

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 54th Legislature (2013)

3 HOUSE BILL 1011

By: Shannon of the House

4 and

5 Bingman and Sykes of the
6 Senate

7
8
9 AS INTRODUCED

10 An Act relating to civil procedure; repealing
11 Sections 12 and 13, Chapter 228, O.S.L. 2009, which
12 relate to pleadings; amending 12 O.S. 2011, Section
13 2008, which relates to general rules of pleading;
14 modifying monetary threshold for which amount of
15 damages is not specified; amending 12 O.S. 2011,
16 Section 2008, as amended by Section 2 of this act,
17 which relates to general rules of pleading; modifying
18 monetary threshold for which amount of damages is not
19 specified; amending 12 O.S. 2011, Section 2009, which
20 relates to pleading special matters; removing
21 provisions for motions to clarify damages for limited
22 purpose; amending 12 O.S. 2011, Section 2009, as
23 amended by Section 4 of this act, which relates to
24 pleading special matters; providing for motions to
clarify damages for limited purpose; providing for
construction of act; providing for noncodification;
and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. REPEALER Sections 12 and 13, Chapter 228,
O.S.L. 2009, are hereby repealed.

1 SECTION 2. AMENDATORY 12 O.S. 2011, Section 2008, is
2 amended to read as follows:

3 Section 2008.

4 GENERAL RULES OF PLEADING

5 A. CLAIMS FOR RELIEF. A pleading which sets forth a claim for
6 relief, whether an original claim, counterclaim, cross-claim or
7 third-party claim, shall contain:

8 1. A short and plain statement of the claim showing that the
9 pleader is entitled to relief; and

10 2. A demand for judgment for the relief to which he deems
11 himself entitled. Every pleading demanding relief for damages in
12 money in excess of ~~the amount required for diversity jurisdiction~~
13 ~~pursuant to Section 1332 of Title 28 of the United States Code~~ Ten
14 Thousand Dollars (\$10,000.00) shall, without demanding any specific
15 amount of money, set forth only that the amount sought as damages is
16 in excess of ~~the amount required for diversity jurisdiction pursuant~~
17 ~~to Section 1332 of Title 28 of the United States Code~~ Ten Thousand
18 Dollars (\$10,000.00), except in actions sounding in contract. Every
19 pleading demanding relief for damages in money in an amount ~~that is~~
20 ~~required for diversity jurisdiction pursuant to Section 1332 of~~
21 ~~Title 28 of the United States Code~~ of Ten Thousand Dollars
22 (\$10,000.00) or less shall specify the amount of such damages sought
23 to be recovered. Relief in the alternative or of several different
24 types may be demanded.

1 B. DEFENSES; FORM OF DENIALS. A party shall state in short and
2 plain terms his defenses to each claim asserted and shall admit or
3 deny the averments upon which the adverse party relies. If he is
4 without knowledge or information sufficient to form a belief as to
5 the truth of an averment, he shall so state and this statement has
6 the effect of a denial. Denials shall fairly meet the substance of
7 the averments denied. When a pleader intends in good faith to deny
8 only a part or a qualification of an averment, he shall specify so
9 much of it as is true and material and shall deny only the
10 remainder. Unless the pleader intends in good faith to controvert
11 all the averments of the preceding pleading, he may make his denials
12 as specific denials of designated averments or paragraphs or he may
13 generally deny all the averments except such designated averments or
14 paragraphs as he expressly admits; but, when he does so intend to
15 controvert all its averments, he may do so by general denial subject
16 to the obligations set forth in Section 2011 of this title.

17 C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading,
18 a party shall set forth affirmatively:

- 19 1. Accord and satisfaction;
- 20 2. Arbitration and award;
- 21 3. Assumption of risk;
- 22 4. Contributory negligence;
- 23 5. Discharge in bankruptcy;
- 24 6. Duress;

- 1 7. Estoppel;
- 2 8. Failure of consideration;
- 3 9. Fraud;
- 4 10. Illegality;
- 5 11. Injury by fellow servant;
- 6 12. Laches;
- 7 13. License;
- 8 14. Payment;
- 9 15. Release;
- 10 16. Res judicata;
- 11 17. Statute of frauds;
- 12 18. Statute of limitations;
- 13 19. Waiver; and
- 14 20. Any other matter constituting an avoidance or affirmative
15 defense.

16 When a party has mistakenly designated a defense as a
17 counterclaim or a counterclaim as a defense, the court on terms, if
18 justice so requires, shall treat the pleading as if there had been a
19 proper designation.

20 D. EFFECT OF FAILURE TO DENY. Averments in a pleading to which
21 a responsive pleading is required, other than those as to the amount
22 of damage, are admitted when not denied in the responsive pleading.
23 Averments in a pleading to which no responsive pleading is required
24 or permitted shall be taken as denied or avoided.

1 E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

2 1. Each averment of a pleading shall be simple, concise, and
3 direct. No technical forms of pleadings or motions are required.

4 2. A party may set forth, and at trial rely on, two or more
5 statements of a claim or defense alternately or hypothetically,
6 either in one count or defense or in separate counts or defenses.
7 When two or more statements are made in the alternative and one of
8 them if made independently would be sufficient, the pleading is not
9 made insufficient by the insufficiency of one or more of the
10 alternative statements. A party may also state as many separate
11 claims or defenses as he has regardless of consistency and whether
12 based on legal or equitable grounds. All statements shall be made
13 subject to the obligations set forth in Section 2011 of this title.

14 F. CONSTRUCTION OF PLEADINGS. All pleadings shall be so
15 construed as to do substantial justice.

16 SECTION 3. AMENDATORY 12 O.S. 2011, Section 2008, as
17 amended by Section 2 of this act, is amended to read as follows:

18 Section 2008.

19 GENERAL RULES OF PLEADING

20 A. CLAIMS FOR RELIEF. A pleading which sets forth a claim for
21 relief, whether an original claim, counterclaim, cross-claim or
22 third-party claim, shall contain:

23 1. A short and plain statement of the claim showing that the
24 pleader is entitled to relief; and

1 2. A demand for judgment for the relief to which he deems
2 himself entitled. Every pleading demanding relief for damages in
3 money in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ the amount
4 required for diversity jurisdiction pursuant to Section 1332 of
5 Title 28 of the United States Code shall, without demanding any
6 specific amount of money, set forth only that the amount sought as
7 damages is in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ the amount
8 required for diversity jurisdiction pursuant to Section 1332 of
9 Title 28 of the United States Code, except in actions sounding in
10 contract. Every pleading demanding relief for damages in money in
11 an amount ~~of Ten Thousand Dollars (\$10,000.00)~~ that is required for
12 diversity jurisdiction pursuant to Section 1332 of Title 28 of the
13 United States Code or less shall specify the amount of such damages
14 sought to be recovered. Relief in the alternative or of several
15 different types may be demanded.

16 B. DEFENSES; FORM OF DENIALS. A party shall state in short and
17 plain terms his defenses to each claim asserted and shall admit or
18 deny the averments upon which the adverse party relies. If he is
19 without knowledge or information sufficient to form a belief as to
20 the truth of an averment, he shall so state and this statement has
21 the effect of a denial. Denials shall fairly meet the substance of
22 the averments denied. When a pleader intends in good faith to deny
23 only a part or a qualification of an averment, he shall specify so
24 much of it as is true and material and shall deny only the

1 remainder. Unless the pleader intends in good faith to controvert
2 all the averments of the preceding pleading, he may make his denials
3 as specific denials of designated averments or paragraphs or he may
4 generally deny all the averments except such designated averments or
5 paragraphs as he expressly admits; but, when he does so intend to
6 controvert all its averments, he may do so by general denial subject
7 to the obligations set forth in Section 2011 of this title.

8 C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading,
9 a party shall set forth affirmatively:

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- 11 2. Arbitration and award;
- 12 3. Assumption of risk;
- 13 4. Contributory negligence;
- 14 5. Discharge in bankruptcy;
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- 17 8. Failure of consideration;
- 18 9. Fraud;
- 19 10. Illegality;
- 20 11. Injury by fellow servant;
- 21 12. Laches;
- 22 13. License;
- 23 14. Payment;
- 24 15. Release;

1 16. Res judicata;

2 17. Statute of frauds;

3 18. Statute of limitations;

4 19. Waiver; and

5 20. Any other matter constituting an avoidance or affirmative
6 defense.

7 When a party has mistakenly designated a defense as a
8 counterclaim or a counterclaim as a defense, the court on terms, if
9 justice so requires, shall treat the pleading as if there had been a
10 proper designation.

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12 a responsive pleading is required, other than those as to the amount
13 of damage, are admitted when not denied in the responsive pleading.
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15 or permitted shall be taken as denied or avoided.

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17 1. Each averment of a pleading shall be simple, concise, and
18 direct. No technical forms of pleadings or motions are required.

19 2. A party may set forth, and at trial rely on, two or more
20 statements of a claim or defense alternately or hypothetically,
21 either in one count or defense or in separate counts or defenses.
22 When two or more statements are made in the alternative and one of
23 them if made independently would be sufficient, the pleading is not
24 made insufficient by the insufficiency of one or more of the

1 alternative statements. A party may also state as many separate
2 claims or defenses as he has regardless of consistency and whether
3 based on legal or equitable grounds. All statements shall be made
4 subject to the obligations set forth in Section 2011 of this title.

5 F. CONSTRUCTION OF PLEADINGS. All pleadings shall be so
6 construed as to do substantial justice.

7 SECTION 4. AMENDATORY 12 O.S. 2011, Section 2009, is
8 amended to read as follows:

9 Section 2009.

10 PLEADING SPECIAL MATTERS

11 A. CAPACITY. It is not necessary to aver the capacity of a
12 party to sue or be sued or the authority of a party to sue or be
13 sued in a representative capacity or the legal existence of an
14 organized association of persons that is made a party. When a party
15 desires to raise an issue as to the legal existence of any party or
16 the capacity of any party to sue or be sued or the authority of a
17 party to sue or be sued in a representative capacity, he shall do so
18 by negative averment, which shall include such supporting
19 particulars as are peculiarly within the pleader's knowledge, and he
20 shall have the burden of proof on that issue.

21 B. FRAUD, MISTAKE, CONDITION OF THE MIND. In all averments of
22 fraud or mistake, the circumstances constituting fraud or mistake
23 shall be stated with particularity. Malice, intent, knowledge, and
24 other condition of mind of a person may be averred generally.

1 C. CONDITIONS PRECEDENT. In pleading the performance or
2 occurrence of conditions precedent, it is sufficient to aver
3 generally that all conditions precedent have been performed or have
4 occurred. A denial of performance or occurrence shall be made
5 specifically and with particularity.

6 D. OFFICIAL DOCUMENT OR ACT. In pleading an official document
7 or official act it is sufficient to aver that the document was
8 issued or the act done in compliance with law.

9 E. JUDGMENT. In pleading a judgment or decision of a domestic
10 or foreign court, judicial or quasi-judicial tribunal, or of a board
11 or officer, it is sufficient to aver the judgment or decision
12 without setting forth matter showing jurisdiction to render it.

13 F. TIME AND PLACE. For the purpose of testing the sufficiency
14 of a pleading, averments of time and place are material and shall be
15 considered like all other averments of material matter.

16 G. SPECIAL DAMAGE. When items of special damage are claimed,
17 their nature shall be specifically stated. In actions where
18 exemplary or punitive damages are sought, the petition shall not
19 state a dollar amount for damages sought to be recovered but shall
20 state whether the amount of damages sought to be recovered is in
21 excess of or not in excess of ~~the amount required for diversity~~
22 ~~jurisdiction pursuant to Section 1332 of Title 28 of the United~~
23 ~~States Code~~ Ten Thousand Dollars (\$10,000.00).

24

1 particulars as are peculiarly within the pleader's knowledge, and he
2 shall have the burden of proof on that issue.

3 B. FRAUD, MISTAKE, CONDITION OF THE MIND. In all averments of
4 fraud or mistake, the circumstances constituting fraud or mistake
5 shall be stated with particularity. Malice, intent, knowledge, and
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23 their nature shall be specifically stated. In actions where
24 exemplary or punitive damages are sought, the petition shall not

1 state a dollar amount for damages sought to be recovered but shall
2 state whether the amount of damages sought to be recovered is in
3 excess of or not in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ the
4 amount required for diversity jurisdiction pursuant to Section 1332
5 of Title 28 of the United States Code.

6 H. MOTION TO CLARIFY DAMAGES. If the amount of damages sought
7 to be recovered by the plaintiff is less than the amount required
8 for diversity jurisdiction pursuant to Section 1332 of Title 28 of
9 the United States Code, the defendant may file, for purposes of
10 establishing diversity jurisdiction only, a Motion to Clarify
11 Damages prior to the pretrial order to require the plaintiff to show
12 by a preponderance of the evidence that the amount of damages, if
13 awarded, will not exceed the amount required for diversity. If the
14 court finds that any damages awarded are more likely than not to
15 exceed the amount of damages required for diversity jurisdiction,
16 the plaintiff shall amend his or her pleadings in conformance with
17 paragraph 2 of subsection A of Section 2008 of this title.

18 SECTION 6. NEW LAW A new section of law not to be
19 codified in the Oklahoma Statutes reads as follows:

20 The amendatory provisions contained in Sections 2 and 4 of this
21 act conform the statute to the holding in *Douglas v. Cox Retirement*
22 *Properties, Inc.*, 2013 OK 37, 302 P.2d 789 (Okla. 2013). The
23 amendatory provisions contained in Sections 3 and 5 of this act
24 conform the statute to the amendatory provisions of Enrolled House

1 Bill No. 1603 of the 1st Session of the 52nd Oklahoma Legislature,
2 c. 228, O.S.L. 2009.

3 SECTION 7. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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8 54-1EX-50018 SD 08/29/13

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