

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 3003

By: Stiles

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5
6 AS INTRODUCED

7 An Act relating to affirmative defenses; amending 12
8 O.S. 2011, Section 2008, as last amended by Section
9 3, Chapter 9, 1st Extraordinary Session, O.S.L. 2013
10 (12 O.S.L. 2013, Section 2008), which relates to
11 general rules of pleading; adding affirmative defense
12 of common sense; and providing an effective date.

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

14 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2008, as
15 last amended by Section 3, Chapter 9, 1st Extraordinary Session,
16 O.S.L. 2013 (12 O.S.L. 2013, Section 2008), is amended to read as
17 follows:

Section 2008.

18 GENERAL RULES OF PLEADING

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

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

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 the amount required for diversity jurisdiction
4 pursuant to Section 1332 of Title 28 of the United States Code
5 shall, without demanding any specific amount of money, set forth
6 only that the amount sought as damages is in excess of the amount
7 required for diversity jurisdiction pursuant to Section 1332 of
8 Title 28 of the United States Code, except in actions sounding in
9 contract. Every pleading demanding relief for damages in money in
10 an amount that is required for diversity jurisdiction pursuant to
11 Section 1332 of Title 28 of the United States Code or less shall
12 specify the amount of such damages sought to be recovered. Relief
13 in the alternative or of several different types may be demanded.

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

1 as specific denials of designated averments or paragraphs or he may
2 generally deny all the averments except such designated averments or
3 paragraphs as he expressly admits; but, when he does so intend to
4 controvert all its averments, he may do so by general denial subject
5 to the obligations set forth in Section 2011 of this title.

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

- 8 1. Accord and satisfaction;
- 9 2. Arbitration and award;
- 10 3. Assumption of risk;
- 11 4. Common sense;
- 12 5. Contributory negligence;
- 13 ~~5.~~ 6. Discharge in bankruptcy;
- 14 ~~6.~~ 7. Duress;
- 15 ~~7.~~ 8. Estoppel;
- 16 ~~8.~~ 9. Failure of consideration;
- 17 ~~9.~~ 10. Fraud;
- 18 ~~10.~~ 11. Illegality;
- 19 ~~11.~~ 12. Injury by fellow servant;
- 20 ~~12.~~ 13. Laches;
- 21 ~~13.~~ 14. License;
- 22 ~~14.~~ 15. Payment;
- 23 ~~15.~~ 16. Release;
- 24 ~~16.~~ 17. Res judicata;

1 ~~17.~~ 18. Statute of frauds;
2 ~~18.~~ 19. Statute of limitations;
3 ~~19.~~ 20. Waiver; and
4 ~~20.~~ 21. Any other matter constituting an avoidance or
5 affirmative defense.

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

10 D. EFFECT OF FAILURE TO DENY. Averments in a pleading to which
11 a responsive pleading is required, other than those as to the amount
12 of damage, are admitted when not denied in the responsive pleading.
13 Averments in a pleading to which no responsive pleading is required
14 or permitted shall be taken as denied or avoided.

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

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

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

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

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

6 SECTION 2. This act shall become effective November 1, 2014.

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