CPLR 3016(c): Specificity of Pleading Requirement Applied to Counterclaim in Divorce Action

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reversed, holding that the defendant's general denial was sufficient to put all the plaintiff's allegations in issue. The Court reasoned that the particularity requirement was inapplicable because the plaintiff had already specified the pertinent conditions in his complaint, and thus the essential purpose of the requirement — i.e., to give the plaintiff notice of that which he must prove at trial — was satisfied.\textsuperscript{70}

CPLR 3016(c): Specificity of pleading requirement applied to counterclaim in divorce action.

CPLR 3016(c) requires that the complaint in an action for separation contain the nature, circumstances, time, and place of each act allegedly constituting the defendant's misconduct. In \textit{Deane v. Deane},\textsuperscript{71} the Supreme Court, Westchester County, applied this pleading requirement to the defendant's counterclaim\textsuperscript{72} for divorce, reasoning that since the ground pleaded, cruel and inhuman treatment, is identically worded for separation and divorce,\textsuperscript{73} "[n]o distinction is made between the nature or the level of proof required to establish [this ground] insofar as it may relate to [either action]."\textsuperscript{74} Thus, the court concluded, the same standards of pleading should apply.

CPLR 3016(c) was created at a time when multiple grounds existed for separation, while the only ground for divorce was adultery, and the pleading requirements for the latter were less than for the former. When the grounds for divorce were expanded in 1967,\textsuperscript{75} no pleading provision corresponding to CPLR 3016(c) was created.\textsuperscript{76} This legislative inactivity prompted the Supreme Court, Delaware County, in \textit{Houch v. Houch},\textsuperscript{77} to conclude that a complaint for divorce should be given a more liberal reading than one for separation on identical grounds.

Although the \textit{Deane} court indicated that the consequences of failing to satisfy this section will be minimal — the delinquent party may have to file an amended pleading or supply a bill of particulars,\textsuperscript{78}
this minor gap in the symmetry of the CPLR should be rectified by
the Legislature.

ARTICLE 31 — DISCLOSURE

CPLR 3120: Discovery and inspection available against the state as
nonparty witness.

In Kaplan v. Kaplan, the Court of Appeals decided whether
the state is immune from disclosure as a nonparty witness. The state
is subject to discovery by court order under CPLR 3102(f) when it is
a party to an action. In Butironi v. Putnam County Civil Service
Commission, the Appellate Division, Second Department, held that
the state was not required to make disclosure as a witness. The court
reasoned that when the Legislature amended CPLR 3102(f) to make
clear that disclosure was available against the state as a party, it had
foregone the opportunity of similarly broadening CPLR 3120(b) to
permit disclosure against the state as a witness.

In Kaplan, the defendants applied under CPLR 3120 for dis-
covery and inspection of documents in the possession of the State
Department of Health. The department resisted the application on
the ground that it was not a party to the action and was not “a per-
son not a party” made equally subject to disclosure under CPLR
3120(b) as a party is under CPLR 3120(a). The Supreme Court,
New York County, ordered disclosure, and the Appellate Division,
First Department, unanimously affirmed. The Court of Appeals unan-
imously affirmed, construing the word “person” in CPLR 3120(b) to
include the state. The Court rejected the Butironi rationale, rea-
soning that the Legislature did not amend CPLR 3120(b) because it
was decided under the CPA that the state could be examined as a
witness.

L. Rev. 121, 141 (1966); Kurcz v. Kurcz, 13 App. Div. 2d 954, 216 N.Y.S.2d 736 (1st Dep’t
1961) (mem.); Glick v. Glick, 63 Misc. 2d 944, 311 N.Y.S.2d 623 (Sup. Ct. Nassau County
1970). The more liberal view of the Deane case, which allows its use, is endorsed by
Professor Siegel. 7B Mckinney’s CPLR 3016, suppl. commentary at 172 (1972).

79 31 N.Y.2d 63, 286 N.E.2d 691, 334 N.Y.S.2d 879, aff’d 32 App. Div. 2d 691, 327

80 However, the state cannot be required to answer interrogatories or to make
admissions.

81 29 App. Div. 2d 474, 288 N.Y.S.2d 734 (2d Dep’t 1969), discussed in The Quarterly

82 Id. at 476, 288 N.Y.S.2d at 737.

83 CPLR 3120(a) provides for the discovery and production of documents and things
for inspection, copying, testing, or photographing.

84 31 N.Y.2d at 69, 286 N.E.2d at 262, 334 N.Y.S.2d at 881.

85 Id., citing City of Buffalo v. Hanna Furnace Corp., 305 N.Y. 369, 113 N.E.2d 520