

NY CLS CPLR § 3004

Current through 2025 released Chapters 1-207

New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 30 Remedies and Pleading (§§ 3001 — 3045)

§ 3004. Where restoration of benefits before judgment unnecessary

A party who has received benefits by reason of a transaction that is void or voidable because of fraud, misrepresentation, mistake, duress, infancy or incompetency, and who, in an action or by way of defense or counterclaim, seeks rescission, restitution, a declaration or judgment that such transaction is void, or other relief, whether formerly denominated legal or equitable, dependent upon a determination that such transaction was void or voidable, shall not be denied relief because of a failure to tender before judgment restoration of such benefits; but the court may make a tender of restoration a condition of its judgment, and may otherwise in its judgment so adjust the equities between the parties that unjust enrichment is avoided.

History

Add, L 1962, ch 308, § 1, eff Sept 1, 1963.

Annotations

Notes

Prior Law:

Earlier statutes: CPA § 112–g.

Advisory Committee Notes:

This section is the same as former § 112-g, enacted upon Law Revision Commission recommendation in 1946 and amended upon recommendation of the Commission in 1952. See NY Law Rev Comm'n Rep 31–78 (1946); id. at 339–54 (1952).

Notes to Decisions

I.Under CPLR

1.Generally

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2.Generally

3.Antenuptial agreement

4.Fraud

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7.Separation agreement

8.Waiver of right of election

9.Rescission

I. Under CPLR

1. Generally

Where a finding that a release was the product of misrepresentation was supported by the evidence, repayment by the plaintiff to the defendant or his insurance company of the amount

received by him upon giving the release was not a prerequisite to maintaining action. *Skipworth v Cooper*, 37 A.D.2d 906, 325 N.Y.S.2d 485, 1971 N.Y. App. Div. LEXIS 3133 (N.Y. App. Div. 4th Dep't 1971).

In an action brought by the purchaser of a truck seeking equitable rescission based on fraud, after discovering that the "new" truck he purchased was a "demonstrator," judgment in favor of the purchaser would be modified by denying to the dealer any offset for storage charges where there had been no implied contract of storage when the purchaser returned the truck to the dealer, where the purchaser had not enriched himself at the dealer's expense, and where the truck had been returned based on the purchaser's belief in its defectiveness rather than for repairs or storage. *D'Angelo v Bob Hastings Oldsmobile, Inc.*, 89 A.D.2d 785, 453 N.Y.S.2d 503, 1982 N.Y. App. Div. LEXIS 17899 (N.Y. App. Div. 4th Dep't 1982), app. denied, 57 N.Y.2d 607, 1982 N.Y. LEXIS 7230 (N.Y. 1982), aff'd, 59 N.Y.2d 773, 464 N.Y.S.2d 724, 451 N.E.2d 471, 1983 N.Y. LEXIS 3116 (N.Y. 1983).

Former wife, who had signed release of any claims she might have to former residence of parties under duress following physical and sexual abuse by her former husband, was entitled to equitable rescission of release and to reformation of deed to property despite her failure to return consideration she had received for release. *Polito v Polito*, 121 A.D.2d 614, 503 N.Y.S.2d 867, 1986 N.Y. App. Div. LEXIS 58600 (N.Y. App. Div. 2d Dep't), app. dismissed, 68 N.Y.2d 981, 510 N.Y.S.2d 564, 503 N.E.2d 120, 1986 N.Y. LEXIS 20941 (N.Y. 1986).

Remedial parts of contempt judgments would be vacated and remanded for equitable remedy where unjust enrichment resulted from award of full restitution of payments made for purchase of accounting practice without adjustment for benefits realized by plaintiff from owning accounting practice for 4 years or for decline in value of practice since date of purchase, and it appeared impractical, if not impossible, to restore parties to status quo. *Wiebusch v Hayes*, 263 A.D.2d 389, 693 N.Y.S.2d 120, 1999 N.Y. App. Div. LEXIS 7994 (N.Y. App. Div. 1st Dep't 1999).

A failure to allege tender in a pleading does not render it defective. *Barocas v Schweikart & Co.*, 63 Misc. 2d 131, 311 N.Y.S.2d 445, 1970 N.Y. Misc. LEXIS 1739 (N.Y. Civ. Ct. 1970).

Fact that beneficiaries of deferred compensation plan retained proceeds from checks representing allegedly inadequate lump-sum amounts did not bar their claim for rescission of plan amendment on ground of mutual mistake. *Allen v Westpoint-Pepperell, Inc.*, 945 F.2d 40, 1991 U.S. App. LEXIS 21478 (2d Cir. N.Y. 1991).

Failure of employees to tender back severance payments made to them at time they signed termination agreements did not provide support for releases contained in termination agreements, where they allegedly were terminated as result of defendant employer's age discrimination. *Clark v Buffalo Wire Works, Co.*, 3 F. Supp. 2d 366, 1998 U.S. Dist. LEXIS 6240 (W.D.N.Y.), *aff'd*, 3 F. Supp. 2d 366, 1998 U.S. Dist. LEXIS 6081 (W.D.N.Y. 1998).

II. Under Former Civil Practice Laws

2. Generally

Where action for breach of contract of sale was tried on theory that plaintiff could, if successful, recover entire consideration paid, defendant could not, after verdict, require that judgment be made conditional. *La Barbera v Ciotta*, 277 A.D. 798, 97 N.Y.S.2d 505, 1950 N.Y. App. Div. LEXIS 3362 (N.Y. App. Div. 1950), *aff'd*, 302 N.Y. 571, 96 N.E.2d 888, 302 N.Y. (N.Y.S.) 571, 1951 N.Y. LEXIS 780 (N.Y. 1951).

Infant's action to rescind contract to buy horse and recover purchase price was construed as action at law for price and damages, and was maintainable. *Holman v Hudson*, 67 N.Y.S.2d 615, 1946 N.Y. Misc. LEXIS 3289 (N.Y. Sup. Ct. 1946).

3. Antenuptial agreement

Failure to tender return of consideration received by plaintiff wife when executing agreement did not bar action to rescind. *Hillman v Hillman*, 69 N.Y.S.2d 134, 1947 N.Y. Misc. LEXIS 2199 (N.Y.

Sup. Ct. 1947), aff'd, 273 A.D. 960, 79 N.Y.S.2d 325, 1948 N.Y. App. Div. LEXIS 5466 (N.Y. App. Div. 1948).

4. Fraud

Tender of shoes by buyer to seller was not condition precedent to commencement of action for fraud to recover money paid. *De Leon v Caplan*, 126 N.Y.S.2d 482, 204 Misc. 535, 1953 N.Y. Misc. LEXIS 2452 (N.Y. App. Term 1953).

Petition by decedent's husband to set aside for fraud his assignment of his intestate share need not allege tender of money received. *In re Schnabel's Will*, 77 N.Y.S.2d 593, 1947 N.Y. Misc. LEXIS 3715 (N.Y. Sur. Ct. 1947).

5. Reformation

Defense against plaintiff's claim of money due that by mistake contract upon which computation rests was wrongly stated, seeking reformation of such contract, did not require defendants to make formal tender of benefits received. *United States Plywood Corp. v Hudson Lumber Co.*, 210 F.2d 462, 1954 U.S. App. LEXIS 2453 (2d Cir. N.Y. 1954).

6. Release

In action for injuries received in automobile collision against drivers, plaintiff need not return consideration received for release where his evidence raised question of fact whether insurer's agent misrepresented that release of insurer did not release defendant drivers. *Ploof v Somers*, 282 A.D. 798, 123 N.Y.S.2d 5, 1953 N.Y. App. Div. LEXIS 4982 (N.Y. App. Div. 1953).

In action for damages for personal injuries and to declare release void, complaint need not allege tender of payment received by plaintiff. *Shontell v Glens Falls Ins. Co.*, 282 A.D. 965, 125 N.Y.S.2d 911, 1953 N.Y. App. Div. LEXIS 5585 (N.Y. App. Div. 1953).

In action by taxicab passenger against taxicab company and automobilists for personal injuries sustained in collision of vehicles, wherein automobilists pleaded release, failure of plaintiff to tender benefits received before commencing his action is not fatal to his complaint. *Finke v Iris Cab Corp.*, 1 A.D.2d 692, 147 N.Y.S.2d 548, 1955 N.Y. App. Div. LEXIS 3642 (N.Y. App. Div. 2d Dep't 1955), app. denied, 2 A.D.2d 780, 154 N.Y.S.2d 840, 1956 N.Y. App. Div. LEXIS 4549 (N.Y. App. Div. 2d Dep't 1956), app. dismissed, 2 N.Y.2d 706, 1956 N.Y. LEXIS 1222 (N.Y. 1956).

Rescission of release of cause of action for personal injuries by negligence may be effected before action by payment of sum received under release, or by action, on appropriate grounds. *Frankenheim v B. Altman & Co.*, 1 A.D.2d 200, 149 N.Y.S.2d 11, 1956 N.Y. App. Div. LEXIS 6263 (N.Y. App. Div. 1st Dep't), reh'g denied, 1 A.D.2d 941, 150 N.Y.S.2d 917, 1956 N.Y. App. Div. LEXIS 5776 (N.Y. App. Div. 1st Dep't 1956).

7. Separation agreement

Where separation agreement provided for liberal transfer of assets by husband to wife and was fair and valid in providing proper measures of support, as condition precedent to rescission, wife was required to return so much of benefits received as remained in her possession, CPA § 112-g being inapplicable. *Jaffe v Jaffe*, 283 A.D. 738, 127 N.Y.S.2d 576, 1954 N.Y. App. Div. LEXIS 5111 (N.Y. App. Div. 1954).

8. Waiver of right of election

As condition of setting aside wife's waiver of her right of election in estate of her husband fraudulently procured by him, court directed her to restore to estate all benefits already paid to her under insurance policies accepted by her in lieu of such waiver. *In re Lieberman's Will*, 132 N.Y.S.2d 558, 206 Misc. 263, 1954 N.Y. Misc. LEXIS 2642 (N.Y. Sur. Ct. 1954).

9. Rescission

Rescission is maintainable even though plaintiff still is in possession of the property. *Nigro v Caserta*, 16 Misc. 2d 355, 184 N.Y.S.2d 1001, 1959 N.Y. Misc. LEXIS 3918 (N.Y. Sup. Ct. 1959).

Research References & Practice Aids

Jurisprudences:

16 NY Jur 2d Cancellation and Reformation of Instruments § 8. .

19A NY Jur 2d Compromise, Accord, and Release §§ 52., 119. .

37 NY Jur 2d Death § 299. .

66 NY Jur 2d Infants and Other Persons Under Legal Disability § 37. .

73 NY Jur 2d Judgments §§ 27., 237. .

91 NY Jur 2d Real Property Sales and Exchanges § 184. .

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, *New York Civil Practice: CPLR Ch. 3004, Where Restoration of Benefits Before Judgment Unnecessary.*

Matthew Bender's New York Practice Guides:

4 New York Practice Guide: Domestic Relations § 54.04.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 3004:1 et seq.

LexisNexis Forms FORM 75-CPLR 3004:1.—Complaint in Action for Damages and for Rescission of Sale of Truck Because of Fraud.

LexisNexis Forms FORM 75-CPLR 3004:2.—Complaint in Action for Damages and for Rescission of Lease and Reformation of Deed Because of Fraud, Duress and Undue Influence.

LexisNexis Forms FORM 75-CPLR 3004:3.—Judgment Provision Deducting Benefits Received From Amount of Recovery.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 14:101 et seq. (remedies and pleadings).

Hierarchy Notes:

NY CLS CPLR, Art. 30

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