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Liberalized Pleading Rules Not Intended to Give Courts "Carte Blanche" to Create Causes of Action

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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*

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[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).

Telefilm Sales, Inc. v. United Artists Corp.[149] The complaint alleged that defendant had misappropriated plaintiff's common-law property rights, which were grounded on a written agreement with a third party concerning a motion picture film. The appellate division held that the complaint failed to comply with CPLR 3013 in that it did not allege what constituted the rights of the licensor to the film, whether the public was deceived or confused, or any indication that the film was not in the public domain. The court indicated that because of the unsettled state of the law with respect to republication of motion pictures, the pleadings should be sufficiently particular to apprise the court and the adverse party of the precise problem involved.

It is essential for the practitioner to realize that while the courts will construe pleadings in conformity with the liberal philosophy of the CPLR, they will not uphold a pleading which fails to indicate that the plaintiff is entitled to recover on some legal theory. Liberalized rules are not an excuse for poorly-drawn or sloppy pleadings. To comply with CPLR 3013, a pleading must be drawn up with sufficient precision to enable the parties to adequately prepare their cases and to enable the court to control the case.

Sham no longer ground for dismissal of irrelevant matter.

In a recent case, the Oneida Special Term granted plaintiff's motion to dismiss an affirmative defense and certain denials contained in an answer on the ground of sham. The appellate division, upon review, ruled that "there is no longer a motion to strike as sham under the CPLR." [150] Accordingly, they reversed special term as to the denials in the answer. However, since the affirmative defense alleged "no facts . . . sufficient in law," [151] it fell within the province of a 3211(b) motion (failure to state a defense) and the dismissal was upheld on that ground.

The appellate division's ruling is consistent with the letter and intent of the CPLR. Rule 103 of the Rules of Civil Practice, which permitted a motion to strike specific matter from a pleading on the ground that it was a sham,[152] was superseded by 3024(b) of the CPLR,[153] which permits the striking of *only* scandalous or prejudicial matter unnecessarily inserted in the pleading. Apparently the striking of matter from a pleading for any other purpose has been eliminated by the CPLR.

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[149] 22 App. Div. 2d 778, 254 N.Y.S.2d 36 (1st Dep't 1964).

[150] Chicago Dressed Beef Co. v. Gold Medal Packing Corp., 22 App. Div. 2d 1010, 254 N.Y.S.2d 717 (4th Dep't 1964).

[151] *Id.* at 1010, 254 N.Y.S.2d at 718.

[152] See PRASHKER & TRAPANI, NEW YORK PRACTICE 449 (4th ed. 1959). Rule 104 is the rule which authorized the striking of the whole answer or reply.

[153] Rule 104 of the RCP has been omitted in the CPLR.