

CPLR 3013: Demand for Equitable Relief Not Fatal If Facts Alleged Merely Show Basis for Legal Relief

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This case has its significance in the illustration of the difference between CPLR 3020(a) and its predecessor, Section 248 of the CPA. The wording of section 248 caused the courts to conclude that where there was any matter in a complaint to which defendant was exempt from pleading in his answer (in this case an incriminating passage regarding defendant's drunken state) his whole answer did not have to be verified.¹³⁹ CPLR 3020(a) has modified the former provision. The CPLR indicates that where a pleading is verified all subsequent pleadings must be verified except "as to matter in the pleading concerning which the party would be privileged from testifying as a witness." Hence, the court held that defendant must verify those parts of his pleadings not referring to his conviction for drunken driving; while under Section 248 of the CPA the whole answer would not have needed verification.

CPLR 3013: Demand for equitable relief not fatal to complaint if facts alleged merely show basis for legal relief.

Despite the clear intent of previous code sections to effect a merger of law and equity,¹⁴⁰ courts seemed reluctant to give full effect to that purpose. Instead, courts required that a complaint conform to a "theory of the pleadings," thereby necessitating a distinction between equity and law actions at the pleading stage.¹⁴¹ While CPLR 103(a), which is identical with previous code sections abolishing distinctions between law and equity,¹⁴² could not accomplish such change itself, the combined effect of two other sections, CPLR 3013 and CPLR 3026, is to remove the main judicial stumbling blocks to the effective merger of law and equity.

In *Lane v. Mercury Record Corp.*,¹⁴³ an action to compel an accounting of royalties claimed under a recording contract, the appellate division, affirming, held that a demand for equitable relief alone was not fatal to the complaint even though it was determined that plaintiff was entitled only to money damages for breach of contract. The court found the complaint sufficient¹⁴⁴ under CPLR 3013 since the statements were particular enough to give defendant notice of the transactions intended to be proved

¹³⁹ "Verification may be omitted . . . where the party . . . would be privileged from testifying as a witness concerning an allegation or denial contained in the pleading."

¹⁴⁰ N.Y. CODE OF CIV. PROC. § 62; CPA § 8.

¹⁴¹ See, e.g., *Terner v. Glickstein & Terner, Inc.*, 283 N.Y. 299, 28 N.E.2d 846 (1940); *Jackson v. Strong*, 222 N.Y. 149, 118 N.E. 512 (1917).

¹⁴² *Supra* note 140.

¹⁴³ 21 App. Div. 2d 602, 252 N.Y.S.2d 1011 (1st Dep't 1964).

¹⁴⁴ See *Foley v. D'Agostino*, 21 App. Div. 2d 60, 248 N.Y.S.2d 121 (1st Dep't 1964).

and since it contained the material elements of a cause of action. The court also found that a liberal construction of the complaint would not result in any substantial prejudice to the defendant.

Decisions which failed to give full effect to the merger of law and equity often did so on the theory that a complaint framed in equity might deprive the defendant of his right to a trial by jury if plaintiff was found entitled only to legal relief.¹⁴⁵ Here, the court pointed out that with the enactment of CPLR 4103, however, possible prejudice in the loss of a right to a jury trial has been eliminated.¹⁴⁶

Liberalized pleading rules not intended to give courts "carte blanche" to create causes of action by contorting complaint's language.

By eliminating the pleading technicalities of the CPA and by providing for a liberal construction of pleadings, the CPLR did not intend "that the court contort the language of the pleadings to create one or more causes of action. . . ." ¹⁴⁷ Recognition of such intent is evident in *Shapolsky v. Shapolsky*.¹⁴⁸ In this action, plaintiff alleged misappropriation of funds and conversion of corporate assets. The court held that while such allegations might give rise to a shareholder's derivative suit, the complaint was too vague in that it failed to show plaintiff's standing to bring suit in his individual capacity. Plaintiff's demand for an accounting by each defendant "for all dividends and distributions to which plaintiff is entitled . . ." was held indefinite since the complaint failed to allege whether or not the dividends had actually been declared. Finally, the court held the allegation of non-delivery of stock certificates by corporate defendants insufficient because the complaint failed to show how plaintiff became entitled to such shares.

Thus, *Shapolsky* indicates that despite the liberalized pleading requirements under the CPLR, the complaint must meet the minimal requirement of informing the defendant and the court of the material elements of the action and of the relief sought.

Further indication that the liberalized pleading requirements are not to be construed as a "carte blanche" is set forth in *Flamingo*

¹⁴⁵ See generally Walsh, *Merger of Law and Equity under Codes and Other Statutes*, 6 N.Y.U.L. REV. 157 (1929); Kharas, *A Century of Law-Equity Merger in New York*, 1 SYRACUSE L. REV. 186 (1949).

¹⁴⁶ CPLR 4103 provides in part: "When it appears in the course of a trial . . . that the relief required, although not originally demanded by a party, entitles the adverse party to a trial by jury of certain issues of fact, the court shall give the adverse party an opportunity to demand a jury trial of such issues. . . ."

¹⁴⁷ 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3013.03 (1963).

¹⁴⁸ 22 App. Div. 2d 91, 253 N.Y.S.2d 816 (1st Dep't 1964).