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 sufficient\(^{144}\) 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."


\(^{142}\) Supra note 140.

\(^{143}\) 21 App. Div. 2d 602, 252 N.Y.S.2d 1011 (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. 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.

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. . . ." Recognition of
such intent is evident in Shapolsky v. Shapolsky. 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).