

# CPLR 3014: Motion to Compel Plaintiff to Separately State and Number Causes of Action To Be Granted If Complaint Incomprehensible

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CPLR 3012(b) provides that a defendant may serve a written demand for a complaint if it was not served with the summons. It also states that a demand for a complaint does not constitute an appearance in the action. Therefore, the defendant in *Frale* need not have feared subjecting itself to the jurisdiction of the New York court by merely demanding a complaint. If the defendant had served a written demand for a complaint and had not received it within 20 days, a motion to dismiss under CPLR 3012(b) would have been appropriate.

*CPLR 3014: Motion to compel plaintiff to separately state and number causes of action to be granted if complaint incomprehensible.*

In the orderly process of justice it is necessary that a defendant be reasonably apprised of the charges made against him. As a means to this end, CPLR 3014 provides that every claim must consist of consecutively numbered paragraphs, each containing, as far as practicable, a single allegation. If the complaint is incomprehensible, a motion to compel the plaintiff to separately state and number the causes of action alleged will be granted. In accord with the general philosophy of the CPLR, however, a defendant cannot attain relief under this rule unless his rights are actually prejudiced, *i.e.*, if he is unable to answer because the complaint is truly incomprehensible.<sup>151</sup>

In *Consolidated Airborne Systems, Inc. v. Silverman*,<sup>152</sup> the defendant's motion to require separate statement and numbering was denied. His appeal from this denial was considered by the appellate division to be one of right, since the order affected his substantial rights.<sup>153</sup>

There would seem to be no doubt that the defendant's right to understand allegations made against him is indeed "substantial"—to deny this right, would be, in effect, a violation of due process of law.

*CPLR 3015(d): Failure to itemize special damages does not render complaint insufficient.*

CPLR 3015(d) requires the itemization of special damages as a device to eliminate the bill of particulars formerly required under the CPA.<sup>154</sup> However, the bill of particulars was restored without

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<sup>151</sup> 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3014.03 (1964).

<sup>152</sup> 23 App. Div. 2d 695, 257 N.Y.S.2d 827 (2d Dep't 1965).

<sup>153</sup> *Ibid.*; see 3 WEINSTEIN, KORN & MILLER, *op. cit. supra* note 151, at ¶ 3014.09.

<sup>154</sup> RCP 116(i).