

CPLR 3013: Request for Equitable Relief Not Fatal Where Facts Indicated Legal Relief Was Proper

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was trying to give expression to the statutory mandate that pleadings be liberally construed.⁵² But it is more likely that the result in the present case is attributable to the nature of the motion being heard.⁵³

ARTICLE 30—REMEDIES AND PLEADING

CPLR 3013: Request for equitable relief not fatal where facts indicated legal relief was proper.

In *Lane v. Mercury Record Corp.*,⁵⁴ the appellate division, first department, held that a complaint which asked for equitable relief could not be dismissed for failure to state a cause of action merely because the complaint only stated facts sufficient for legal relief. Recently, the Court of Appeals affirmed this decision,⁵⁵ thereby making it applicable to the whole state.

CPLR 3013 requires that "statements in a pleading shall 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."⁵⁶ This section underlines the plan of the CPLR to do away with the technicalities of pleading—to sustain any cause of action which can be found within the pleading.⁵⁷ It is, therefore, a departure from the old law which required that a pleading state "material facts" only.⁵⁸ Now, pleadings must only identify the transaction, and the facts alleged must be sufficient to entitle plaintiff to relief under some theory of substantive law.⁵⁹

⁵² CPLR 3026.

⁵³ CPLR 3025 provides that supplemental pleadings be "freely given upon such terms as may be just." Furthermore, under CPA § 105, amendments to pleadings were liberally granted so as to permit complete litigation of the issues. See 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3025.11 (1965).

⁵⁴ 21 App. Div. 2d 602, 252 N.Y.S.2d 1011 (1st Dep't 1964). The plaintiff had asked for an accounting, and while such equitable relief was unavailable under the alleged facts, the facts did show a cause of action in contract with damages as the appropriate remedy.

⁵⁵ *Lane v. Mercury Records Corp.*, 18 N.Y.2d 889, 223 N.E.2d 35, 276 N.Y.S.2d 626 (1966).

⁵⁶ CPLR 3013.

⁵⁷ 7B MCKINNEY'S CPLR 3013, supp. commentary 60 (1966).

⁵⁸ CPA § 241. 7B MCKINNEY'S CPLR 3013, supp. commentary 60 (1966); 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3013.01 (1965).

⁵⁹ WACHTELL, NEW YORK PRACTICE UNDER THE CPLR 112 (1963); 7B MCKINNEY'S CPLR 3013, supp. commentary 64-65 (1966). The instant case does, however, directly overrule *Jackson v. Strong*, 222 N.Y. 149, 118 N.E. 512 (1917), and *Terner v. Glickstein & Terner, Inc.*, 283 N.Y. 299, 28 N.E.2d 846 (1940), wherein the Court of Appeals held that where the

The test for pleadings is the avoidance of prejudice to the opposing party. The burden is expressly placed upon one who attacks a pleading to show that he is prejudiced.⁶⁰ The question, therefore, is whether the request for equitable relief will prejudice the defendant when plaintiff is entitled only to legal relief. Without more it will not. The "theory of the pleadings" idea has been slowly eroded and there is no longer a distinction in procedure between law and equity.⁶¹ Furthermore, if it appears during the course of the trial that a legal remedy is appropriate, CPLR 4103 provides that either party may demand a jury.⁶² Thus, these provisions presaged the instant case, which appears to finally lay to rest the law-equity distinctions for more expeditious dispositions of civil contests.

CPLR 3024(c): Untimeliness not a bar to motion to strike prejudicial matter.

CPLR 3024(b) provides that a party may move to strike scandalous or prejudicial matter unnecessarily inserted in a pleading, and 3024(c) states that notice of such a motion "shall be served within twenty days after service of the challenged pleading." Notwithstanding the mandatory language of this section,⁶³ the supreme court, in *Szolosì v. Long Island R.R.*,⁶⁴ held that a motion to strike prejudicial matter should not be denied solely because it is untimely.

The CPLR begins with the proviso that the statute "shall be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding."⁶⁵ Furthermore, it allows the court to permit correction of mistakes or defects upon such terms as are just,⁶⁶ or if no substantial right of a party is prejudiced, to entirely disregard the defect or mistake.⁶⁷

complaint was framed in equity, there was no authority to grant merely legal relief. See also 7B MCKINNEY'S CPLR 3013, supp. commentary 71 (1966).

⁶⁰ *Foley v. D'Agostino*, 21 App. Div. 2d 60, 248 N.Y.S.2d 121 (1st Dep't 1964).

⁶¹ CPLR 103.

⁶² This pervading liberality is reflected in *Diemer v. Diemer*, 8 N.Y.2d 206, 168 N.E.2d 654, 203 N.Y.S.2d 829 (1960), where a lower court granted a separation on the ground of cruelty and the Court of Appeals affirmed on the ground of abandonment.

⁶³ WACHTELL, NEW YORK PRACTICE UNDER THE CPLR 157 (1963); 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3024.16 (1965).

⁶⁴ 52 Misc.2d 1081, 277 N.Y.S.2d 587 (Sup. Ct. Suffolk County 1967).

⁶⁵ CPLR 104.

⁶⁶ CPLR 2001.

⁶⁷ CPLR 3026.