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Drafting NY Civil-Litigation Documents: Part 7—The Answer Cont'd

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Shakespeare Testifies – *Belott v. Mountjoy*

by William B. Stock

Also in this Issue

Diversity Roundtable

Reasonable Doubt

Trusts and Wills

Eyewitness Identification



Drafting New York Civil-Litigation Documents: Part VII — The Answer

The *Legal Writer* continues its series on drafting litigation documents. Because the bulk of the answer is contained in the Response to Allegations section of the answer, the *Legal Writer* will now discuss that section in depth. The *Legal Writer* will continue in the next issue with techniques for asserting affirmative defenses, counterclaims, and cross-claims.

Response to Allegations

Once you've admitted an allegation in the complaint, that admission stands. If you, the defendant, amend your answer to deny that allegation, the plaintiff may use the original admission as evidence of a fact you've admit-

appropriate. As the *Legal Writer* will discuss in the upcoming months in its article on motions, a better option might be to move to dismiss the complaint.

General denials are prohibited in the following cases: (1) a contractual condition precedent;³ (2) the validity of a signature on an instrument;⁴ and (3) schedule of goods.⁵

As discussed in part VI of this series, under CPLR 3018(a) you have three ways to deny an allegation contained in the plaintiff's complaint. First, based on your personal knowledge, you may unconditionally deny an allegation. Second, you may deny an allegation that you allege is false based on second-hand knowledge, even if you have no

Depending on which numbering technique you use to draft the answer (see part VI of this series), you may also deny substantial portions of the complaint at the same time.

1. Defendant denies each allegation in paragraphs 1, 4, 5–10, 20–30.
2. On information and belief, defendant denies each allegation in paragraphs, 2, 11–19, 31, 32.
3. Defendant denies knowledge or information sufficient to form a belief about the truth of each allegation in paragraph 3, 33–40.

If the plaintiff's complaint contains multiple allegations in a single paragraph, you may respond differently to each allegation. If any allegation

When a plaintiff alleges law, the best approach is to respond to the allegation, even though you don't have to.

ted.¹ You may introduce evidence to explain or minimize the admission.

Address every allegation in the plaintiff's complaint, including those allegations in the introduction and the summary of the case, as well as any statement about jurisdiction and venue.

General denials are blanket statements in which you deny the entire complaint. Although the CPLR doesn't authorize or prohibit general denials, the courts disfavor them.² A court might determine that your general denial was made in bad faith and sanction you. That consequence depends on whether the complaint is detailed and well-pleaded. If it's a bare bones complaint, a general denial may be

personal, first-hand knowledge that it's false. Third, you may state that you have insufficient information about whether an allegation is true. Don't speculate or make an educated guess about whether the allegation is true. Examples of the three ways to deny an allegation:

1. Defendant denies the allegation in paragraph 1 of the complaint.
2. On information and belief, defendant denies each allegation in paragraph 2 of the complaint.
3. Defendant denies knowledge or information sufficient to form a belief about the truth of each allegation in paragraph 3 of the complaint.

lets you deny it unconditionally, deny the entire paragraph and explain the exceptions to the other allegations you aren't denying. Example:

1. Defendant denies the allegations in paragraph 12 of the complaint, except admits that defendant sold the lawnmower to plaintiff. Based on information and belief, defendant denies the allegation in paragraph 7 that the lawnmower failed to perform as guaranteed.⁶

It's best not to answer an allegation by admitting it and then following with an exception. This method might inadvertently result in your making admissions. *Example:* "10. Defendant admits

CONTINUED ON PAGE 58

the allegations in paragraph 10 of the complaint, except denies the allegation that defendant made fraudulent representation to plaintiff.”

Don’t deny an allegation by affirmatively alleging contrary facts. Doing so might lead to a court’s deeming your allegation admitted. If a complaint contains an allegation that has some truth to it even though it’s misleading or inaccurate, deny the allegation and then admit only those facts that are true according to your client’s version of what happened. Assume that the allegation in the complaint is as follows in paragraph 4: “4. Defendants’ audit department told management to institute new audit procedures in

Plaintiff’s allegations in paragraph 9 of the complaint are vague and ambiguous; defendant cannot determine whether to admit or deny them; thus, defendant denies each allegation in that paragraph.”¹⁰ You may also move under CPLR 3024(a) for a more definite statement. If you don’t understand the allegation, under no circumstance should you ignore it.

If the plaintiff has sued multiple defendants, you address the claims aimed at your client. No need to respond to the allegations aimed at the other defendant(s). To ensure that you haven’t admitted something in error, the best practice is to state expressly that the specific allegations in the com-

Plaintiff denies the allegations in paragraph 6 of the complaint, except admits that the lease exists and refers the court to that document for its complete terms.”¹³ If the plaintiff quotes verbatim a portion of a document, make sure that the quotation isn’t taken out of context. When in doubt, deny the allegation, admit that the document exists, and refer the court to the document (see immediately preceding example).

In a complaint, a plaintiff should allege facts, not law. When the plaintiff alleges law, the best approach is to respond to the allegation, even though you don’t have to. You don’t want the court to deem your silence an admission. Assume that the com-

When you’re in doubt about whether to respond to an allegation in the complaint, respond to it anyway.

1994 and 1996.”⁷ Your answer might look like this: “4. Deny the allegations contained in paragraph 4 of the complaint, except admit that defendants, during the relevant period, continually improved their compliance function.”⁸

If you’re responding to an allegation in the complaint that contains a single sentence with multiple allegations, you may deny the entire allegation and admit only a specific fact (see earlier example), or you may deny the entire allegation even if the allegation contains some facts you don’t dispute. Allegation in complaint: “6. Defendant fraudulently represented to plaintiff that the car defendant sold to plaintiff (a) was new; (b) had never been involved in an accident; and (c) had side, front, and knee airbags.”⁹ The key to this allegation is that the plaintiff alleges that the defendant “fraudulently represented” facts. Deny the entire allegation if that’s untrue.

Responding to an allegation in the complaint that’s vague or ambiguous can be difficult. If the allegation is unintelligible, one intelligent way to answer it is to state the following: “9.

plaint don’t apply to you. Example: “12. Because plaintiff is not pleading a claim against Defendant John Justice, Defendant Justice does not respond to the allegations in paragraphs 12–20 of the Second Cause of Action.”¹¹

Sometimes exhibits will be attached to a complaint. The plaintiff might refer to a document in the following manner: “A true and complete copy of the rent-stabilized lease is attached to this complaint as Exhibit 2.”¹² If that allegation is true, admit it. If it’s untrue, deny it. To avoid conceding the document’s authenticity, state the following: “Exhibit 2, attached to the complaint, purports to be a copy of the rent-stabilized lease.”

A plaintiff may do more than just attach an exhibit. Be careful when a plaintiff interprets or paraphrases a document. The plaintiff might take the language out of context, reword the language in the plaintiff’s favor, or do both. The best method to respond to these allegations is to admit that the document exists, if you know that it exists, but to deny every allegation that interprets the document. Example: “6.

plaint alleges the following: “30. Defendant’s failure to service the equipment violated section 349 of the New York General Business Law.”¹⁴ Your response: “30. States that paragraph 30 of the complaint contains conclusions of law as to which no response is required. To the extent that paragraph 30 contains any factual allegations, defendant denies those allegations.”¹⁵

At the end of the complaint, the plaintiff will have a “demand for relief.” This demand isn’t an allegation. It’s the relief the plaintiff seeks on each cause of action. If the plaintiff includes a demand for relief in the body of the complaint, respond to it. Assume that the complaint alleges the following: “21. On this FIRST CAUSE OF ACTION (breach of contract), plaintiff is entitled to compensatory damages from defendant in the amount of \$150,000.”¹⁶ Your response: “21. Denies the allegations contained in paragraph 21 of the complaint.”¹⁷

After each cause of action, the plaintiff may have a reallegation paragraph. *Example:* “Plaintiff realleges each and

every allegation contained in paragraphs 1 through 10 above as though set forth fully and at length herein.” Your answer should mirror the plaintiff’s reallegation paragraphs. Before you respond, determine whether you’ve responded to the earlier allegations. Also determine whether the earlier allegations applied to you or a co-defendant.

When you’re in doubt about whether to respond to an allegation in the complaint, respond to it anyway.

A defendant has specific pleading requirements under CPLR 3016(f) in claims for sale and delivery of goods, performance of labor or services, or furnishing of materials. The requirements apply only if the plaintiff serves a verified complaint that describes and numbers the items of the plaintiff’s claim and states the reasonable value or agreed price of each item. If the plaintiff doesn’t comply with the requirements, the defendant need not provide a detailed response.¹⁸ If the plaintiff’s complaint satisfies these two requirements, your verified answer must specify which items you dispute and whether each dispute pertains to delivery, performance, reasonable value, or agreed price.¹⁹ If the plaintiff doesn’t quite comply with the requirements but is close enough to complying, provide the itemized response anyway. If you fail to deny the plaintiff’s itemized claims with specificity, a court might deem them admitted and grant the plaintiff summary judgment.²⁰

Under CPLR 3015(a), you must plead with specificity and particularity your defense that a condition precedent wasn’t satisfied. Failing to satisfy CPLR 3015(a) means that you waive the condition-precedent defense and are precluded from raising that defense. Look at CPLR 3015 for other things you must plead with specificity.

The authenticity of a signature on a negotiable instrument will be deemed admitted unless you specifically deny it in the answer.²¹

If you’re relying on a prior judgment, decision, or administrative tribunal’s ruling, state that you’re pleading a

prior ruling and relying on it.²² Indicate the nature of the ruling and the connection it has with the current lawsuit.

In New York City Civil Court actions, you must specifically deny the following items in your answer: (1) ownership, operation, or control of a vehicle or building in a negligence action if the vehicle or building is properly identified in the complaint;²³ (2) genuineness of a signature on a written instrument, provided that the defendant demands that it be proved;²⁴ (3) the plaintiff’s or the defendant’s existence as a corporation.²⁵

Ethics

Answer the complaint in good faith. A frivolous denial in your answer might subject you to costs or other sanctions. If you know that the allegation is true, it’s improper for you to deny it based on a purported lack of knowledge or information. Not answering truthfully might cause the court to strike your denial and possibly deem your response an admission.²⁶ In egregious circumstances, the court might strike your answer and grant summary judgment for the plaintiff.²⁷ A court may also award additional costs to the prevailing party for each unjustifiable denial of certain matters.²⁸

In the next issue, the *Legal Writer* will discuss affirmative defenses, counterclaims, and cross-claims. ■

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1. *American Tobacco Co. v. Riggio Tobacco Corp.*, 37 Misc. 2d 23, 24, 234 N.Y.S.2d 51, 52 (Sup. Ct., N.Y. Co. 1962) (noting that the admission must be material and relevant).
2. *Doyle v. Buturlinsky*, 26 A.D.2d 717, 717, 271 N.Y.S.2d 349, 350 (3d Dep’t 1966); *Rouse v. Champion Home Builders Co.*, 47 A.D.2d 584, 584, 363 N.Y.S.2d 167, 167 (4th Dep’t 1975).
3. CPLR 3015(a).
4. CPLR 3015(d).
5. CPLR 3016(f).
6. Adapted from 1 Michael Barr, Myriam J. Altman, Burton N. Lipshie & Sharon S. Gerstman, New York Civil Practice Before Trial § 15:531, at 15-55 (2006; Jan. 2011 Supp.).
7. *Id.* at § 15:545, at 15-56.
8. *Id.*
9. Adapted from *id.* at § 15:550, at 15-57.
10. Adapted from *id.* at § 15:552, at 15-57.
11. Adapted from *id.* at § 15:554, at 15-58.
12. Adapted from *id.* at § 15:555, at 15-58.
13. Adapted from *id.* at § 15:556, at 15-58.
14. *Id.* at § 15:558, at 15-59.
15. Adapted from *id.* at § 15:558, at 15-59.
16. Adapted from *id.* at § 15:560, at 15-59.
17. *Id.*
18. *Id.* at § 15:573, at 15-60.
19. CPLR 3016(f).
20. Barr *et al.*, *supra* note 6, at § 15:572, at 15-60.
21. CPLR 3015(d) (applies to all pleadings, not just answers).
22. CPLR 3015 (c).
23. Civ. Ct. Act § 1102(a).
24. Civ. Ct. Act § 1102(b).
25. Civ. Ct. Act § 1102(c).
26. Barr *et al.*, *supra* note 6, at § 15:532, at 15-55.
27. *Id.*
28. Civ. Ct. Act § 1102(d).