPLR 3016:15.— Allegations in Complaint in Action for Damages for Fraud Where Fraudulent Representations Made to Commercial Agency.

LexisNexis Forms FORM 75-CPLR 3016:16.— Allegations in Complaint in Action for Damages for Frau Fraudulent Concealment.

LexisNexis Forms FORM 75-CPLR 3016:17.— Allegations in Action for Damages and Rescission of Purchase of Real Property on Ground of Frau.

LexisNexis Forms FORM 75-CPLR 3016:18.— Complaint in Action for Fraud by Insurer During Settlement Negotiations by Inducing Plaintiff Not to File Notice of Claim.

LexisNexis Forms FORM 75-CPLR 3016:19.— Complaint in an Action for Fraud Where Religious Corporation Was Fraudulently Deprived of the Use of a Car by Defendants.

LexisNexis Forms FORM 75-CPLR 3016:2.— Complaint in Action for Libel by Motion Picture.

LexisNexis Forms FORM 75-CPLR 3016:20.— Complaint in Action for Fraud in Sale of Business Property.

LexisNexis Forms FORM 75-CPLR 3016:21.— Complaint in Action Against Judgment Creditor Alleging Fraudulent Transfer of Assets.

LexisNexis Forms FORM 75-CPLR 3016:22.— Affidavit in Opposition to Summary Judgment in Suit for Fraudulent Misrepresentation.

LexisNexis Forms FORM 75-CPLR 3016:23.— Affidavit in Support of Motion to Dismiss Fraud Complaint Where Cause of Action Was Not Pleaded With Factual Detail Required by CPLR 3016(b).

LexisNexis Forms FORM 75-CPLR 3016:24.— Affidavit in Opposition to Motion to Dismiss Complaint Alleging a Fraud on Creditors.

LexisNexis Forms FORM 75-CPLR 3016:25.— Complaint in Action to Cancel Deeds on Grounds of Fraud and Undue Influence.

LexisNexis Forms FORM 75-CPLR 3016:26.— Complaint in Action to Reform Contract on Ground of Mutual Mistake.

LexisNexis Forms FORM 75-CPLR 3016:27.— Complaint in Action to Reform Deed on Ground of Mutual Mistake.

LexisNexis Forms FORM 75-CPLR 3016:28.— Complaint in Action to Rescind Contract Because of Mistake of Law.

LexisNexis Forms FORM 75-CPLR 3016:29.— Complaint for Money Paid by Mistake; Official Form 10.

LexisNexis Forms FORM 75-CPLR 3016:3.— Complaint in Action for Libel Per Se by Union Charged With Racial Discrimination.

LexisNexis Forms FORM 75-CPLR 3016:30.— Affirmative Defense Mutual Mistake.

LexisNexis Forms FORM 75-CPLR 3016:31.— General Allegations in an Action for Separation.

LexisNexis Forms FORM 75-CPLR 3016:32.— General Allegations in an Action for Divorce.

LexisNexis Forms FORM 75-CPLR 3016:33.— Allegation in Action on Judgment That No Part Satisfied.

LexisNexis Forms FORM 75-CPLR 3016:34.— Allegation in Action on Judgment That Part Is Satisfied.

LexisNexis Forms FORM 75-CPLR 3016:35.— Allegations as to Foreign Law.

LexisNexis Forms FORM 75-CPLR 3016:36.— Complaint for Goods Sold and Accepted; Official Form 6.

LexisNexis Forms FORM 75-CPLR 3016:37.— Complaint for Goods Sold and Accepted; Proposed Official Form 7.

LexisNexis Forms FORM 75-CPLR 3016:38.— Complaint for Goods Sold, Delivered and Accepted With Itemization Under CPLR 3016(f); Official Form 7.

LexisNexis Forms FORM 75-CPLR 3016:39.— Complaint for Goods Sold, Delivered and Accepted With Itemization Under CPLR 3016(f); Proposed Official Form 8.

LexisNexis Forms FORM 75-CPLR 3016:4.— Complaint in Action for Libel Per Se by Radio and Television Performer Labeled Communist, etc.

LexisNexis Forms FORM 75-CPLR 3016:40.— Complaint for Goods Sold, Delivered and Accepte With Schedule Annexed; Official Form 8.

LexisNexis Forms FORM 75-CPLR 3016:41.— Complaint for Goods Sold, Delivered and Accepted With Schedule Annexed; Proposed Official Form 9.

LexisNexis Forms FORM 75-CPLR 3016:42.— General Form of Complaint in an Action for Goods Sold and Delivered on Account State.

LexisNexis Forms FORM 75-CPLR 3016:43.— Specific Denials in Answer to Complaint Under CPLR 3016(f); Official Form 19.

LexisNexis Forms FORM 75-CPLR 3016:44.— Specific Denials in Answer to Complaint Under CPLR 3016(f); Proposed Official Form 21.

LexisNexis Forms FORM 75-CPLR 3016:45.— Complaint in Action for Services Rendered.

LexisNexis Forms FORM 75-CPLR 3016:46.— Complaint in Action for Materials, Labor and Services.

LexisNexis Forms FORM 75-CPLR 3016:47.— Schedule Attached to Pleading in Action for Materials, Labor and Services.

LexisNexis Forms FORM 75-CPLR 3016:48.— Denials in Answer Indicating Specifically Items in Schedule Which Defendant Disputes.

LexisNexis Forms FORM 75-CPLR 3016:49.— Allegation of Serious Injury in Action for Personal Injuries Arising Out of the Negligent Operation of Motor Vehicle.

LexisNexis Forms FORM 75-CPLR 3016:5.— Complaint in Action for Libel Per Se by Nurse Against Doctors for Statement Made in Professional Newsletter.

LexisNexis Forms FORM 75-CPLR 3016:50.— Allegation of Economic Loss Greater Than Basic Economic Loss in an Action for Personal Injuries Arising Out of the Negligent Operation of a Motor Vehicle.

LexisNexis Forms FORM 75-CPLR 3016:51.— Allegation of Gross Negligence or Intentional Infliction of Harm by Certain Directors, Officers or Trustees of Certain Corporations, Associations, Organizations or Trusts.

LexisNexis Forms FORM 75-CPLR 3016:6.— Attorney’s Affidavit in Support of Motion to Dismiss Libel Complaint Where Statements Complained of Were “Pure Opinion’’.

LexisNexis Forms FORM 75-CPLR 3016:7.— Defendant’s Affidavit in Support of Motion to Dismiss Libel Complaint Where Statements Complained of Were “Pure Opinion’’.

LexisNexis Forms FORM 75-CPLR 3016:8.— Complaint in Action for Slander Per Se.

LexisNexis Forms FORM 75-CPLR 3016:9.— Complaint in Action for Slander Where Employer Accused Employee of Using Drugs.

LexisNexis Forms FORM 120-18:1.— General Form of Complaint for Damages Resulting From Fraud.

LexisNexis Forms FORM 380-42:201.— Complaint in Divorce Action Based on Cruel and Inhuman Treatment.

LexisNexis Forms FORM 380-42:202.— Complaint in Divorce Action Based on Cruel and Inhuman Treatment; Allegations of Alcohol and Drug Abuse.

LexisNexis Forms FORM 380-42:203.— Complaint in Divorce Action Based on Cruel and Inhuman Treatment; Allegations of Physical Assault on Spouse and Children.

LexisNexis Forms FORM 380-42:204.— Complaint in Divorce Action Based on Cruel and Inhuman Treatment; Multiple Allegations.

LexisNexis Forms FORM 380-42:205.— Complaint in Divorce Action Based on Abandonment.

LexisNexis Forms FORM 380-42:206.— Complaint in Divorce Action Based on Defendant's Imprisonment.

LexisNexis Forms FORM 380-42:207.— Complaint in Divorce Action Based on Adultery Where Co-respondent Named.

LexisNexis Forms FORM 380-42:208.— Complaint in Divorce Action Based on Adultery Where Co-respondent Unknown.

LexisNexis Forms FORM 380-42:209.— Complaint in Divorce Action Based on Separation Decree.

LexisNexis Forms FORM 380-42:210.— Complaint in Divorce Action Based on Separation Agreement.

LexisNexis Forms FORM 380-42:301.— Affirmative Defenses in Divorce Actions.

LexisNexis Forms FORM 380-42:302.— Verified Answer and Counterclaim on Grounds of Constructive Abandonment.

LexisNexis Forms FORM 380-42:303.— Notice of Motion to Dismiss Complaint for Divorce; Parties Not Separated for One Year.

LexisNexis Forms FORM 380-42:304.— Affidavit in Support of Motion to Dismiss Complaint; Parties Not Separated for One Year.

LexisNexis Forms FORM 380-42:305.— Attorney's Affidavit in Support of Motion to Dismiss Complaint; Parties Not Separated for One Year.

LexisNexis Forms FORM 380-43:101.— General Allegations in an Action for Separation.

LexisNexis Forms FORM 380-43:201.— Complaint in Action for Separation On Ground of Cruel and Inhuman Treatment, With Allegations as to Defendant's Property.

LexisNexis Forms FORM 380-43:202.— Complaint in Action for Separation on Ground of Miscellaneous Acts of Cruel and Inhuman Treatment, and to Set Aside Separation Agreement.

LexisNexis Forms FORM 380-43:203.— Answer Setting Forth Counterclaim for Separation on Ground of Cruel and Inhuman Treatment; Allegations of Husband Moving Out of Marital Home, Refusal to Cohabit, and Consorting With Another Woman.

LexisNexis Forms FORM 380-43:204.— Notice of Motion to Dismiss Complaint in Separation Action on Grounds of Lack of Particularity.

LexisNexis Forms FORM 380-43:205.— Affidavit of Defendant's Attorney in Support of Motion to Dismiss Complaint for Separation Based Upon Cruel and Inhuman Treatment on Ground of Lack of Particularity.

LexisNexis Forms FORM 380-43:301.— Complaint in Action for Separation on Ground of Abandonment.

LexisNexis Forms FORM 380-43:302.— Complaint in Action for Separation on Ground of Abandonment Where Defendant Bars Plaintiff From Home.

LexisNexis Forms FORM 380-43:401.— Complaint in Action for Separation on Ground of Refusal to Support.

LexisNexis Forms FORM 380-43:501.— Complaint in Action for Separation on the Ground of Adultery.

LexisNexis Forms FORM 380-43:502.— Complaint in Action for Separation on Grounds of Adultery, Cruel and Inhuman Treatment, Abandonment and Non-Support.

LexisNexis Forms FORM 380-43:601.— Complaint in Action for Separation on Ground of Imprisonment.

LexisNexis Forms FORM 380-43:703.— Default Judgment in Separation Action on Grounds of Cruel and Inhuman Treatment and Abandonment.

LexisNexis Forms FORM 380-43:801.— Answer in Action for Separation, with Defense of Justification Alleging Adultery of Plaintiff.

LexisNexis Forms FORM 380-43:802.— Defense of Abandonment by Wife in Separation Action Where Husband Charged With Abandonment.

LexisNexis Forms FORM 380-43:803.— Defense of Cruel and Inhuman Treatment by Wife in Wife’s Action for Separation.

LexisNexis Forms FORM 380-43:804.— Defense in Action for Separation of Plaintiff’s Refusal of Marriage Relations.

LexisNexis Forms FORM 380-43:805.— Defense of Condonation for Alleged Misconduct.

LexisNexis Forms FORM 380-43:806.— Defense in Action for Separation Alleging Misconduct of Plaintiff Consisting of Abandonment and Cruel and Inhuman Treatment.

LexisNexis Forms FORM 380-43:807.— Answer and Defense in Action for Separation Alleging That Marriage Void Because of Prior Subsisting Marriage, Annulment of Which Was Void Because of Lack of Jurisdiction.

LexisNexis Forms FORM 380-43:808.— Defense of Prior Annulment.

LexisNexis Forms FORM 380-43:809.— Defense of Prior Divorce.

LexisNexis Forms FORM 380-43:810.— Defense of Separation Agreement.

LexisNexis Forms FORM 380-43:811.— Defense of Statute of Limitations.

LexisNexis Forms FORM 521-31-33.— Complaint; Collision Case.

LexisNexis Forms FORM 521-31-34.— Complaint against Employer (Owner) and Employee (Driver); Collision Case.

LexisNexis Forms FORM 521-31-36.— Notice of Claim.

LexisNexis Forms FORM 521-31-37.— Complaint; Pedestrian Struck by Automobile.

LexisNexis Forms FORM 521-31-39.— Answer; Collision Case.

LexisNexis Forms FORM 521-31-40.— Answer with Cross Complaint.

LexisNexis Forms FORM 521-11-5.— Complaint for Non-economic Loss.

LexisNexis Forms FORM 521-11-6.— Complaint for Non-economic Loss and Economic Loss Exceeding Basic Economic Loss.

LexisNexis Forms FORM 521-11-7.— Complaint for Non-economic Loss and Property Damage to Automobile.

LexisNexis Forms FORM 1434-19189.— Automobile Collision.

LexisNexis Forms FORM 1434-19198.— Slip and Fall.

LexisNexis Forms FORM 70-IS5102:1.— Complaint in Action for Serious Injury or Excessive Economic Loss.

LexisNexis Forms FORM 70-IS5104:1.— Answer and Affirmative Defense: Failure to Plead Serious Injury or Loss in Excess of Basic Economic Loss.

LexisNexis Forms FORM 70-IS5102:18.— Attorney's Affidavit in Support of Defendant's Motion for Summary Judgment Dismissing Complaint; Failure to Prove Substantial Injuries.

LexisNexis Forms FORM 70-IS5102:19.— Attorney's Affirmation in Support of Defendant's Motion for Summary Judgment Dismissing Complaint; Medical Evidence Insufficient to Meet Serious Injury Threshold.

LexisNexis Forms FORM 70-IS5102:20.— Affidavit of Physician in Support of Defendant's Motion for Summary Judgment Dismissing Complaint; Medical Evidence Insufficient to Meet Serious Injury Threshold.

LexisNexis Forms FORM 70-IS5104:2.— Affirmation in Support of Motion for Order Dismissing Affirmative Defense Alleging Failure to Plead Serious Injury.

LexisNexis Forms FORM 70-IS5102:22.— Affirmation in Support of Motion for Summary Judgment Based on Lack of "Serious Injury''.

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

Texts:

1-5 Bergman on New York Mortgage Foreclosures (Matthew Bender) § 5.07.

1 New York Trial Guide (Matthew Bender) § 2.01.

Hierarchy Notes:

NY CLS CPLR, Art. 30