

CPLR 3015: Particularity as to Special Damages

St. John's Law Review

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Recommended Citation

St. John's Law Review (1972) "CPLR 3015: Particularity as to Special Damages," *St. John's Law Review*: Vol. 47 : No. 1 , Article 20.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol47/iss1/20>

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settlement. Indeed, the defendant never contested the existence or the terms of the agreement in question.⁸⁵

ARTICLE 30 — REMEDIES AND PLEADING

CPLR 3015: Particularity as to special damages.

Subdivision (d), which required the itemization of special damages in the pleadings, has been repealed and subdivision (e) has been re-lettered as subdivision (d). Itemization of special damages is left to the bill of particulars.

A caveat to the bar: Special damages must still be pleaded where they are an essential element of a cause of action.⁸⁶

CPLR 3021: Mere allegation of improper verification does not mandate rebuttal.

In 1965, section 741 of the RPAPL was amended to require verified petitions in proceedings to regain possession of real property. Thus, such petitions must be verified pursuant to CPLR 3021⁸⁷ to avoid the possible penalty for improper verification contained in CPLR 3022, viz., that such pleadings may be treated as a nullity if the adverse party so notifies opposing counsel.

In *Gould v. Pollack*,⁸⁸ the defendant contended that the petition had not been properly verified and sought to raise an issue of fact as to whether the petition had actually been verified. In rejecting these allegations, the New York City Civil Court, New York County, noted that the instant affidavit followed the form required by CPLR 3021.⁸⁹ Moreover, where no issue of fact as to the authenticity of the verification was shown, the plaintiff had "no duty . . . to call the Notary Public as a witness."⁹⁰

The lack of any proof of irregularity concerning the petition's verification clearly justifies the instant decision, which forestalls the delay of summary proceedings which an opposite holding would have produced. Moreover, assuming *arguendo* that the petition was defectively verified, the CPLR states that "[d]efects [in pleadings] shall be ignored if a substantial right of a party is not prejudiced."⁹¹

⁸⁵ 38 App. Div. 2d at 814, 328 N.Y.S.2d at 902.

⁸⁶ CPLR 3013.

⁸⁷ Note that the wording of the section is not mandatory. See 3 WK&M ¶ 3021.02. In addition the Court of Appeals has adopted a "substantial compliance" test for determining whether verification is proper. *In re Macaulay*, 94 N.Y. 574, 577-78 (1884).

⁸⁸ 68 Misc. 2d 670, 327 N.Y.S.2d 808 (N.Y.C. Civ. Ct. N.Y. County 1971).

⁸⁹ *Id.* at 676, 327 N.Y.S.2d at 815.

⁹⁰ *Id.*

⁹¹ CPLR 3026. For a case adopting this approach, see *Capital Newspapers Div.-Hearst*