

## NY CLS CPLR R 4018

Current through 2025 released Chapters 1-207

*New York*

*Consolidated Laws Service* >  
*Civil Practice Law And Rules (Arts. 1 — 100)* >  
*Article 40 Trial Generally (§§ 4001 — 4019)*

### **R 4018. Increased damages**

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Where increased damages are granted by statute, the decision, report or verdict shall specify the sum awarded as single damages, and judgment shall be entered for the increased amount.

### **History**

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

Annotations

### **Notes**

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#### **Prior Law:**

Earlier statutes: CPA § 435; CCP §§ 1020, 1184.

#### **Advisory Committee Notes:**

This rule is a simplification of CPA § 435.

### **Notes to Decisions**

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I.Under CPLR

## **1. Generally**

## **II. Under Former Civil Practice Laws**

### **2. Generally**

### **3. Treble damages**

### **4. Waiver of increased damages**

### **5. Pleading**

### **6. In Justice Court**

## **I. Under CPLR**

### **1. Generally**

In an action for damages pursuant to Real P Action & Pr Law § 861 relating to the destruction of trees located on plaintiffs' property, it was improper to direct the jury to insert treble damages if they made a finding of trespass against any defendant; it is for the court to grant judgment for treble damages for violation of a statute pursuant to CPLR § 4018. *Recchia v Nelson*, 127 Misc. 2d 412, 485 N.Y.S.2d 963, 1985 N.Y. Misc. LEXIS 2611 (N.Y. Sup. Ct. 1985).

## **II. Under Former Civil Practice Laws**

### **2. Generally**

Treble damages could be obtained under CPA § 435 and Penal Law § 1433(3), and Real Property Law § 535 only in an action at law; they could not be recovered in an equitable action for injunction and incidental damages. *Schneider v 44-84 Realty Corp.*, 7 N.Y.S.2d 305, 169 Misc. 249, 1938 N.Y. Misc. LEXIS 2046 (N.Y. Sup. Ct. 1938), *aff'd*, 257 A.D. 932, 12 N.Y.S.2d 1022, 1939 N.Y. App. Div. LEXIS 8484 (N.Y. App. Div. 1939).

CPA § 435 construed with CPA § 924 (§§ 924, 6221 herein) in holding that treble damages for false claim by third party to attached property must be sought by a separate action, and not by motion to assess damages. *Burton v Myers*, 14 N.Y.S.2d 562, 172 Misc. 263, 1939 N.Y. Misc. LEXIS 2266 (N.Y. Sup. Ct. 1939).

CPA § 435 embodied the rule in *NEWCOMB v BUTTERFIELD*, 1811 N.Y. LEXIS 138 (N.Y. Sup. Ct. Aug. 1, 1811); *King v Havens*, 1841 N.Y. LEXIS 222 (N.Y. Sup. Ct. May 1, 1841).

### **3. Treble damages**

Plaintiff in action to recover damages for unlawful and wilful injury to personal property is entitled under subdivision 3 of § 1433 of the Penal Law to treble the actual damages assessed by the jury. *Alloway v Hickok*, 215 A.D. 86, 213 N.Y.S. 192, 1925 N.Y. App. Div. LEXIS 5369 (N.Y. App. Div. 1925), *aff'd*, 243 N.Y. 615, 154 N.E. 628, 243 N.Y. (N.Y.S.) 615, 1926 N.Y. LEXIS 905 (N.Y. 1926).

### **4. Waiver of increased damages**

Although the complaint goes upon the statute of wilful trespass and claims double damages, yet the plaintiff may waive his claim for double damages. *Dubois v Beaver*, 25 N.Y. 123, 25 N.Y. (N.Y.S.) 123, 1862 N.Y. LEXIS 112 (N.Y. 1862).

A claim for treble damages under Real Property Law § 535, Penal Law § 1433(3), and CPA § 435, could not be raised for the first time after decision rendered when the complaint did not ask treble damages. *Schneider v 44-84 Realty Corp.*, 7 N.Y.S.2d 305, 169 Misc. 249, 1938 N.Y. Misc. LEXIS 2046 (N.Y. Sup. Ct. 1938), *aff'd*, 257 A.D. 932, 12 N.Y.S.2d 1022, 1939 N.Y. App. Div. LEXIS 8484 (N.Y. App. Div. 1939).

### **5. Pleading**

If plaintiff desires to sue and recover treble damages under Penal Law § 1433(3) and Real Property Law § 535, his pleading must clearly advise defendant and the court of such theory. Requisites stated for complaint seeking treble damages under Penal Law § 1433(3) and Real Property Law § 535. *Schneider v 44-84 Realty Corp.*, 7 N.Y.S.2d 305, 169 Misc. 249, 1938 N.Y. Misc. LEXIS 2046 (N.Y. Sup. Ct. 1938), *aff'd*, 257 A.D. 932, 12 N.Y.S.2d 1022, 1939 N.Y. App. Div. LEXIS 8484 (N.Y. App. Div. 1939).

The complaint must distinctly refer to the statute to enable the plaintiff to recover double or treble damages. *Brown v Bristol*, 1823 N.Y. LEXIS 111 (N.Y. Sup. Ct. Aug. 1, 1823).

## **6. In Justice Court**

CPA § 435, in regard to treble damages was by CCP § 2868, made applicable to an action brought in justice's court for a cause of action for injury to property brought under § 654 of the Penal Code. *Layton v McConnell*, 61 A.D. 447, 70 N.Y.S. 679, 1901 N.Y. App. Div. LEXIS 961 (N.Y. App. Div. 1901).

## **Research References & Practice Aids**

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### **Cross References:**

Action for forcible or unlawful entry or detainer; treble damages, CLS RPAPL § 853.

Action for cutting or carrying off trees or timber, when treble damages may be recovered, CLS RPAPL § 861.

### **Jurisprudences:**

36 NY Jur 2d Damages § 183. .

45 NY Jur 2d Domestic Relations § 487. .

73 NY Jur 2d Judgments § 72. .

75A NY Jur 2d Logs and Timber § 32. .

## **Treatises**

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

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4018, Increased Damages.

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

CPLR Manual § 23.02. Trials; general rules.

## **Annotations:**

Necessity of determination or showing of liability for punitive damages before discovery or reception of evidence of defendant's wealth. 32 ALR4th 432.

What constitutes bringing an action to trial or other activity in case sufficient to avoid dismissal under state statute or court rule requiring such activity within stated time. 32 ALR4th 840.

Sufficiency of showing of actual damages to support award of punitive damages—modern cases. 40 ALR4th 11.

Standard of proof as to conduct underlying punitive damage awards-modern status. 58 ALR4th 878.

Plaintiff's rights to punitive or multiple damages when cause of action renders both available. 2 ALR5th 449.

## **Forms:**

Bender's Forms for the Civil Practice Form No. CPLR 4018:1 et seq.

2 Medina's Bostwick Practice Manual (Matthew Bender), Forms 18:101 et seq .(trial generally).

## **Hierarchy Notes:**

NY CLS CPLR, Art. 40

## Forms

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### Forms

#### Form 1

##### Body of Order on Motion for Judgment for Increased Damages

The above-entitled action being duly at issue and having been duly brought on for trial and tried, and the defendants duly appearing by counsel, and a verdict for the plaintiff having been duly rendered for the sum of \_\_\_\_\_ dollars and the plaintiff having thereupon made motion to have said verdict doubled [trebled] for the recovery of the sum of \_\_\_\_\_ dollars.

Now, on motion of counsel for the defendants, it is

Ordered, that the said motion by the plaintiff be, and the same hereby is in all respects denied [or: granted and that the clerk of this Court be and he hereby is directed to enter judgment against defendant \_\_\_\_\_, and in favor of plaintiff \_\_\_\_\_, in the sum of \_\_\_\_\_, together with his costs and disbursements as taxed].

#### Form 2

##### Judgment for Increased Damages

Judgment

[Title of court and cause]

Index No. \_\_\_\_\_ [if assigned]

The issues in this action having been regularly brought on for trial before Mr. Justice \_\_\_\_\_ and a jury at a trial term of this court held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the county court house in the City of \_\_\_\_\_, New York, and all the defendants duly appearing by counsel and

the issues having been duly tried, and a verdict for the plaintiff having been duly rendered on the said day in the sum of \_\_\_\_\_ dollars, and a motion by the plaintiff to double [treble] the amount of said verdict having been granted and the costs of said plaintiff having been duly taxed at the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, now, on motion of \_\_\_\_\_, attorney for plaintiff, it is

ADJUDGED that the plaintiff, \_\_\_\_\_, recover of the defendant, \_\_\_\_\_, the double [treble] damages herein directed, amounting to the sum of \_\_\_\_\_, together with the sum of \_\_\_\_\_, costs and disbursements as taxed, making in all the sum of \_\_\_\_\_, and that the plaintiff have execution therefor against defendant.

Judged filed and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

[Print signer's name

below signature]

Clerk