

## NY CLS CPLR R 3036

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)*

### **R 3036. Court determination**

---

1. Except upon a trial under paragraph three of rule 3034 of the issue of the making of the contract or submission, the rules as to the admissibility of evidence, except as provided by statutes relating to privileged communications, and as to procedure shall be dispensed with unless the court shall otherwise direct, and shall not apply to or exclude, limit, or restrict the taking of any testimony and the adducing of any proof.
2. In any action brought pursuant to the simplified procedure for court determination of disputes in which the court shall be of the opinion that evidence by an impartial expert would be of material aid to the just determination of the action, it may direct that such evidence be obtained. The fee and expenses of such expert shall be paid by the parties as, in its discretion, the court may direct.
3. Any action or proceeding, other than one brought in accordance with the simplified procedure, which presents an issue referable to the court for determination under the simplified procedure may be stayed by the court in which such action or proceeding is pending, or by the supreme court.
4. If the court directs a party to the contract or submission to serve a statement within a given time, and the party fails to do so, or if a party fails to appear upon proper notice, judgment by default may be awarded.

5. At a pre-trial conference, or at any other time on motion of any party or on its own motion, on notice to the parties, and upon such terms and conditions as in its discretion may seem proper, the court may (a) order or allow any party to serve an additional or amended statement of facts; (b) direct pre-trial disclosure of evidence and discovery and inspection of books, records and documents; (c) permit the taking of depositions for use at the hearing; (d) limit or restrict the number of experts to be heard as witnesses; (e) clarify and define the issues to be tried; (f) stay or transfer and consolidate with the action any other civil action or proceeding pending in any court between parties to the action; (g) grant summary judgment in favor of any party as in rule 3212 provided.
6. After a statement complying with the requirements of rule 3032 or settled in accordance with rule 3034 has been filed, any party may serve and file a note of issue. Trial of the action shall commence on the date specified in such note of issue or as soon thereafter as may be practicable. Completion of preliminary procedures required by local court rules prior to the placing of a case upon the calendar for trial shall not be required in actions under the New York Simplified Procedure for Court Determination of Disputes.
7. The judgment roll shall consist of the submission or contract; the statement of claims and defenses; each paper submitted to the court upon a motion and each order of the court thereon; a copy of the judgment and of each paper necessarily affecting the judgment.
8. Those provisions of the civil practice law and rules pertaining to venue, entry and enforcement of judgment and the continuance of a civil action in case of the death or incompetency of parties shall apply to actions under the simplified procedure.
9. Costs and disbursements may be awarded by the court in its discretion. If awarded, the amount thereof must be included in the judgment.

## History

---

## Annotations

## Notes

---

### Prior Law:

Earlier rules: RCP 306.

## Notes to Decisions

---

Where parties had agreed to a full audit of defendant's books plaintiff was entitled to have defendant's books audited under this rule and neither defendant's claim that figures were already available to plaintiff nor that audit would be an intolerable burden would defeat plaintiff's right. *Stell Mfg. Corp. v Century Industries, Inc.*, 23 A.D.2d 281, 260 N.Y.S.2d 547, 1965 N.Y. App. Div. LEXIS 3969 (N.Y. App. Div. 1st Dep't), *aff'd*, 16 N.Y.2d 1020, 265 N.Y.S.2d 902, 213 N.E.2d 313, 1965 N.Y. LEXIS 1009 (N.Y. 1965).

No provision of the CPLR treating of simplified procedures permits the sending of issues to a referee. *Kores Mfg. Corp. v Standard Packaging Corp.*, 31 A.D.2d 622, 295 N.Y.S.2d 862, 1968 N.Y. App. Div. LEXIS 2658 (N.Y. App. Div. 1st Dep't 1968).

Where complaint, in part, sought declaratory judgment, declaration should have been made with respect to rights of parties even though plaintiffs were not entitled to declaration sought. *New York State School Bus Operators Asso. v County of Nassau*, 48 A.D.2d 671, 367 N.Y.S.2d 825, 1975 N.Y. App. Div. LEXIS 9692 (N.Y. App. Div. 2d Dep't 1975), *aff'd*, 39 N.Y.2d 638, 385 N.Y.S.2d 263, 350 N.E.2d 593, 1976 N.Y. LEXIS 2722 (N.Y. 1976).

If a plaintiff in a declaratory judgment action is not entitled to the relief sought, the trial court should declare that plaintiff is not entitled to relief rather than dismiss the action. Thus, in an action in which plaintiff sought to have declared void a town zoning ordinance which was valid, the trial court's judgment dismissing the complaint would be modified by substituting provisions declaring that the ordinance was not invalid and that the complaint was dismissed. *Bierker v*

Clarkstown, 81 A.D.2d 601, 437 N.Y.S.2d 720, 1981 N.Y. App. Div. LEXIS 11086 (N.Y. App. Div. 2d Dep't 1981).

Upon determining that a challenged disclaimer of liability was proper and effective, the trial court in actions, inter alia, for declaratory judgments should have made appropriate declarations rather than dismissing the complaints in their entirety. *Josephs v Reliance Ins. Co.*, 84 A.D.2d 547, 443 N.Y.S.2d 179, 1981 N.Y. App. Div. LEXIS 15607 (N.Y. App. Div. 2d Dep't 1981).

Court properly denied defendant's motion to dismiss for lack of prosecution and directed parties to appear for conference to work out disclosure schedule, in effect vacating defendant's 90-day notice, where delay caused by plaintiff's failure to provide promised further responses to defendant's disclosure demand was not so extensive as to be indicative of inclination not to proceed with action. *Scheurer v Xerox Corp.*, 258 A.D.2d 332, 683 N.Y.S.2d 846, 1999 N.Y. App. Div. LEXIS 1128 (N.Y. App. Div. 1st Dep't 1999).

## **Research References & Practice Aids**

---

### **Cross References:**

This section referred to in § 3035.; CLS NYC Civil Ct Act § 910.; CLS UCCA § 910.; CLS UDCA § 910.; CLS UJCA § 910.

Simplified procedure for court determination of disputes; action without pleadings, CLS NYC Civil Ct Act § 910; . UCCA § 910.; UDCA § 910.; UJCA § 910.

### **Jurisprudences:**

1 NY Jur 2d Actions § 25. .

73 NY Jur 2d Judgments §§ 84., 119. .

86 NY Jur 2d Process and Papers § 8. .

92 NY Jur 2d References § 2. .

97 NY Jur 2d Summary Judgment and Pretrial Motions to Dismiss §§ 1., 6. .

105 NY Jur 2d Trial § 83. .

23 Am Jur 2d, Depositions and Discovery § 92.

1A Am Jur PI & Pr Forms (Rev), Actions, § 23 et seq.

7A Am Jur PI & Pr Forms (Rev), Continuance, Forms 1.– 12.

31 Am Jur Trials 287., Defense Use of Economist.

4 Am Jur Trials 1., Discovery-Written Interrogations.

2 Am Jur Trials 357., Locating Medical Experts.

2 Am Jur Trials 293., Locating Scientific and Technical Experts.

4 Am Jur Trials 659., Pretrial Conference.

2 Am Jur Trials 585., Selecting and Preparing Expert Witnesses.

## **Treatises**

### **Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3036, Court Determination.

### **Matthew Bender's New York CPLR Manual:**

CPLR Manual § 21.14. Action on submitted facts.

CPLR Manual § 31.01. Arbitration in general.

CPLR Manual § 31.16. An alternative to arbitration: simplified procedure for judicial determination of disputes.

## **Annotations:**

Binding effect of court's order entered after pretrial conference. 22 ALR2d 599.

Pictures of litigant taken by opponent or latter's investigator as subject of pretrial disclosure, production, and inspection. 95 ALR2d 1084.

Appealability of order entered in connection with pretrial conference. 95 ALR2d 1361.

Consideration or submission at trial, under Rule 16 of Federal Rules of Civil Procedure, of issues not fixed for trial in pretrial order. 11 ALR Fed 786.

**Forms:**

Bender's Forms for the Civil Practice Form No. CPLR Form No. CPLR 3036:1 et seq.

LexisNexis Forms FORM 75-CPLR 3036:1.—Order for Testimony of Impartial Expert in Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3036:10.—Order Limiting Number of Experts.

LexisNexis Forms FORM 75-CPLR 3036:11.—Pretrial Order Clarifying and Defining the Issues Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3036:12.—Order Granting Motion for Summary Judgment Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3036:2.—Notice of Motion to Stay Pending Action.

LexisNexis Forms FORM 75-CPLR 3036:3.—Affidavit in Support of Motion for Stay of Pending Action.

LexisNexis Forms FORM 75-CPLR 3036:4.—Order Staying Action Pending Determination by Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3036:5.—Notice of Motion for Pretrial Conference Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3036:6.—Order for Pretrial Conference Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3036:7.—Order Allowing Service of an Additional or Amended Statement of Facts.

LexisNexis Forms FORM 75-CPLR 3036:8.—Order for Disclosure of Evidence.

LexisNexis Forms FORM 75-CPLR 3036:9.—Order for Taking of Depositions.

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

**Hierarchy Notes:**

NY CLS CPLR, Art. 30

New York Consolidated Laws Service

Copyright © 2025 All rights reserved.