

NY CLS CPLR R 4406

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New York

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Civil Practice Law And Rules (Arts. 1 — 100) >
Article 44 Trial Motions (§§ 4401 — 4406)

R 4406. Single post-trial motion

In addition to motions made orally immediately after decision, verdict or discharge of the jury, there shall be only one motion under this article with respect to any decision by a court, or to a verdict on issues triable of right by a jury; and each party shall raise by the motion or by demand under rule 2215 every ground for post-trial relief then available to him.

History

Formerly § 4406, add, L 1962, ch 308; amd, L 1962, ch 315, § 1, eff Sept 1, 1963.

Annotations

Notes

Advisory Committee Notes:

This rule is new. It contemplates a single post-trial review of the verdict or decision in which the court has the opportunity to hear and consider all arguments for relief at once. Under former practice, a motion for judgment notwithstanding the verdict under subd 3 of CPA § 457-a might have been made independently of a motion for new trial under § 549. Successive motions for new trial were permitted under §§ 549 and 552 although a ground which had been urged at the

trial might not have been raised again at Special Term. *Jacquin v Syracuse Auto R. & T. Corp.* (1933) 263 NY 53, 188 NE 154.

Under this rule, upon motion by one party, all other parties are required to demand relief under rule 2215 in opposing the motion. Thus, the court has the advantage of having heard all arguments before rendering any decision.

The oral motion at trial is exempted in order that parties will not be forced to present their grounds for relief before they have had an opportunity to review the trial. Extensions of time may be permitted under other provisions where necessary. See, e.g., § 1022 (substitution of parties).

There is a similar provision in Illinois, where all relief must be requested in one post-trial motion. Ill Ann Stat c. 110, §§ 68.1(2), 68.1(3) (Smith-Hurd 1956). However, under the Illinois rule, a party against whom judgment is entered pursuant to such a motion has the opportunity to make another post-trial motion for relief from the new judgment. Under this rule, on granting or denying a motion for judgment the court is required to render a conditional decision as to new trial. Each party could urge such relief on the motion as an alternative to judgment being entered against him. A provision like that of Illinois would, in effect, require the court to reconsider its previous conditional decision.

Where, as is normally the case, all issues are tried by the court or by a jury as of right, there will be only one post-trial motion in the case. It may be, however, that some issues will be tried by a jury as of right, others by a referee to determine and still others by the court, with or without an advisory jury or referee to report. In such case, one "single motion" may be made after the jury's verdict, another after the decision of the referee to determine, and still another after the decision of the court on the issues it decides. Indeed, if two separate juries are empanelled successively to try different issues as of right a separate "single motion" will be possible following each verdict.

Notes to Decisions

Construction company and a corporation's claims for indemnification against an electrical contractor in an action by a worker alleging a violation of N.Y. Lab. Law § 240(1) were properly dismissed because those claims were not timely brought within 15 days of the verdict or asserted in response to post-trial motions by the worker and another pursuant to N.Y. C.P.L.R. § 4406. *Bradley v IBEX Constr., LLC*, 52 A.D.3d 433, 862 N.Y.S.2d 470, 2008 N.Y. App. Div. LEXIS 5711 (N.Y. App. Div. 1st Dep't), recalled, vacated, sub. op., 54 A.D.3d 626, 865 N.Y.S.2d 32, 2008 N.Y. App. Div. LEXIS 6921 (N.Y. App. Div. 1st Dep't 2008).

When the trial court clearly directed that any post-trial motions, including motions regarding indemnification, be submitted within 15 days of the verdict, and defendants failed to move within 15 days or to assert their indemnification claims in response to plaintiffs' timely motion, and failed to give an adequate reason for the delay, their claims were properly dismissed at that time *Bradley v IBEX Constr., LLC*, 54 A.D.3d 626, 865 N.Y.S.2d 32, 2008 N.Y. App. Div. LEXIS 6921 (N.Y. App. Div. 1st Dep't 2008).

Trial court properly denied a wife's second posttrial motion as improper pursuant to N.Y. C.P.L.R. 4406; in addition, the motion was improper because it was brought more than 15 days after the trial. *Spathis v Dulimof-Spathis*, 103 A.D.3d 599, 960 N.Y.S.2d 384, 2013 N.Y. App. Div. LEXIS 1269 (N.Y. App. Div. 1st Dep't 2013), app. denied, 22 N.Y.3d 913, 975 N.Y.S.2d 733, 998 N.E.2d 397, 2013 N.Y. LEXIS 2845 (N.Y. 2013), cert. denied, 574 U.S. 856, 135 S. Ct. 140, 190 L. Ed. 2d 105, 2014 U.S. LEXIS 6476 (U.S. 2014).

Any application for setoff utilizing collateral source of payments must be either requested verbally immediately after jury renders verdict that includes loss of earnings, or as part of written single post-trial motion contemplated by CLS CPLR § 4406, which must be made within 15 days of jury verdict (CLS CPLR § 4405). *Bongiovanni v Staten Island Med Group, PC*, 188 Misc. 2d 362, 728 N.Y.S.2d 345, 2001 N.Y. Misc. LEXIS 179 (N.Y. Sup. Ct. 2001).

Research References & Practice Aids

Federal Aspects:

Form of motions in United States District Courts, USCS Court Rules, Federal Rules of Civil Procedure, Rule 7.

Jurisprudences:

73 NY Jur 2d Judgments § 203. .

92 NY Jur 2d References § 45. .

105 NY Jur 2d Trial § 605. .

15 Am Jur PI & Pr Forms, Rev, Judgments, Form 325.

Law Reviews:

Motion practice under the CPLR. 9 NY L Forum 317.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4406, Single Post-trial Motion.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 8.03. Rights and privileges of poor persons.

CPLR Manual § 23.06. Trial and post-trial motions.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 9.28. Moving for Post-Trial Judgment or New Trial.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property § 3.46.

Matthew Bender's New York Checklists:

Checklist for Submitting Pre-Trial Memorandum of Law, Marked Pleadings, and Other Papers to Court LexisNexis AnswerGuide New York Civil Litigation § 9.02.

Checklist for Making Trial and Post-Trial Motions LexisNexis AnswerGuide New York Civil Litigation § 9.25.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 4406:1 et seq.

LexisNexis Forms FORM 75-CPLR 4406:1.—Affidavit in Support of Omnibus Post-Trial Motion Contract Action.

LexisNexis Forms FORM 75-CPLR 4406:2.—Affidavit in Opposition to Omnibus Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial Bailment Action.

LexisNexis Forms FORM 380-21:509.—Notice of Motion to Set Aside Decision of Court and Judgment Entered Thereon.

LexisNexis Forms FORM 380-21:510.—Order Setting Aside Decision of Court.

LexisNexis Forms FORM 380-21:511.—Notice of Motion to Set Aside Jury Verdict.

LexisNexis Forms FORM 380-21:513.—Affidavit in Support of Motion to Set Aside Jury Verdict on Grounds of Insufficient Damage Award Based on Application of Erroneous Legal Theory.

LexisNexis Forms FORM 380-21:514.—Affidavit in Support of Motion to Set Aside Jury Verdict on Grounds of Excessive Damage Award.

LexisNexis Forms FORM 380-21:512.—Notice of Motion to Set Aside Damage Award.

Hierarchy Notes:

NY CLS CPLR, Art. 44

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