

CPLR 3013: Particularity of Statements in Pleadings

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should not reap the benefit of a statute of limitations defense because of a minor defalcation on the part of the plaintiff."⁹³

In opposition to the foregoing view, it is submitted that a dismissal under CPLR 3012(b) should be the equivalent of a dismissal for neglect to prosecute under CPLR 3216. If a plaintiff does not deem it worthwhile to serve a complaint, this, in itself would seem to be a neglect to prosecute as a matter of law. Such neglect to prosecute should not warrant the six-month extension provided by CPLR 205(a). So holding would serve as a sufficient stimulus to plaintiffs who fail to serve their complaint. If, however, the court finds that the failure to serve the complaint was excusable, it would not dismiss the action under CPLR 3012(b).

It should be further noted that if the CPLR 3012(b) dismissal is independent of a CPLR 3216 dismissal, the plaintiff would not be able to rely upon the forty-five day notice provision of CPLR 3216 to resist a motion under CPLR 3012(b). In any case, it seems that as soon as a substantial period of time expires after a defendant demands a complaint under CPLR 3012(b), the defendant may move under that section to dismiss the complaint. He may then label the motion one to dismiss for neglect to prosecute, or have the motion so treated without labeling it as such. In either case, the plaintiff would not have to serve a forty-five day demand as a condition to his motion.⁹⁴

CPLR 3013: Particularity of statements in pleadings.

In *Loudin v. Mohawk Airlines, Inc.*,⁹⁵ plaintiff sued for defamation and other injuries. The appellate division held that the complaint purporting to allege malicious intent to interfere with plaintiff's right to employment was insufficient because it stated neither facts sufficient to show that plaintiff would have obtained employment but for defendant's interference nor did it plead special damages by reason of such interference.

Under the CPA, a pleading had to state "material facts."⁹⁶ The present requirement under the CPLR requires statements sufficiently particular to give the court and parties notice of the transactions, and the material elements of each cause of action.⁹⁷ The stress of the new statutory provisions seems to be placed on the requirement that the pleadings be sufficiently detailed to give the parties and the court notice of the event relied upon as a cause of action and of the rule of law being invoked.⁹⁸ On the one

⁹³ 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3012.15 (1965).

⁹⁴ 7B MCKINNEY'S CPLR 3012, supp. commentary 49-50 (1965).

⁹⁵ 24 App. Div. 2d 447, 260 N.Y.S.2d 899 (1st Dep't 1965).

⁹⁶ CPA § 241.

⁹⁷ CPLR 3013.

⁹⁸ FIRST REP. 261-65.

hand, in framing the complaint "meticulous particularity should not be demanded."⁹⁹ On the other hand, however, "the allegations made must indicate some probability that the transaction, if it occurred as stated, supports a right to legal relief."¹⁰⁰

It appears that the CPLR, when viewed as a liberalization of previous law,¹⁰¹ should mandate that a complaint is sufficient if it sets forth facts adequate to give rise to a cause of action. Whether this claim will later be proved must not be considered when considering the sufficiency of an allegation in a pleading.

For example, with respect to an action for libel or slander, the CPLR states that "the particular words complained of shall be set forth in the complaint, but their application to the plaintiff may be stated generally."¹⁰² A cause of action based upon the unwarranted interference with the right to employment would fit well within the meaning of the last part of CPLR 3016(a). That is, in cases of damaging injury to a person's character, the causal connection of defendant's act may be stated generally. There exists some doubt whether the complaint in the instant case should have burdened the plaintiff to present facts showing that he would have obtained employment but for defendant's act. Nor does it appear necessary to require plaintiff's complaint to itemize in the pleading the special damages incurred. These matters will be of importance at the trial, but form no proper basis upon which to dismiss a cause of action when the complaint, taken as a whole, states facts sufficient to notify a defendant of a claim against him.¹⁰³

There is some dispute among authorities as to the necessity of plaintiff's pleading reflecting an itemization of special damages. CPLR 3015(d) codified prior case law by requiring that special damages be itemized.¹⁰⁴ Some authorities advocate strict compliance with this section,¹⁰⁵ while others espouse the more liberal view¹⁰⁶ that "where special damages are not an integral part of the cause of action . . . 3015(d)'s requirement of itemization should be given very little if any significance by the courts."¹⁰⁷

⁹⁹ 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3013.03 (1965).

¹⁰⁰ *Ibid.*

¹⁰¹ See, e.g., CPLR 104, 3014, 3026.

¹⁰² CPLR 3016(a).

¹⁰³ See *Hewitt v. Maass*, 41 Misc. 2d 894, 246 N.Y.S.2d 670 (Sup. Ct. Suffolk County 1964); see generally *The Biannual Survey of New York Practice*, 39 ST. JOHN'S L. REV. 406, 437-39 (1965).

¹⁰⁴ See *The Biannual Survey of New York Practice*, 38 ST. JOHN'S L. REV. 406, 425-27 (1964).

¹⁰⁵ 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3015.19 (1965).

¹⁰⁶ 7B MCKINNEY'S CPLR 3015, *supp. commentary* 84 (1965); see generally 7B MCKINNEY'S CPLR 3013, *supp. commentary* 64 (1965).

¹⁰⁷ *Ibid.*

It would appear that the cause of action stated in the instant complaint would not necessitate the itemization of special damages in the light of the latter approach. Nonetheless, it should be noted that if the complaint in the instant case was deemed to be one in *prima facie* tort the special damages would be an "element of the cause of action itself" and would, therefore, require the itemization.¹⁰⁸

It appears that the court in the instant case is creating a strict rule that both elements, *viz.*, that plaintiff would have obtained employment but for the defendant's act *and* the incidence of special damages, are integral parts of the cause of action alleged and would, therefore, not only have to be proved, but also would have to be specifically pleaded. It seems difficult to consider the instant action to be one in *prima facie* tort, where special damages would have to be itemized, unless we admit that a cause of action for wrongful interference with the right to employment is only as new as the advent of New York's recent theory of *prima facie* tort.

Adhering to the reasoning in the instant case, if the pleadings show that the plaintiff is entitled to some relief, whether legal or equitable, and if the pleadings conform to the notice requirement of CPLR 3013, the fact that the plaintiff has failed to allege other facts will not be a ground for a dismissal of the complaint. This is generally true unless it is determined that the facts not pleaded formed an integral part of the cause of action.

CPLR 3025(b): Amendment of pleadings allowed when not prejudicial.

In *Stillwell v. Giant Supply Corp.*,¹⁰⁹ an action for personal injuries and loss of services, Giant's insurer admitted that defendant owned the vehicle involved in the collision and that defendant Akines, an infant, was operating it with the knowledge and consent of Giant. During the course of pretrial examinations it was ascertained that defendant Akines did not have Giant's consent to operate the vehicle and Giant, therefore, sought to deny its operation of the vehicle. The court held that if the plaintiffs were "qualified persons" within the provisions of the Insurance Law governing MVAIC,¹¹⁰ their time to file a notice of claim with MVAIC would have expired. Accordingly, defendant Giant was not entitled to amend its answer until it was determined whether the plaintiffs would be prejudiced by the granting of a motion permitting such amendment.

¹⁰⁸ *Ibid.*

¹⁰⁹ 47 Misc. 2d 568, 262 N.Y.S.2d 833 (Sup. Ct. Nassau County 1965).

¹¹⁰ N.Y. INS. LAW § 608(a); see Note, 39 ST. JOHN'S L. REV. 321, 325-30 (1965).