

An Act

(1ST EXTRAORDINARY SESSION)

ENROLLED HOUSE

BILL NO. 1011

By: Shannon, Stiles, Cockroft,
Ritze and Wright of the
House

and

Bingman, Sykes, Jolley and
Shortey of the Senate

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

SUBJECT: Civil procedure pleadings

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 REPEALER Sections 12 and 13, Chapter 228, O.S.L. 2009, are hereby repealed.

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

Section 2008.

GENERAL RULES OF PLEADING

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

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

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

B. DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this statement has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to

controvert all its averments, he may do so by general denial subject to the obligations set forth in Section 2011 of this title.

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

1. Accord and satisfaction;
2. Arbitration and award;
3. Assumption of risk;
4. Contributory negligence;
5. Discharge in bankruptcy;
6. Duress;
7. Estoppel;
8. Failure of consideration;
9. Fraud;
10. Illegality;
11. Injury by fellow servant;
12. Laches;
13. License;
14. Payment;
15. Release;
16. Res judicata;
17. Statute of frauds;
18. Statute of limitations;
19. Waiver; and

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

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

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

E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

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

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

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

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

Section 2008.

GENERAL RULES OF PLEADING

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

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

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

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

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

1. Accord and satisfaction;
2. Arbitration and award;
3. Assumption of risk;

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

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

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

E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

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

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

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

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

Section 2009.

PLEADING SPECIAL MATTERS

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

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

C. CONDITIONS PRECEDENT. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver

generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

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

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

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

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

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

SECTION 5. AMENDATORY 12 O.S. 2011, Section 2009, as amended by Section 4 of this act, is amended to read as follows:

Section 2009.

PLEADING SPECIAL MATTERS

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

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

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

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

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

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

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

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

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

The amendatory provisions contained in Sections 2 and 4 of this act conform the statute to the holding in *Douglas v. Cox Retirement Properties, Inc.*, 2013 OK 37, 302 P.2d 789 (Okla. 2013). The amendatory provisions contained in Sections 3 and 5 of this act conform the statute to the amendatory provisions of Enrolled House Bill No. 1603 of the 1st Session of the 52nd Oklahoma Legislature, c. 228, O.S.L. 2009.

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

Passed the House of Representatives the 5th day of September, 2013.

Jan Rowell
Presiding Officer of the House
of Representatives

Passed the Senate the 9th day of September, 2013.

[Signature]
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 9th

day of September, 20 13, at 6:39 o'clock P M.

By: Audrey Redwell

Approved by the Governor of the State of Oklahoma this 10th

day of September, 20 13, at 4:27 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 10th

day of September, 20 13, at 4:47 o'clock P M.

By: Chris Morris