

CPLR 3042: Attorney Personally Fined for Ignoring a Demand for a Bill of Particulars

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CPLR 3041: A demand in a bill of particulars for identification of witnesses is permissible under special circumstances.

Generally, the purposes of a bill of particulars are amplification of the pleading, prevention of surprise at trial, and limitation of the scope of proof.⁹² The bill was not intended as a means of eliciting evidence or obtaining the names of witnesses.⁹³ However, courts will allow a demand for such information under special circumstances.⁹⁴

Such circumstances were found in *Block v. Fairbairn*,⁹⁵ where the plaintiff, a dog-bite victim, was required to furnish the identity of persons who were with him at the time of the incident.⁹⁶ In so holding, the Supreme Court, Ulster County, advocated the expansion of the scope of the bill of particulars as a means of reducing the expense of litigation, citing the increasing cost of the record of examinations before trial, the usual device by which such information is obtained.

It has been argued that the bill of particulars "imposes burdens on the parties and the court that far outweigh the modicum of added intelligence that may be afforded by [its] use. . . ."⁹⁷ Nevertheless, the idea that the scope of the bill of particulars should be expanded in this regard certainly has merit. It mirrors a welcome judicial inclination toward making the courts more accessible to many litigants for whom the cost of the record of an examination before trial would otherwise be prohibitive.

CPLR 3042: Attorney personally fined for ignoring a demand for a bill of particulars.

*Blanchfield Storage, Inc. v. State*⁹⁸ involved a motion to vacate a conditional preclusion order which had been granted to the State after

Corp. v. Vanderbilt, 44 Misc. 2d 542, 254 N.Y.S.2d 309 (Sup. Ct. Albany County 1964). Therein, the court held that a complaint demanding injunctive relief would not be dismissed for defective verification where the defendant would not be substantially prejudiced if the defect were ignored.

⁹² *Elman v. Ziegfeld*, 200 App. Div. 494, 193 N.Y.S. 133 (1st Dep't 1922).

⁹³ *W. R. Simmons & Assocs. Research, Inc. v. Ziff-Davis Publishing Co.*, 37 Misc. 2d 62, 234 N.Y.S.2d 991 (Sup. Ct. N.Y. County 1962); *Slawson v. Murphy*, 37 N.Y.S.2d 930 (Sup. Ct. Nassau County 1942). See generally 6 CARMODY-WAIT 2d § 36:3 (1968).

⁹⁴ H. WACHTELL, *NEW YORK PRACTICE UNDER THE CPLR* 230-31 (3d ed. 1970). See *In re Cohn's Estate*, 41 Misc. 2d 36, 244 N.Y.S.2d 669 (Sup. Ct. N.Y. County 1963).

⁹⁵ 68 Misc. 2d 931, 328 N.Y.S.2d 497 (Sup. Ct. Ulster County 1972).

⁹⁶ The court also allowed, *inter alia*, the defendant's demand for information as to whether the dog was claimed to have bitten anyone in the past, stating that it "would prevent surprise at the trial and would permit the defendants to investigate such claim prior to trial." *Id.* at 933, 328 N.Y.S.2d at 500. Three other dog-bite cases have similarly permitted the use of the device for the identification of previous victims. *Diskin v. St. Martin's Roman Catholic Church*, 2 App. Div. 2d 901, 157 N.Y.S.2d 144 (2d Dep't 1956); *Drake v. Hess*, 281 App. Div. 1074, 122 N.Y.S.2d 32 (4th Dep't 1953) (*per curiam*); *Robson v. Driscoll*, 278 App. Div. 847, 104 N.Y.S.2d 334 (2d Dep't 1951).

⁹⁷ 3 WK&M ¶ 3041.05.

⁹⁸ 69 Misc. 2d 487, 330 N.Y.S.2d 139 (Ct. Cl. 1972) (*mem.*).

the claimant in an appropriation proceeding had ignored a demand by the State for a bill of particulars. In the exercise of its discretion, the court granted the claimant's motion to vacate the order, on condition that the attorney personally remit one hundred dollars to the State. It took this course "in order to point up [its] aversion to claimant's counsel's lack of attention to his responsibilities . . . and . . . to discourage such neglectful conduct in the future."⁹⁹

ARTICLE 31 — DISCLOSURE

CPLR 3101: Liberalization of disclosure in matrimonial actions.

In *Lachoff v. Lachoff*,¹⁰⁰ the Supreme Court, Nassau County, granted the defendant-husband's motion for disclosure proceedings against his plaintiff-wife. While the policy has been to deny disclosure in matrimonial actions, on the theory that such examination may impede or prevent reconciliation,¹⁰¹ the court reasoned that the 1967 revisions of the DRL¹⁰² requiring the parties to go through a conciliation procedure at the outset of matrimonial actions made this theory obsolete.¹⁰³ The court abandoned the rule which allowed pretrial disclosure in matrimonial actions only upon a showing of "special circumstances," and followed¹⁰⁴ the liberal approach¹⁰⁵ which permits such disclosure unless the opposing party is able to show circumstances which would render it improper.¹⁰⁶

Lachoff goes beyond *Hochberg v. Hochberg*,¹⁰⁷ which allowed disclosure of financial matters in matrimonial actions. The instant decision is a positive step toward granting parties in matrimonial actions the same rights as those in other actions.

⁹⁹ *Id.* at 491, 330 N.Y.S.2d at 143, citing *Maglieri v. Saks*, 33 App. Div. 2d 898, 306 N.Y.S.2d 479 (1st Dep't 1970); *Breazeal v. Rent-A-Car Club of America*, 32 App. Div. 2d 653, 300 N.Y.S.2d 812 (2d Dep't 1969); *Boyle v. Krebs & Schulz Motors, Inc.*, 18 App. Div. 2d 1010, 239 N.Y.S.2d 143 (2d Dep't 1963); 7B MCKINNEY'S CPLR 3042, supp. commentary at 269-70 (1970).

¹⁰⁰ 69 Misc. 2d 512, 330 N.Y.S.2d 227 (Sup. Ct. Nassau County 1972) (mem.).

¹⁰¹ See 7B MCKINNEY'S CPLR 3101, commentary at 18-19 (1970).

¹⁰² DRL 215. See *Hunter v. Hunter*, 10 App. Div. 2d 291, 198 N.Y.S.2d 1008 (1st Dep't 1960).

¹⁰³ 69 Misc. 2d at 512, 330 N.Y.S.2d at 229.

¹⁰⁴ *Id.*, 330 N.Y.S.2d at 230.

¹⁰⁵ See *Plancher v. Plancher*, 35 App. Div. 2d 417, 317 N.Y.S.2d 140 (2d Dep't 1970), *aff'd mem.*, 29 N.Y.2d 880, 278 N.E.2d 650, 328 N.Y.S.2d 444 (1972); *Dunlap v. Dunlap*, 34 App. Div. 2d 889, 312 N.Y.S.2d 441 (4th Dep't 1970) (mem.) (disclosure of all relevant matters); *Campbell v. Campbell*, 7 App. Div. 2d 1011, 184 N.Y.S.2d 479 (2d Dep't 1957).

¹⁰⁶ CPLR 3101(b).

¹⁰⁷ 63 Misc. 2d 77, 310 N.Y.S.2d 737 (Sup. Ct. Nassau County 1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 342, 356 (1970).