

# NY CLS CPLR § 2201

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***New York***

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>

***Civil Practice Law And Rules (Arts. 1 — 100)***

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***Article 22 Stay, Motions, Orders and Mandates (§§ 2201 — 2223)***

## § 2201. Stay

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Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.

## History

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

Annotations

## Notes

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### **Prior Law:**

Earlier statutes: CPA § 167; CCP § 805; 2 RS 199, §§ 23, 25.

### **Advisory Committee Notes:**

This section is derived from CPA § 167 with no change of substance.

CPA § 169 has been omitted. Its first exception, concerning a judgment or order appealed from, is covered in the appeals provisions and the final clause is unnecessary. The only effect of omitting the section is to change the rule prohibiting a judge out of court from granting a stay for longer than 20 days without notice.

CPA § 167-a relates only to marital actions; it has therefore been transferred to the Domestic Relations Law along with CPA art 67-70. Section 168 has been treated in the title governing removal of actions.

Also left to the discretion of judges is the matter of staying proceedings shortly before the beginning of a term in which an action may be reached for trial; the unnecessarily detailed restrictions on such a stay contained in RCP 155 have been omitted.

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**I. Under CPLR**

## 1. Generally

Where judgment debtor had no interest in land on date of levy, but if conveyances of land by debtor were ultimately set aside, land would be available for sale, Special Term did not abuse its discretion in staying sheriff's sale of that land to enforce judgment pending determination of action by judgment creditor to set aside the allegedly fraudulent conveyances of that land. *Schaefer v Schaefer*, 54 A.D.2d 943, 388 N.Y.S.2d 342, 1976 N.Y. App. Div. LEXIS 14825 (N.Y. App. Div. 2d Dep't 1976).

In a commercial litigation involving rights in a petrochemical facility the court improperly denied defendant's motion for a stay of all proceedings, even though plaintiff had made a showing of merit, where no evidence of hardship had been demonstrated that would warrant a departure from the traditional stay rule pending payment of two judgments for costs imposed upon the plaintiff following the dismissal of a Federal court action involving the same controversy for lack of diversity jurisdiction, and where the real parties in interest were corporations with substantial assets capable of meeting the costs of litigation, and had the responsibility of complying with the orders and judgments of the court. *Prudential Oil Corp. v Phillips Petroleum Co.*, 83 A.D.2d 453, 445 N.Y.S.2d 438, 1981 N.Y. App. Div. LEXIS 15508 (N.Y. App. Div. 1st Dep't 1981).

As long as the court is not called upon to make a determination or ruling on the merits of an action, but simply to rule on the question of where the action will be tried, a statutory stay does not apply. Accordingly, the court properly granted defendant's motion to change the place of trial even though defendant had filed a petition for reorganization under Chapter 11 of the Bankruptcy Law. *D&D Realty, Inc. v Lionel Corp.*, 87 A.D.2d 859, 449 N.Y.S.2d 295, 1982 N.Y. App. Div. LEXIS 16341 (N.Y. App. Div. 2d Dep't 1982).

In an action to recover a real estate broker's commission, the trial court properly stayed enforcement of a salary judgment the court had earlier granted, and properly granted a trial preference on defendants' amended answer, where in granting summary judgment the court had recognized a possible affirmative defense of fraud in the inducement of the contract but had determined that defendants' pleadings were insufficient to properly present the defense, where

by later allowing defendants to serve an amended answer the court acknowledged that they should have their day in court on that issue, and where, in effect, the court continued its jurisdiction over the lawsuit. *Ladden v Cutrone*, 95 A.D.2d 901, 463 N.Y.S.2d 914, 1983 N.Y. App. Div. LEXIS 18872 (N.Y. App. Div. 3d Dep't 1983).

Supreme Court erred in ordering stay of mortgage foreclosure where purchasers of trailer park had executed purchase-money mortgage with vendors, vendors exercised what they contended was right of assignment of rents granted to them in mortgage, purchasers responded by commencing action for tortious interference with contract, vendors began foreclosure of mortgage by advertisement pursuant to CLS RPAPL Art 14, and purchasers sought relief from foreclosure in notice of motion requesting "preliminary injunction" and in supporting affidavit requesting "stay"; CLS CPLR § 2201 was inapplicable since foreclosure by advertisement is not judicial proceeding, and requirements of CLS CPLR Art 63 were not met since no undertaking was ordered. *Griffiths v Jefferds*, 125 A.D.2d 949, 510 N.Y.S.2d 42, 1986 N.Y. App. Div. LEXIS 63128 (N.Y. App. Div. 4th Dep't 1986).

When party appears in several capacities, previous action will not bar another brought in different capacity. *In re Levy*, 135 A.D.2d 540, 522 N.Y.S.2d 17, 1987 N.Y. App. Div. LEXIS 52487 (N.Y. App. Div. 2d Dep't 1987).

Court properly stayed insurance company's action seeking declaratory judgment that it was not obligated to defend or indemnify its insured under homeowner's policy in personal injury action by third party against insured and others, since complaint in personal injury action alleged not only cause of action for intentional assault, but also cause of action sounding in negligence. *Allstate Ins. Co. v Kemp*, 144 A.D.2d 853, 534 N.Y.S.2d 806, 1988 N.Y. App. Div. LEXIS 11256 (N.Y. App. Div. 3d Dep't 1988).

Although reference for evidentiary hearing was appropriate on defendant's claim that plaintiff's attorney might be necessary witness, which was made in support of motion to disqualify plaintiff's counsel, such claim provided no basis to disqualify plaintiff's co-counsel and was not sufficient to warrant stay of all other proceedings in pending actions. *Elghanayan v Iannucci*, 145

A.D.2d 345, 535 N.Y.S.2d 611, 1988 N.Y. App. Div. LEXIS 13332 (N.Y. App. Div. 1st Dep't 1988).

In action for rescission of deed and accounting of rents collected, court properly denied motion to extend stay of entry of judgment dismissing action where (1) court granted motion to dismiss on grounds that plaintiffs lacked capacity to sue, (2) on plaintiffs' representations that will would be admitted to probate imminently, court stayed entry of dismissal judgment for 60 days or until commencement of new action by duly named representative of estate, (3) thereafter, court agreed to extend stay several times, each time accepting plaintiffs' claim that contested probate proceeding would soon be resolved and representative would be named, (4) entry of dismissal order was thus stayed for nearly one year, and (5) plaintiffs had ample opportunity to address dismissal judgment and could have arranged for appointment of temporary administrator to protect estate. *Estate of Salerno v Estate of Salerno*, 154 A.D.2d 430, 546 N.Y.S.2d 8, 1989 N.Y. App. Div. LEXIS 12494 (N.Y. App. Div. 2d Dep't 1989).

Pursuant to CLS CPLR § 2201, court may, sua sponte, grant stay of proceedings in action "pending" before it; moreover, "pending," as used in § 2201, means "captioned," and action keeps its caption regardless of status of judgment rendered in it. *Halloran v Halloran*, 161 A.D.2d 562, 555 N.Y.S.2d 139, 1990 N.Y. App. Div. LEXIS 5330 (N.Y. App. Div. 2d Dep't 1990).

In medical malpractice action commenced by plaintiff who was thereafter sentenced to term of imprisonment of 9 to 16 years, it was error for court to stay action until plaintiff was released from prison so as to relieve state from burden of producing plaintiff for depositions, conferences and other proceedings, since prejudice to parties far outweighed any discernible benefit to state. *Wells v St. Vincent's Hosp.*, 199 A.D.2d 27, 605 N.Y.S.2d 12, 1993 N.Y. App. Div. LEXIS 11680 (N.Y. App. Div. 1st Dep't 1993).

Court properly granted defendant's request to stay foreclosure sale on condition that he pay \$7,500 to defray part of plaintiff's legal costs where defendant had stated in his motion papers that he would agree to pay such sum if parties entered into stipulation for adjournment of

foreclosure sale. *Ilton v Stage St. Realty Corp.*, 212 A.D.2d 760, 623 N.Y.S.2d 291, 1995 N.Y. App. Div. LEXIS 2204 (N.Y. App. Div. 2d Dep't 1995).

Court properly denied motion for stay of divorce trial to permit wife to complete discovery where special referee reported that he had reviewed documentation and found that wife had received all but minor discovery items. *Silverman v Silverman*, 219 A.D.2d 550, 632 N.Y.S.2d 65, 1995 N.Y. App. Div. LEXIS 9603 (N.Y. App. Div. 1st Dep't 1995).

Appellate Division lacked jurisdiction to hear appeal from Supreme Court's order denying personal injury plaintiff's motion to restore case to trial calendar where plaintiff died 3 days after return date of motion, no motion for substitution was made by coadministrators, and thus Supreme Court's order, which was made between plaintiff's death and substitution of qualified personal representative, was nullity because all proceedings are automatically stayed on death of party. *Anderson v Gilliland*, 245 A.D.2d 654, 665 N.Y.S.2d 126, 1997 N.Y. App. Div. LEXIS 12589 (N.Y. App. Div. 3d Dep't 1997).

Court properly denied stay in stockholder derivative action against bank, which sought stay pending action by Special Litigation Committee (SLC) it had appointed, given bank's delay in appointing SLC, and inclusion on SLC of members whose impartiality was suspect. *Katz v Renyi*, 282 A.D.2d 262, 722 N.Y.S.2d 860, 2001 N.Y. App. Div. LEXIS 3648 (N.Y. App. Div. 1st Dep't 2001).

As the hotel did not seek to stay the Justice Court action in Justice Court, there was no basis to disturb Supreme Court's denial of the hotel's request for a stay of the Justice Court action. *Matter of Town of Colonie v City of New York*, 237 A.D.3d 1398, 233 N.Y.S.3d 404, 2025 N.Y. App. Div. LEXIS 2218 (N.Y. App. Div. 3d Dep't 2025).

If presented with a request for a stay, the Justice Court should consider whether there exists a pending action or proceeding in another jurisdiction involving a dispositive issue or whether the

two are sufficiently similar so as to present a situation where the failure to grant a stay may bring about an inequitable result. *Matter of Town of Colonie v City of New York*, 237 A.D.3d 1398, 233 N.Y.S.3d 404, 2025 N.Y. App. Div. LEXIS 2218 (N.Y. App. Div. 3d Dep't 2025).

Independently of statute, the court may consolidate or stay one or more actions pending the determination of another. *Big Apple Supermarkets, Inc. v Corkdale Realty, Inc.*, 61 Misc. 2d 483, 305 N.Y.S.2d 531, 1969 N.Y. Misc. LEXIS 1089 (N.Y. Sup. Ct. 1969).

In an Article 78 proceeding commenced by a tenured teacher seeking review of a disciplinary determination made by a hearing panel convened pursuant to Educ Law § 3020-a, a board of education's motion to stay or dismiss the proceeding for the purpose of permitting the Commissioner of Education to render a decision on an appeal from that determination subsequently commenced by the board of education would be denied in all respects since the court had jurisdiction of the Article 78 proceeding. Dismissal of the proceeding would not only have violated the legislative scheme, but was unavailable under CPLR § 3211(a)(4) inasmuch as the pending "action" was not an action but an appeal to an administrative agency. A stay pursuant to CPLR § 2201 was not warranted where it had not been shown that the entire matter could not be adequately reviewed in the court or that the exercise of expertise of the other forum was required. *Tombler v Board of Education*, 109 Misc. 2d 821, 440 N.Y.S.2d 1012, 1981 N.Y. Misc. LEXIS 2481 (N.Y. Sup. Ct. 1981).

While courts are authorized to grant a stay of proceedings where a point of law applicable to certain litigants is about to be decided by an appellate court, this should only be done where a decision is imminent. The court must take into consideration when was the appeal taken, when arguments are to be heard, and when a decision is forthcoming. Accordingly, in a divorce proceeding where only a motion for leave to appeal had been made with no decision thereof, a husband was not entitled to have his affidavit of financial disclosure received in camera pending determination by the New York Court of Appeals of various other appeals apparently to be taken



to that court from a decision of the appellate division in another related case. *Miller v Miller*, 109 Misc. 2d 982, 441 N.Y.S.2d 339, 1981 N.Y. Misc. LEXIS 2502 (N.Y. Sup. Ct. 1981).

Defendant is not entitled to stay trial of small claims property damage action merely because defendant is in military service, since stay of action or proceeding is not required unless defendant's ability to conduct his defense is materially affected by reason of military service, and mere allegations by defendant that ability to conduct defense will be materially affected is insufficient to establish entitlement to stay. *Deacon v Witham*, 131 Misc. 2d 217, 499 N.Y.S.2d 317, 1985 N.Y. Misc. LEXIS 3076 (N.Y. City Ct. 1985).

Personal injury action would not be placed on inactive status for purpose of permitting hearing before Workers' Compensation Board in order to determine validity of affirmative defense that accident occurred in course of plaintiff's employment where defendants were not in employment relationship with plaintiff and thus were not "parties in interest" entitled to participate in workers' compensation hearing; instead, Supreme Court would refer matter to referee for hearing on issue of workers' compensation coverage before ruling on plaintiff's motion to strike affirmative defense and defendants' motion for summary judgment. *Liss v Trans Auto Systems, Inc.*, 136 Misc. 2d 197, 518 N.Y.S.2d 315, 1987 N.Y. Misc. LEXIS 2410 (N.Y. Sup. Ct. 1987).

Airline's motion to stay action by State Attorney General to enjoin it from placing advertisements not stating full price of flights would be granted on ground that Congress intended to preempt field of regulation of airline advertising, in view of history of extensive federal statutory and regulatory authority in field and existence of Federal Department of Transportation orders permitting specific practices sought to be restrained. *People by Abrams v Trans World Airlines, Inc.*, 147 Misc. 2d 697, 556 N.Y.S.2d 803, 1990 N.Y. Misc. LEXIS 252 (N.Y. Sup. Ct. 1990), *aff'd*, 171 A.D.2d 76, 575 N.Y.S.2d 1, 1991 N.Y. App. Div. LEXIS 12298 (N.Y. App. Div. 1st Dep't 1991).

New York City Civil Court lacked subject matter jurisdiction to order injunctive relief staying lien sale within special proceeding challenging validity of lien, even though court had subject matter jurisdiction over proceeding itself, and despite fact that court has inherent power under CLS

CPLR § 2201 to stay its own proceedings in pending case, since lien sale is not function of court's own process, so that at time injunctive relief was requested, there was no action pending in which court's proceedings could have been stayed; § 2201 is not substitute for, nor alternative to, proper application for injunctive relief under CLS CPLR Art 63, and CLS Lien § 201-a grants no injunctive jurisdiction to court not already vested with it. *Maloney v Rincon*, 153 Misc. 2d 162, 581 N.Y.S.2d 120, 1992 N.Y. Misc. LEXIS 29 (N.Y. Civ. Ct. 1992).

Personal injury defendants were not entitled to interlocutory judgment on issue of liability as determined by jury, and stay of further proceedings pending their appeal, although bifurcated trial was noncontinuous, where almost 7 years had elapsed since accident occurred, some plaintiffs were elderly, and trial record supported jury's findings of negligence and gross negligence. *Bank of New York v Ansonia Assocs.*, 172 Misc. 2d 70, 656 N.Y.S.2d 813, 1997 N.Y. Misc. LEXIS 118 (N.Y. Sup. Ct. 1997).

Although a limited liability company (LLC) was dissolved pursuant to N.Y. Ltd. Liab. Co. Law § 701(a)(4) when its sole member's medical license was suspended, N.Y. Ltd. Liab. Co. Law § 703(b) provided that the LLC's action to recover assigned first-party no-fault benefits from an insurer could still be maintained; therefore, a stay of the proceedings pursuant to N.Y. C.P.L.R. 2201 was not warranted. *A.B. Med. Servs., PLLC v Travelers Indem. Co.*, 895 N.Y.S.2d 759, 26 Misc. 3d 69, 2009 N.Y. Misc. LEXIS 3424 (N.Y. App. Term 2009).

In action to recover damages for the alleged lead paint poisoning of an infant, the record afforded no basis for the imposition of the indefinite stay imposed by the trial court where there was no indication that the father intended to return from Bangladesh with the infant to prosecute the action at any time in the future. *Islam v Nathan Katz Realty Co.*, 296 A.D.2d 566, 745 N.Y.S.2d 577, 2002 N.Y. App. Div. LEXIS 7721 (N.Y. App. Div. 2d Dep't 2002).

In a motion to dismiss a case brought by the parents and the student under the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400, et seq., where it was undisputed that the parents and the student had failed to exhaust their administrative remedies, the court stayed further proceedings until the parents and the student had submitted the matter to an administrative

agency DiBrita v Rockville Ctr. Sch. Dist., 195 Misc. 2d 671, 760 N.Y.S.2d 834, 2003 N.Y. Misc. LEXIS 630 (N.Y. Dist. Ct. 2003).

Court-appointed expert's motion to stay custody proceeding under N.Y. C.P.L.R. 2201 was denied because the fact that the expert was a defendant in a suit filed by the father would not affect the expert's objectivity, in that the expert had not done any work with the father and would only be testifying about his assessment of the mother. Moreover, the expert had already completed his assessment, and relieving the expert after his assessment had already been completed and subjecting the child and her family to a second evaluation would be psychologically harmful and disruptive to the child's sense of security. Matter of Anthony McK v Dawn M., 879 N.Y.S.2d 293, 24 Misc. 3d 684, 241 N.Y.L.J. 79, 2009 N.Y. Misc. LEXIS 936 (N.Y. Fam. Ct. 2009).

There was no merit to a law office's contention that the trial court should have stayed enforcement of the judgment against it pursuant to N.Y. C.P.L.R. 2201; the law office did not substantially perform when it failed to complete two of the three agreed upon tasks despite having been paid in full. Felix v Law Off. of Thomas F. Liotti, 90 A.D.3d 597, 933 N.Y.S.2d 874, 2011 N.Y. App. Div. LEXIS 8753 (N.Y. App. Div. 2d Dep't 2011), app. denied, 2012 N.Y. App. Div. LEXIS 7001 (N.Y. App. Div. 2d Dep't Jan. 19, 2012).

Assignee of no-fault benefits, which was a professional service limited liability company (PLLC), could not continue an action under N.Y. Ins. Law § 5102(a) against an insurer because the doctor who was its sole member had been suspended from the practice of medicine; the PLLC was required to go through a disqualification process under N.Y. Ltd. Liab. Co. Law §§ 1209 and 1210 but could pursue the claims as part of its winding up under N.Y. Ltd. Liab. Co. Law § 703(b), and a stay was ordered under N.Y. C.P.L.R. § 2201 for the appointment of a representative to do so. A.B. Med. Servs. PLLC v Travelers Indem. Co., 858 N.Y.S.2d 574, 20 Misc. 3d 509, 239 N.Y.L.J. 106, 2008 N.Y. Misc. LEXIS 2845 (N.Y. Dist. Ct. 2008), aff'd, 906 N.Y.S.2d 770, 25 Misc. 3d 143(A), 2009 N.Y. Misc. LEXIS 3342 (N.Y. App. Term 2009), rev'd, 895 N.Y.S.2d 759, 26 Misc. 3d 69, 2009 N.Y. Misc. LEXIS 3424 (N.Y. App. Term 2009).

## **2. Discretion of court**

The court in which an action is pending may grant a stay of proceedings in a related action in the exercise of the sound discretion of the court, particularly where the stay is granted to prevent an unnecessary multiplicity of suits. *Trieber v Hopson*, 27 A.D.2d 151, 277 N.Y.S.2d 241, 1967 N.Y. App. Div. LEXIS 4855 (N.Y. App. Div. 3d Dep't 1967).

The issuance of a stay pursuant to CPLR 2201 is discretionary in the trial court and reviewable by the Appellate Division. *Research Corp. v Singer-General Precision, Inc.*, 36 A.D.2d 987, 320 N.Y.S.2d 818, 1971 N.Y. App. Div. LEXIS 4099 (N.Y. App. Div. 3d Dep't 1971).

Though a state action was for breach of contract, where the record revealed that the dominant issue was not construction of the contract but rather the validity of the patent on which the contract was based, as the licensee might avoid payment of all accrued royalties if it could prove the invalidity of the patent, the trial court, in the interest of comity, orderly procedure and uniformity, properly exercised its discretion in granting a stay and deferring to the United States Court in which an action involving the validity of the patent was pending. *Research Corp. v Singer-General Precision, Inc.*, 36 A.D.2d 987, 320 N.Y.S.2d 818, 1971 N.Y. App. Div. LEXIS 4099 (N.Y. App. Div. 3d Dep't 1971).

Court is permitted to stay proceedings in proper case upon such terms as may be just; it is within court's discretion to stay execution of judgment upon disclosure of exceptional circumstances. *Coburn v Coburn*, 109 A.D.2d 984, 486 N.Y.S.2d 467, 1985 N.Y. App. Div. LEXIS 47484 (N.Y. App. Div. 3d Dep't 1985).

It was abuse of discretion to grant defendants' motion to stay foreclosure sale pending certain discovery where they failed to show any fact to support their claim that deceased mortgagor had violated Banking Law in making mortgage. *Hausch v Topper*, 221 A.D.2d 591, 635 N.Y.S.2d 496, 1995 N.Y. App. Div. LEXIS 12439 (N.Y. App. Div. 2d Dep't 1995).

Court properly exercised its discretion in denying defendant's application to stay trial so that his third attorney, hired on eve of trial, could familiarize himself with case. *Settembrini v Settembrini*, 270 A.D.2d 408, 704 N.Y.S.2d 641, 2000 N.Y. App. Div. LEXIS 3042 (N.Y. App. Div. 2d Dep't 2000).

Because unusual and unanticipated circumstances developed subsequent to the filing of a note of issue and certificate of readiness, pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, § 202.21(d), N.Y. C.P.L.R. 2201, the stay of a valuation hearing and limited discovery requested from a shareholder was warranted. *Matter of Quadrozzi v Quadrozzi Concrete Corp.*, 50 A.D.3d 1043, 854 N.Y.S.2d 907, 2008 N.Y. App. Div. LEXIS 3578 (N.Y. App. Div. 2d Dep't 2008).

A motion for a stay of proceedings is primarily addressed to the court's discretion. *Procter & Gamble Distributing Co. v Lloyd's Underwriters*, 44 Misc. 2d 872, 255 N.Y.S.2d 361, 1964 N.Y. Misc. LEXIS 1309 (N.Y. Sup. Ct. 1964).

Pursuant to court's discretionary authority under CLS CPLR 2201, entry of judgment on jury's verdict in favor of plaintiff in small claims action brought after waterbed plaintiff had purchased from defendant was found to be unsatisfactory, is stayed until further order of court in view of fact that there was uncontroverted evidence that parties conspired to avoid State sales tax by reporting that sale was made to plaintiff's electrical business although sale was clearly subject to tax, but plaintiff may move to terminate stay upon showing that all tax liability with respect to subject sale has been satisfied. *Cutro v Puro*, 131 Misc. 2d 476, 500 N.Y.S.2d 942, 1986 N.Y. Misc. LEXIS 2521 (N.Y. Civ. Ct. 1986).

Summary proceeding against petitioner's ex-domestic partner and mother of his 2 out-of-wedlock children did not involve marital relation, and District court would not abstain from exercising jurisdiction under CLS RPAPL § 713(7) based on respondent's claim that dissolution of family should be litigated in Family Court which had issued order of child support in her favor and allegedly could best protect parties' interests, as District court did not have statutory or constitutional power to transfer case, and stay of determination of merits was not warranted because petitioner's possessory rights in his premises were not inextricably intertwined with

support and custody of parties' children. *Blake v Stradford*, 188 Misc. 2d 347, 725 N.Y.S.2d 189, 2001 N.Y. Misc. LEXIS 126 (N.Y. Dist. Ct. 2001).

Because a facility director did not present a circumstance so extraordinary or exceptional as to require restraining a resident against the resident's will to await a successful discharge plan pursuant to N.Y. Mental Hyg. Law § 29.15, the court declined to extend a stay under N.Y. C.P.L.R. 2201. *Matter of Michelle G.*, 898 N.Y.S.2d 787, 27 Misc. 3d 399, 2010 N.Y. Misc. LEXIS 216 (N.Y. Sup. Ct. 2010).

Because a defaulting borrower presented exigent circumstances in the borrower's application for more time to vacate the foreclosed premises, pursuant to N.Y. C.P.L.R. 2201, as made applicable under N.Y. Uniform Dist. Ct. Act § 212, the borrower was afforded a reasonable amount of additional time to locate suitable accommodations for the borrower and the borrower's 92-year-old mother, who suffered from dementia. *Deutsche Bank Natl. Trust Co. v Oliver*, 879 N.Y.S.2d 674, 24 Misc. 3d 838, 2009 N.Y. Misc. LEXIS 1100 (N.Y. Dist. Ct. 2009).

Since a declaratory judgment could not be given preclusive effect because it was not "actually litigated," the court stayed the matter, pursuant to N.Y. C.P.L.R. 2201, to afford a health care provider the opportunity to move to vacate its default and, if granted, to "actually litigate" the coverage question in a declaratory judgment action. *Bedford Med. Care, P.C. v Encompass Ins. Co.*, 915 N.Y.S.2d 452, 31 Misc. 3d 222, 2011 N.Y. Misc. LEXIS 86 (N.Y. Civ. Ct. 2011).

Court declined to stay medical malpractice actions, even though providers were insured by insolvent risk retention group and South Carolina liquidation order prohibited claims against insureds, because there is no automatic stay of litigation under the Uniform Insurers Liquidation Act and enforcement would have subjected plaintiffs to severe hardship. *Hala v Orange Regional Med. Ctr.*, 60 Misc. 3d 274, 76 N.Y.S.3d 369, 2018 N.Y. Misc. LEXIS 1553 (N.Y. Sup. Ct. 2018), *aff'd in part*, 178 A.D.3d 151, 113 N.Y.S.3d 212, 2019 N.Y. App. Div. LEXIS 7403 (N.Y. App. Div. 2d Dep't 2019).

### **3. Undertaking**

Supreme Court did not abuse discretion in failing to require undertaking from defendant attorney, on granting of his motion to stay plaintiff attorney from serving and filing petitions for charging liens on cases of plaintiff's former clients which had been turned over to defendant, where (1) plaintiff's petitions were irrelevant, accusatory and inflammatory, tending to harm defendant in representation of clients, and (2) adequate security was provided under another order which required defendant to place in escrow 50 percent of fees received from plaintiff's former clients. *Capoccia v Brognano*, 126 A.D.2d 323, 513 N.Y.S.2d 863, 1987 N.Y. App. Div. LEXIS 41238 (N.Y. App. Div. 3d Dep't), app. dismissed, 70 N.Y.2d 742, 519 N.Y.S.2d 964, 514 N.E.2d 384, 1987 N.Y. LEXIS 18588 (N.Y. 1987), app. dismissed, 70 N.Y.2d 743, 519 N.Y.S.2d 965, 514 N.E.2d 385, 1987 N.Y. LEXIS 18589 (N.Y. 1987), app. dismissed, 70 N.Y.2d 743, 519 N.Y.S.2d 965, 514 N.E.2d 385, 1987 N.Y. LEXIS 18590 (N.Y. 1987).

#### **4. Arbitration proceedings**

An order entered in the action itself, staying such action pending arbitration did not finally determine the action within the meaning of the Constitution and appeal dismissed. *Kushlin v Bialer*, 26 N.Y.2d 748, 309 N.Y.S.2d 47, 257 N.E.2d 293, 1970 N.Y. LEXIS 1592 (N.Y. 1970).

CPLR 7503 no longer permits a simple stay of action, and now the procedure is to seek to compel arbitration and, if granted, a stay of action is automatic pursuant to subdivision a of CPLR 7503. *Methodist Church of Babylon v Glen-Rich Constr. Corp.*, 29 A.D.2d 773, 287 N.Y.S.2d 728, 1968 N.Y. App. Div. LEXIS 4611 (N.Y. App. Div. 2d Dep't 1968).

In an action to enforce a statutory trust by laborers and materialmen pending an arbitration award, the court properly exercised its discretion in granting a stay where the right of petitioner and other beneficiaries to recover trust assets hinged upon the resolution of central issues in arbitration proceedings between a general contractor and owner. *C.B. Strain & Son, Inc. v J. Baranello & Sons*, 90 A.D.2d 924, 457 N.Y.S.2d 925, 1982 N.Y. App. Div. LEXIS 19206 (N.Y. App. Div. 3d Dep't 1982).

In action for breach of contract entered into by various family members regarding ownership and disposition at death of corporation and partnerships, plaintiffs were not entitled to stay of prosecution of counterclaim pending arbitration, even though contract provided for arbitration of dispute raised by counterclaim, since plaintiffs had first proceeded to judicial forum, thereby expressing their intention to waive right to press their own claim by arbitration and thus waiving any right to arbitration of related claims brought by adverse parties. *Levkoff-Sennet Partnership v Levkoff*, 154 A.D.2d 352, 545 N.Y.S.2d 830, 1989 N.Y. App. Div. LEXIS 12283 (N.Y. App. Div. 2d Dep't 1989).

Court properly stayed plaintiff's action against his former employer, securities dealer, since claims of discrimination arose out of and in connection with his employment with dealer, and plaintiff had executed "U-4 Form" agreeing to arbitrate all disputes and claims which arose from or were connected with business of any National Association of Securities Dealers member. *Shapiro v Prudential Sec.*, 233 A.D.2d 384, 650 N.Y.S.2d 12, 1996 N.Y. App. Div. LEXIS 11601 (N.Y. App. Div. 2d Dep't 1996).

Defendant did not waive its right to arbitrate by participating in litigation where it raised arbitration requirement as affirmative defense in its answer, and there were arbitrable and nonarbitrable issues involved; thus, defendant was entitled to order staying action and directing arbitration. *Ruttura & Sons Constr. Co. v J. Petrocelli Constr.*, 257 A.D.2d 614, 684 N.Y.S.2d 286, 1999 N.Y. App. Div. LEXIS 333 (N.Y. App. Div. 2d Dep't), app. dismissed, 93 N.Y.2d 956, 694 N.Y.S.2d 346, 716 N.E.2d 181, 1999 N.Y. LEXIS 1413 (N.Y. 1999).

Trial court erred in denying defendants' cross motion to stay the action pursuant to N.Y. C.P.L.R. 2201 or N.Y. C.P.L.R. 7503(a) and to compel arbitration, as there was clear and convincing evidence that the parties executed an amendment to the agreement that provided for binding arbitration of any claim for breach of the agreement. *Empire Entm't Group, L.L.C. v Wanderlust Pictures, Inc.*, 307 A.D.2d 811, 763 N.Y.S.2d 296, 2003 N.Y. App. Div. LEXIS 8633 (N.Y. App. Div. 1st Dep't 2003).



Where action has been commenced prior to the appearance of any reason for arbitration on the part of the defendant in such action, a motion for stay of the action pending arbitration may be treated as a motion to compel arbitration and stay, pending arbitration under a binding arbitration agreement, may be granted. *E. F. Hutton & Co. v Bokelmann*, 56 Misc. 2d 910, 290 N.Y.S.2d 415, 1968 N.Y. Misc. LEXIS 1845 (N.Y. Sup. Ct. 1968).

Although defendant under sales contract with broad arbitration provision was entitled to have dispute arising thereunder arbitrated, court had no power to compel the arbitration in Miami, Florida, and could do no more than grant a stay of plaintiff's action to recover on contract. *Industrial Iron & Steel Products Co. v General Bronze Architectural Products, Div. of Allied Products Corp.*, 85 Misc. 2d 379, 380 N.Y.S.2d 618, 1976 N.Y. Misc. LEXIS 2005 (N.Y. Sup. Ct. 1976).

Although CPLR 7503 (subd [a]) provides for a stay of an action only in conjunction with an order granting a motion to compel arbitration, where a stay of an action between an employee and employer is warranted because of an arbitration agreement binding upon the employee's union but the court is unable to direct the parties to proceed to arbitration because the union is not before the court and the employer, under the terms of the collective bargaining agreement, is only obligated to arbitrate claims with the union, the court is nonetheless empowered to stay the action between the employee and employer independent of an order compelling arbitration. *Heimlich v Charlton Lithographing, Inc.*, 103 Misc. 2d 741, 428 N.Y.S.2d 127, 1979 N.Y. Misc. LEXIS 2946 (N.Y. Sup. Ct. 1979).

Seller's motion for stay, pending arbitration, of action for money had and received would be denied where arbitration clause was not binding because it was contained in seller's confirmation of written purchase order and constituted material alteration of offer to purchase. *Diamond's Run, Ltd. v Rebel Fabrics, Inc.*, 134 Misc. 2d 568, 511 N.Y.S.2d 996, 1987 N.Y. Misc. LEXIS 2064 (N.Y. Civ. Ct. 1987).

Action seeking judicial dissolution of partnership under CLS Partn §§ 63(1)(c), (d), (f), accounting, and declaration that partnership agreement had been abrogated by parties would be

stayed, and cross motion to compel arbitration would be granted, where arbitration clause in partnership agreement required “all disputes and controversies arising out of or in connection with” agreement to be determined by arbitration; issue of whether agreement containing such broad arbitration clause had been abrogated was to be determined by arbitration. *Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc. 2d 812, 578 N.Y.S.2d 802, 1991 N.Y. Misc. LEXIS 737 (N.Y. Sup. Ct. 1991), *aff'd*, 183 A.D.2d 678, 584 N.Y.S.2d 56, 1992 N.Y. App. Div. LEXIS 7354 (N.Y. App. Div. 1st Dep't 1992).

Action seeking judicial dissolution of partnership under CLS Partn §§ 63(1)(c), (d), (f), accounting, and declaration that partnership agreement had been abrogated by parties would be stayed, and cross motion to compel arbitration would be granted, where arbitration clause in partnership agreement required “all disputes and controversies arising out of or in connection with” agreement to be determined by arbitration; issues plaintiff sought to litigate were subject to arbitration if partnership agreement had not been abrogated. *Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc. 2d 812, 578 N.Y.S.2d 802, 1991 N.Y. Misc. LEXIS 737 (N.Y. Sup. Ct. 1991), *aff'd*, 183 A.D.2d 678, 584 N.Y.S.2d 56, 1992 N.Y. App. Div. LEXIS 7354 (N.Y. App. Div. 1st Dep't 1992).

Motion to stay an action pending the outcome of the arbitration should have been granted; although there was not a complete identity of parties, the arbitration statement of claims and the complaint contained overlapping factual allegations, and both sought the same damages, including all costs and expenses related to the replacement, repair, inspection, and maintenance of the boiler stacks, and lost steam revenue. Thus, the determination of the pending arbitration proceeding may well have disposed of or limit the issues to be determined in the action. *Oxbow Calcining USA Inc. v American Indus. Partners*, 96 A.D.3d 646, 948 N.Y.S.2d 24, 2012 N.Y. App. Div. LEXIS 5035 (N.Y. App. Div. 1st Dep't 2012).

Where a housing complex operator and an architectural firm entered into an agreement for architectural services and disputed the amount owed to an architect after the architect's license was suspended, the operator's unjust enrichment claim was subject to mediation under the

agreement; the rest of the claims, which were based on the alleged invalidity of the lien, remained, and the proceeding was stayed. *Masaryk Tower Corp. v Anastasi*, 234 N.Y.L.J. 77, 2005 N.Y. Misc. LEXIS 3585 (N.Y. Sup. Ct. Oct. 20, 2005).

Where a consumer filed a class action alleging defendant violated N.Y. Arts & Cult. Aff. Law § 25.30(1)(c) by failing to sell paperless tickets that could be independently and freely transferred, defendant was not entitled to stay the action pending arbitration because the arbitration would not be dispositive as to whether it violated § 25.30(1)(c), and an arbitration award would not have any binding effect on defendant, the consumer, or the proposed class. *Pires v Bowery Presents, LLC*, 988 N.Y.S.2d 467, 44 Misc. 3d 704, 2014 N.Y. Misc. LEXIS 2845 (N.Y. Sup. Ct. 2014).

## **5. Landlord and tenant**

Trial court's granting of motion to consolidate a summary proceeding instituted against it with plaintiff's court action for a declaratory judgment was improper where the civil court had jurisdiction over plaintiff's defense. *Lun Far Co. v Aylesbury Associates*, 40 A.D.2d 794, 338 N.Y.S.2d 84, 1972 N.Y. App. Div. LEXIS 3329 (N.Y. App. Div. 1st Dep't 1972).

Unless it clearly appears that relief sought is unavailable in summary proceedings, its prosecution should not be stayed, and civil court had jurisdiction over tenant's defense based on so-called reformation granted on an executed oral modification of the lease provisions for termination at the landlord's option; thus tenant's motion in Supreme Court action for declaratory judgment to consolidate summary proceeding was improperly granted. *Lun Far Co. v Aylesbury Associates*, 40 A.D.2d 794, 338 N.Y.S.2d 84, 1972 N.Y. App. Div. LEXIS 3329 (N.Y. App. Div. 1st Dep't 1972).

Where it did not appear that plaintiffs, suing city for unpaid rent and moving for summary judgment should be halted in achieving judgment, but, if counterclaims were proven valid, city would be placed in position of having paid rent and finding nothing available for execution of judgment on counterclaims, court exercised discretion to sever and stay execution, but if

severed action was not brought to trial and resolved within reasonable time, application for vacatur of the stay would be in order. *Knitcraft Foundations, Inc. v New York*, 58 A.D.2d 536, 395 N.Y.S.2d 654, 1977 N.Y. App. Div. LEXIS 12518 (N.Y. App. Div. 1st Dep't 1977).

The tenant which occupied the entire rentable area above the ground floor in a 31-story office building was a "party in interest" that would arguably be "adversely affected" by the planned transfer of air rights from the building it occupied to a proposed structure by the owner of the leased premises and was therefore entitled to a preliminary injunction prohibiting the sale of said rights. *Macmillan, Inc. v Cadillac Fairview Corp.*, 86 A.D.2d 15, 448 N.Y.S.2d 668, 1982 N.Y. App. Div. LEXIS 14995 (N.Y. App. Div. 1st Dep't), rev'd, 56 N.Y.2d 386, 452 N.Y.S.2d 377, 437 N.E.2d 1134, 1982 N.Y. LEXIS 3433 (N.Y. 1982).

A declaratory judgment action to determine which of two leases, that, as a result of a partnership dispute, had been granted to two persons, was valid, would be stayed pending the resolution of a summary proceeding by the holder of the first lease in Civil Court, where the only issue was which lease was prior in time, where a resolution of that question would determine all the issues in the action, and where the Civil Court was perfectly capable of making that determination. *Cohen v Goldfein*, 100 A.D.2d 795, 474 N.Y.S.2d 519, 1984 N.Y. App. Div. LEXIS 17898 (N.Y. App. Div. 1st Dep't 1984).

In summary proceeding to recover possession of real property purchased by petitioners at public auction, after county deeded property to itself for nonpayment of property taxes 16 months after unrecorded transfer of property to respondent, court erred in denying respondent's motion for stay of proceeding to permit time to move for consolidation of quiet title action since (1) there was fact issue as to whether respondent's predecessors took title without actual or constructive notice of tax sale, and (2) although respondent had failed to file deed, he should be allowed to raise issue of regularity of county's tax sale since he was in privity to his predecessor's title, and time period for challenge to tax sale procedures had not expired. *Peck v Groholy*, 131 A.D.2d 146, 521 N.Y.S.2d 319, 1987 N.Y. App. Div. LEXIS 49509 (N.Y. App. Div. 3d Dep't 1987).

In holdover proceeding involving tenants of building converted to cooperative ownership, Civil Court correctly dismissed tenants' defensive claims that they were "eligible senior citizens" within meaning of CLS Gen Bus § 352-eeee and were entitled to purchase shares allocated to their apartment at insider's price, since Civil Court lacks jurisdiction to grant equitable relief; however, where tenants thereafter commenced Supreme Court action for declaratory and injunctive relief, asserting same claims, they were entitled to stay of holdover proceeding pending Supreme Court resolution of those claims. *Green v Glenbriar Co.*, 131 A.D.2d 363, 516 N.Y.S.2d 670, 1987 N.Y. App. Div. LEXIS 47846 (N.Y. App. Div. 1st Dep't 1987).

Tenants were not entitled to stay of holdover proceeding instituted by landlord in Civil Court pending resolution of tenants' action in Supreme Court to declare lease valid and enforceable where tenants could obtain full redress of their rights under alleged lease in summary proceeding pending in Civil Court. *Amoo v Eastlake Realty Co.*, 133 A.D.2d 657, 519 N.Y.S.2d 831, 1987 N.Y. App. Div. LEXIS 51698 (N.Y. App. Div. 2d Dep't 1987).

Court properly denied plaintiffs' motion to vacate stay of enforcement of judgment, which awarded them legal fees and declaration of their right to lease renewals, since issue of primary residency remained unresolved, and there was pending proceeding which would finally determine that issue. *Brosnan v Behette*, 243 A.D.2d 524, 664 N.Y.S.2d 560, 1997 N.Y. App. Div. LEXIS 9855 (N.Y. App. Div. 2d Dep't 1997).

The power of the New York City Civil Court to grant stays of execution in holdover proceedings involving residential property is not confined to that granted by the Real Property Actions and Proceedings Law, and such power might be found in § 212 of the New York City Civil Court Act and in § 2201 of the CPLR, which a fortiori must logically apply to proceedings affecting commercial property; so that the court could stay execution in a holdover proceeding in which a commercial tenant demonstrated it was having great difficulty in acquiring new premises for storing its equipment and maintaining its operation that had been carried on at the subject premises for 27 years. *Pepsi-Cola Metropolitan Bottling Co. v Miller*, 50 Misc. 2d 40, 269 N.Y.S.2d 471, 1966 N.Y. Misc. LEXIS 1942 (N.Y. Civ. Ct. 1966).

By virtue of the provisions of UDCA § 212, the provisions of CPLR 2201 are applicable to the District Court of Nassau County and empowered that court to stay the execution of a warrant of eviction for nonpayment of rent “upon such terms as may be just”. *Canigiani v Deptula*, 59 Misc. 2d 401, 299 N.Y.S.2d 234, 1969 N.Y. Misc. LEXIS 1630 (N.Y. Dist. Ct. 1969).

Where vendees under contract for purchase of new home to be constructed by defendant instituted action for specific performance alleging breach of contract and defendant served 30-day notice upon plaintiffs to vacate other premises owned by defendant and made available to them as purchasers pending delivery of the new home, plaintiffs were not entitled to extraordinary remedy of preliminary injunction to prevent such threatened eviction proceedings. *Boyle v Pogs Constr. Corp.*, 74 Misc. 2d 307, 344 N.Y.S.2d 210, 1973 N.Y. Misc. LEXIS 2125 (N.Y. Sup. Ct. 1973).

Issuance and execution of warrant for eviction of tenants, printing concerns, from commercial property was stayed where landlord had filed variance application, tenants would incur a \$250,000 moving expense at the time and would be unable to fulfill their contractual printing obligations to the Board of Elections in the City of New York for registration materials and supplies as well as ballots, materials and supplies for the upcoming primary election and subsequent general election for New York, Queens and Richmond Counties and there was evidence that a 3 to 6 months’ planning and moving lead time was usual. *Mountbatten Equities v Tabard Press Corp.*, 87 Misc. 2d 865, 386 N.Y.S.2d 783, 1976 N.Y. Misc. LEXIS 2321 (N.Y. Civ. Ct. 1976).

In an action by a landlord for possession of a commercial tenancy, it was imprudent, unjust, and contraindicated to stay the issuance of a warrant of eviction to commercial tenants for an indeterminate time to extend until the “potential expiration” of the last stay granted to the last residential tenant in the building. *Eskandar Corp. v Velis*, 110 Misc. 2d 193, 438 N.Y.S.2d 180, 1981 N.Y. Misc. LEXIS 3063 (N.Y. App. Term 1981).

Tenant who was subject to eviction as undesirable tenant due to “objectionable” conduct could nonetheless be granted stay of eviction on court’s instigation, despite ban on such relief under

CLS RPAPL § 753 if tenant's conduct is found objectionable, since CLS CPLR § 2201 permits court to grant stay "in a proper case" and CLS RPAPL § 753 applies only to issuance of warrant, not to execution under warrant; because CLS RPAPL § 753 is punitive in nature, it must be strictly construed. *New York University v Arnold*, 133 Misc. 2d 1040, 508 N.Y.S.2d 869, 1986 N.Y. Misc. LEXIS 3024 (N.Y. Civ. Ct. 1986).

In summary proceeding brought by landlord on grounds of alleged nonprimary residence, tenant was entitled to stay until loft board determined whether tenant could sell fixtures she installed in loft and, if so, to whom and at what price; question of fixture sale or compensation was matter within particular expertise of loft board and its determination concerning sale would necessarily affect ultimate disposition of summary proceeding. *Galan Industries, Inc. v Loizeaux*, 134 Misc. 2d 641, 512 N.Y.S.2d 625, 1986 N.Y. Misc. LEXIS 3127 (N.Y. Civ. Ct. 1986).

Court would not stay execution of eviction and vacate judgment for landlord merely because tenant's dependent child was injured and hospitalized during period in question where tenant admitted nonpayment of rent in open court and had exhibited consistent pattern of nonpayment. *Glenwood Associates v De Rasmio*, 136 Misc. 2d 632, 519 N.Y.S.2d 78, 1987 N.Y. Misc. LEXIS 2448 (N.Y. City Ct. 1987).

New York City Civil Court had power to stay landlord from bringing any additional summary proceedings against 70 tenants involved in joint trial of nonpayment proceedings, or from serving 3-day demand for current rent until final judgment was issued in current proceedings, since permitting landlord to serve statutory rent demands would only result in further delays and confusion and might impair effectiveness of joint trial proceedings; landlord could amend petitions for those trials not yet held to reflect rent due and owing as of date of trial. *Solow v Wellner*, 142 Misc. 2d 383, 537 N.Y.S.2d 762, 1989 N.Y. Misc. LEXIS 26 (N.Y. Civ. Ct. 1989).

Court would stay holdover proceeding pending resolution of proceeding commenced by respondent before Division of Housing and Community Renewal (DHCR) where (1) proceeding before DHCR was commenced before holdover proceeding, it would resolve status of respondent as licensee or squatter, and would determine whether landlord had right to

possession, and (2) respondent had agreed to pay legal rent alleged in petition and to pay for outstanding use and occupancy. *Newman v Sirkin*, 153 Misc. 2d 864, 582 N.Y.S.2d 930, 1992 N.Y. Misc. LEXIS 139 (N.Y. Civ. Ct. 1992).

CLS RPAPL § 747-a, as written, contradicts CLS CPLR § 2201 and CLS RPAPL § 749 and is not enforceable. *Targee Mgmt., L. L .C. v Jones*, 177 Misc. 2d 323, 677 N.Y.S.2d 206, 1997 N.Y. Misc. LEXIS 714 (N.Y. Civ. Ct. 1997).

On filing appropriate bond and payment of use and occupancy, tenants were entitled to stay of warrant of eviction pending their appeal from judgment of possession in summary proceeding by petitioner who purchased premises at foreclosure sale, despite petitioner's opposition that payment of use and occupancy was "not a substitute for a vacant house to be sold." *GRP Realty Corp. v Baruck*, 184 Misc. 2d 958, 712 N.Y.S.2d 287, 2000 N.Y. Misc. LEXIS 285 (N.Y. J. Ct. 2000).

Stay issued in landlord's holdover proceeding pursuant to CLS CPLR § 2201 had no effect in separate nonpayment proceeding commenced by same landlord against same tenant. 1544-48 Props., L.L.C. v Maitre, 184 Misc. 2d 984, 712 N.Y.S.2d 303, 2000 N.Y. Misc. LEXIS 326 (N.Y. App. Term 2000).

While adhering to the view that a demonstrated lease violation based upon a history of chronic rent defaults is not subject to a traditional postjudgment cure under N.Y. Real Prop. Acts. Law § 753(4), courts also recognize that there may exist circumstances warranting the issuance of a stay of a possessory judgment upon such terms as may be just, N.Y. C.P.L.R. 2201, in order to avoid a leasehold forfeiture in this type of eviction proceeding. 326-330 E. 35th St. Assoc. v Sofizade, 191 Misc. 2d 329, 741 N.Y.S.2d 380, 2002 N.Y. Misc. LEXIS 253 (N.Y. App. Term 2002).

A summary proceeding remains pending until the execution of the warrant and, while the proceeding is pending, the warrant may be stayed under CPLR 2201.203 E. 13th Street Corp. v



Lechycky, 67 Misc. 2d 451, 324 N.Y.S.2d 560, 1971 N.Y. Misc. LEXIS 1501 (N.Y. App. Term 1971).

As a matter of custom and usage, the six-month limitation on the issuance of warrants of eviction in summary holdover proceedings under N.Y. Real Prop. Acts. Law § 753(1) is inclusive of the execution of such warrants, except under exceptional, extenuating or exigent circumstances, and is intended to operate independently of the more open-ended stay provisions of N.Y. C.P.L.R. 2201; to permit stay provisions in holdover cases to be guided solely by the courts' discretion would ultimately eliminate the six-month limitation on stays in such proceedings. *New York City Hous. Auth. v Witherspoon*, 819 N.Y.S.2d 446, 12 Misc. 3d 899, 2006 N.Y. Misc. LEXIS 1248 (N.Y. Civ. Ct. 2006).

Because it was possible that a landlord could obtain possession of all the units in a building during the pendency of the landlord's N.Y. Comp. Codes R. & Regs. tit. 9, § 2524.4(a) owner-use proceeding, and because a N.Y. C.P.L.R. 2201 stay might be appropriate at a later date, the matter was ripe for adjudication; accordingly, there was no basis upon which to dismiss the proceeding. *Bianco v Sciaulino*, 897 N.Y.S.2d 596, 26 Misc. 3d 780, 2009 N.Y. Misc. LEXIS 3248 (N.Y. Civ. Ct. 2009).

Summary licensee holdover proceeding was stayed in interests of judicial economy pending New York City Commission on Human Rights' final determination of complaint in which respondent alleged that landlord harassed him and failed to award him succession rights following death of his gay life partner due to his mental retardation, sexual orientation and marital status, as respondent's discrimination complaint predated landlord's holdover proceeding, his right to remain in possession of apartment was at heart of each proceeding, landlord would not be unduly prejudiced by imposition of stay, and commission (if it found discrimination) could provide more comprehensive relief than court. 170 West 85 St. *HDFC v Jones*, 176 Misc. 2d 262, 673 N.Y.S.2d 830, 1998 N.Y. Misc. LEXIS 90 (N.Y. Civ. Ct. 1998).

Tenants were not entitled to an indefinite stay of the proceeding because, inter alia, while the tenants should be afforded more time to prepare for that trial, the state of the current COVID-19 pandemic sweeping the nation justified conducting the instant trial by virtual means, Judiciary Law § 2-3(b) empowered the court to employ procedures to further ensure a tenant's meaningful participation, simply because a virtual trial might take longer did not mean that a trial should not be had, a virtual trial, while an imperfect mode to administer a trial, was not an unconstitutional one, the action was a three-year-old nonpayment proceeding with discovery completed nearly one year ago. *Wyona Apts. LLC v Ramirez*, 70 Misc. 3d 591, 137 N.Y.S.3d 653, 2020 N.Y. Misc. LEXIS 9295 (N.Y. Civ. Ct. 2020).

Stay for good cause of the execution of a warrant of eviction for the tenant to vacate the premises was found based upon the health of the tenant, the alleged efforts made to find alternate housing, the presence of school aged children who either had IEPs or were graduating within the next 45 days, the longevity of the proceeding, the order was the first order to show cause submitted, the lack of prejudice attested to by the landlord, and the relatively modest amount of time sought. *217 E. 93 217 E. 93 LLC v Edwards*, 2025 N.Y. Misc. LEXIS 3771 (N.Y. Civ. Ct. 2025).

*Unpublished decision:* Landlord was entitled to vacate a stay imposed by the Emergency Rental Assistance Program (ERAP) in a holdover proceeding when the landlord sought possession of the subject unregulated premises following service of a notice terminating the tenancy because the landlord had sworn to the fact that the landlord would not accept ERAP money and the maintenance of the stay at that juncture was prejudicial and served no discernible legal purpose. *178 Broadway Realty Corp. v Charles*, 75 Misc. 3d 937, 172 N.Y.S.3d 323, 2022 N.Y. Misc. LEXIS 2184 (N.Y. Civ. Ct. 2022), dismissed, 2022 N.Y. Misc. LEXIS 5344 (N.Y. Sup. Ct. Aug. 26, 2022).

## **6. Enforcement of judgments**

Plaintiff was entitled to order staying execution of partial summary judgment granted to defendant on counterclaim, since amount of plaintiff's unsettled claims exceeded amount of counterclaim, and failure to stay execution of partial summary judgment pending resolution of unsettled causes of action of complaint could result in financial prejudice to plaintiff if he ultimately prevailed on his unsettled claims. *Levy v Renck*, 137 A.D.2d 464, 525 N.Y.S.2d 41, 1988 N.Y. App. Div. LEXIS 1746 (N.Y. App. Div. 1st Dep't 1988).

Court properly refused to stay entry or execution of summary judgment granted in favor of subcontractor in its action to foreclose mechanic's lien where contractor and its insurance carrier (defendants) failed to offer adequate support to substantiate their claim that subcontractor was not financially stable and might not remain viable business entity by time defendants' counterclaims in 2 separate actions involving subcontractor were resolved; unsworn written statement by contractor's president asserting hearsay information as to subcontractor's financial instability was insufficient to show that subcontractor was financially unsound. *P. S. Griswold Co. v Cortland Glass Co.*, 138 A.D.2d 869, 525 N.Y.S.2d 973, 1988 N.Y. App. Div. LEXIS 3164 (N.Y. App. Div. 3d Dep't 1988).

Party subject to affirmed judgment for damages is not entitled to stay of enforcement pending determination of liability of party who may be jointly and severally liable. *Plowden v Manganiello*, 143 Misc. 2d 446, 540 N.Y.S.2d 1020, 1989 N.Y. Misc. LEXIS 274 (N.Y. Sup. Ct. 1989).

In a mother's action against her son for a declaration that she was the owner of certain property purportedly transferred to the son, the trial court properly denied the mother's motion for a stay of all proceedings in a related action in which a purchaser was granted summary judgment on his claim against the son for specific performance of a contract to sell the property because the mother failed to demonstrate that she was entitled to the relief sought in her declaratory judgment action where she failed to rebut the presumption of the deed's validity established by a certificate of acknowledgment and she failed to plead fraud with sufficient particularity. *Elder v Elder*, 2 A.D.3d 671, 770 N.Y.S.2d 95, 2003 N.Y. App. Div. LEXIS 13814 (N.Y. App. Div. 2d Dep't 2003).

## **7. Multiple actions or proceedings**

The court in which an action is pending may grant a stay of proceedings in a related action in the exercise of the sound discretion of the court, particularly where the stay is granted to prevent an unnecessary multiplicity of suits. *Trieber v Hopson*, 27 A.D.2d 151, 277 N.Y.S.2d 241, 1967 N.Y. App. Div. LEXIS 4855 (N.Y. App. Div. 3d Dep't 1967).

In an Article 78 proceeding by taxpayers to prohibit city from proceeding with a class action, Supreme Court had jurisdiction to authorize the city's class action to resolve potential claims for refund of real estate taxes, and also had the power to stay an individual taxpayer's suit on the same issue until after another class action appeal was argued in the Court of Appeals; finally, the constitutionality of a refund ordinance could not be challenged in an Article 78 proceeding. *Reynders v Conway*, 79 A.D.2d 863, 434 N.Y.S.2d 513, 1980 N.Y. App. Div. LEXIS 14278 (N.Y. App. Div. 4th Dep't 1980).

Where after a personal injury action was tried and settled in New York County defendant attorney moved in New York County to distribute fees with plaintiff legal firm on a quantum meruit basis but before the return date of that motion, and plaintiff commenced a breach of contract action on Richmond County, plaintiff's motion for a stay of the New York County proceedings was improperly granted since New York County was the first forum in which the proceedings were commenced to distribute the legal fees in the personal injury action case and it was an abuse of discretion for Richmond County to reward plaintiff's attempt at forum shopping by granting the stay. *Taliuaga & Karsch v Kaplan*, 90 A.D.2d 500, 454 N.Y.S.2d 739, 1982 N.Y. App. Div. LEXIS 18528 (N.Y. App. Div. 2d Dep't 1982).

A class action suit to recover damages for injury to personal property allegedly caused by the improper chemical treatment of water supplied by defendant water service corporation would be stayed pending final resolution of the named plaintiff's complaint before the Public Service Commission, where the action presented questions of fact which were of the type that should have been "considered and passed upon by the trained body established for that very purpose

and especially equipped to examine into the intricate facts commonly involved in public utility problems.” *Sternberg v New York Water Service Corp.*, 94 A.D.2d 723, 462 N.Y.S.2d 609, 1983 N.Y. App. Div. LEXIS 18166 (N.Y. App. Div. 2d Dep't 1983).

In an action in Sullivan County to recover a real estate commission, the trial court properly denied defendant's motion to dismiss, even though defendants had commenced an action in Kings County for a declaratory judgment that they owed no real estate commission, where there was not a complete identity of parties in the two actions and a more complete resolution of the controversy was available in the Sullivan County action; it was inappropriate, however, for the trial court in Sullivan County to have stayed the Kings County action, even though Sullivan County was the more appropriate venue for the resolution of the controversy, since a joint trial of both actions in Sullivan county should have been ordered instead. *Safier v Cohl*, 95 A.D.2d 933, 463 N.Y.S.2d 937, 1983 N.Y. App. Div. LEXIS 18902 (N.Y. App. Div. 3d Dep't 1983).

In a proceeding pursuant to Real Property Tax Law Article 7 alleging overvaluation by the State Board of Equalization and Assessment challenging the special franchise tax assessment for the fiscal year 1980, the trial court properly denied respondents' motion for a stay of petitioner's similar proceeding challenging the identical assessment for the five years prior to the year in question since, while all the proceedings had a similar issue of valuation, they were not necessarily identical in that an assessment fixes value as of a certain time so that assessments of the same property for different years may not be identical due to changed circumstances resulting in different proof. *Brooklyn Union Gas Co. v State Bd. of Equalization & Assessment*, 97 A.D.2d 897, 470 N.Y.S.2d 462, 1983 N.Y. App. Div. LEXIS 20688 (N.Y. App. Div. 3d Dep't 1983).

The practice of applying to stay the proceedings in another action pending in a different jurisdiction is unauthorized, the proper procedure is to apply for a stay to the court handling the action sought to be stayed. *Modernismo Publications, Ltd. v Tenney*, 104 A.D.2d 721, 480 N.Y.S.2d 657, 1984 N.Y. App. Div. LEXIS 20140 (N.Y. App. Div. 4th Dep't 1984).

Action for damages against insured party should be stayed pending declaration of his insurer's duty to defend, but such action should not be stayed pending declaration of insurer's duty to indemnify where such duty depended on facts which would necessarily be decided in damage action. *Hout v Coffman*, 126 A.D.2d 973, 511 N.Y.S.2d 990, 1987 N.Y. App. Div. LEXIS 42089 (N.Y. App. Div. 4th Dep't 1987).

Defendant in personal injury action was entitled to stay pending determination by Workers' Compensation Board as to whether defendant was plaintiff's employer, even though board had previously determined that temporary service, not defendant, was employer, where defendant submitted evidence that plaintiff was working at defendant's premises on day of accident under defendant's supervision, and defendant was neither given notice of, nor participated in, board's hearing on issue. *Heifetz v Metropolitan Jewish Geriatric Center*, 135 A.D.2d 498, 521 N.Y.S.2d 739, 1987 N.Y. App. Div. LEXIS 52458 (N.Y. App. Div. 2d Dep't 1987).

In action to declare assignment of mortgage void on ground that defendant (plaintiff's former attorney) had caused forged assignment of mortgage to be recorded, assigning ? of plaintiff's interest in premises to defendant's wife and to his accountant, court properly granted defendant's motion for stay pending resolution of criminal prosecution arising from same transaction, to protect defendant's constitutional right against self-incrimination; moreover, prior determination of criminal action could have collateral estoppel effect in subsequent civil case, reducing scope of discovery and simplifying issues, and plaintiff failed to show that he would be prejudiced by stay. *De Siervi v Liverzani*, 136 A.D.2d 527, 523 N.Y.S.2d 147, 1988 N.Y. App. Div. LEXIS 317 (N.Y. App. Div. 2d Dep't 1988).

Motion court properly denied individual and corporate defendants' applications for protective order and for stay of civil proceedings, and properly directed that they appear for examination before trial subject to individual defendants' right at that time to invoke privilege against self-incrimination, even though criminal investigation apparently was under way at time motion for stay was made, where no criminal actions were pending against them; however, even if criminal

action were pending, court was not obligated to stay civil matter. *Stuart v Tomasino*, 148 A.D.2d 370, 539 N.Y.S.2d 327, 1989 N.Y. App. Div. LEXIS 3858 (N.Y. App. Div. 1st Dep't 1989).

Court properly granted stay of civil action brought by employer against former bookkeeper for alleged conversion of sums from employer's checking account where related criminal action had been brought in which bookkeeper was charged with 2 counts of second degree grand larceny. *Zonghetti v Jeromack*, 150 A.D.2d 561, 541 N.Y.S.2d 235, 1989 N.Y. App. Div. LEXIS 7043 (N.Y. App. Div. 2d Dep't 1989).

Court should have granted defense motion to stay proceedings under CLS CPLR § 2201 pending determination of litigation in Great Britain where actions pending in Great Britain derived from same transactions as instant action, conduct complained of occurred primarily in London, and majority of witnesses and documents pertaining to case were in London. *American Marine Ins. Group. v Price Forbes, Ltd.*, 166 A.D.2d 263, 560 N.Y.S.2d 638, 1990 N.Y. App. Div. LEXIS 11928 (N.Y. App. Div. 1st Dep't 1990).

Personal injury action of injured worker was properly stayed, pending hearing before Workers' Compensation Board, where injured worker was employed by Human Resources Administration (HRA), he had been loaned out as job developer to South Bronx Development Organization (SBDO), he was injured while working for SBDO, he filed workers' compensation claim and informed board that HRA was sole employer, thereafter he sued SBDO for negligence, and SBDO raised affirmative defense that workers' compensation was plaintiff's sole remedy; factual issue of worker's status as "special employee" was within primary jurisdiction of board. *Rodriguez v South Bronx Dev. Organization*, 179 A.D.2d 545, 578 N.Y.S.2d 567, 1992 N.Y. App. Div. LEXIS 493 (N.Y. App. Div. 1st Dep't 1992).

In discovery proceeding brought by coexecutors of estate asserting claim to certain property stored in vault leased by company controlled by coexecutor's estranged husband (respondent), Surrogate properly denied respondent's motion to dismiss or stay proceeding on ground of pending matrimonial action between coexecutor and respondent, in which coexecutor asserted that property in vault had been acquired by her by gift or inheritance, since estate's claim of

ownership was based on events predating those that might give coexecutor superior right to equitable distribution over respondent, and neither estate nor lessee of vault were parties to matrimonial action. *Zabel v Karasik*, 184 A.D.2d 436, 585 N.Y.S.2d 399, 1992 N.Y. App. Div. LEXIS 8590 (N.Y. App. Div. 1st Dep't 1992).

In action by law firm to recover fee charged for legal services in which defendant counterclaimed for legal malpractice, court properly stayed action pending determination of underlying action by defendant out of which action arose, since doctrine of collateral estoppel could bar defendant from asserting legal malpractice in event law firm succeeded on claim for fee. *Tenzer, Greenblatt, Fallon & Kaplan v Ellenberg*, 199 A.D.2d 45, 604 N.Y.S.2d 947, 1993 N.Y. App. Div. LEXIS 11698 (N.Y. App. Div. 1st Dep't 1993).

Supreme Court properly stayed action to partition real property, inter alia, pending resolution of Surrogate's Court proceeding to settle interim account of administrator of estate, where determination of latter proceeding might dispose of issues in instant action. *Lupoli v Lupoli*, 205 A.D.2d 595, 613 N.Y.S.2d 423, 1994 N.Y. App. Div. LEXIS 6187 (N.Y. App. Div. 2d Dep't 1994).

It was error to grant motion to stay action to recover damages for nursing care services provided to defendant pending outcome of proceeding to determine claim for workers' compensation benefits filed by defendant where status of defendant's claim before Workers' Compensation Board had no bearing on plaintiff's right to seek recovery for services nursing home allegedly provided under written admission agreement, especially where plaintiff established that nursing home was not authorized to render medical care to compensation claimant and would be precluded from seeking payment under Workers' Compensation Law. *Ragin v Altman*, 205 A.D.2d 674, 613 N.Y.S.2d 646, 1994 N.Y. App. Div. LEXIS 6470 (N.Y. App. Div. 2d Dep't 1994).

Owner did not waive its right to seek stay of action by subcontractor to enforce mechanics' lien by moving for summary judgment with knowledge that general contractor had filed petition for bankruptcy. *Strober Bros. v Kitano Arms Corp.*, 224 A.D.2d 351, 638 N.Y.S.2d 90, 1996 N.Y. App. Div. LEXIS 1481 (N.Y. App. Div. 1st Dep't 1996).



In action under CLS CPLR § 3213 to enforce guarantee of promissory note, court properly granted defendant's motion to stay action on ground of another action pending involving plaintiff's status as holder in due course of note, which put in issue enforceability of note and guarantee sued upon. *Tinicum Fin. Corp. v Lorch*, 226 A.D.2d 214, 640 N.Y.S.2d 756, 1996 N.Y. App. Div. LEXIS 3891 (N.Y. App. Div. 1st Dep't 1996).

In action by bus passenger against bus company and others for personal injuries sustained when tour bus went out of control in snow storm, struck guardrail, and overturned, defendants were entitled to stay of action pending resolution of criminal prosecution of bus driver for vehicular homicide and assault by automobile where driver had given no deposition testimony, he intended to invoke his right of self-incrimination if called as witness, and defendants would be unable to assert competent defense without driver's critical testimony. *Britt v International Bus Servs., Inc.*, 255 A.D.2d 143, 679 N.Y.S.2d 616, 1998 N.Y. App. Div. LEXIS 11732 (N.Y. App. Div. 1st Dep't 1998).

In not-for-profit corporation's action seeking judgment declaring propriety of its use of immobilizing "boot" on vehicles parked without authorization on private streets it owned and maintained, its motion to stay further proceedings in more than 100 small claims actions brought against it by owners of "booted" vehicles would be denied since Supreme Court could not issue what amounted to blanket injunction staying so many such claims based on record; any such stay should emanate from Civil Court on case-by-case basis. *Forest Hills Gardens Corp. v Baroth*, 147 Misc. 2d 404, 555 N.Y.S.2d 1000, 1990 N.Y. Misc. LEXIS 226 (N.Y. Sup. Ct. 1990).

Although judgment creditor of husband would normally have right to execute against husband's interest in real property which was not marital abode but was owned by husband and wife as tenants by entireties, taking interest at Sheriff's sale as tenant-in-common with wife without right of partition and subject to her survivorship, in view of pending matrimonial action between husband and wife, wife would be granted 90-day stay of any such sale in which to obtain bona fide purchaser for premises at price in excess of mortgages and other encumbrances, with any excess to be held in escrow until disposition of equitable distribution issues. *BNY Financial*

Corp. v Moran, 154 Misc. 2d 435, 584 N.Y.S.2d 261, 1992 N.Y. Misc. LEXIS 246 (N.Y. Sup. Ct. 1992).

Housing corporation whose shares were owned by trust and corporate entities of husband's family was stayed from bringing any proceeding to evict wife from marital residence, where court in pending matrimonial action gave her exclusive occupancy. Wildenstein v Nineteen E. Sixty-Fourth St. Corp., 177 Misc. 2d 517, 676 N.Y.S.2d 846, 1998 N.Y. Misc. LEXIS 316 (N.Y. Sup. Ct. 1998).

Tenant was not entitled to stay of drug holdover proceeding pending prosecution of concomitant criminal action against him arising out of same incidents, despite his concern that going to trial in summary proceeding would force him to choose between preserving his Fifth Amendment privilege and losing his civil suit, because (1) even if he chose to testify at drug holdover proceeding, he might not be forced to give any incriminating answers, and he could offer exculpatory evidence, and (2) choice whether to testify in drug holdover trial or assert his Fifth Amendment privilege might be difficult, but it was not unconstitutional. 54 West 16th St. Apt. Corp. v Dawson, 179 Misc. 2d 264, 684 N.Y.S.2d 400, 1998 N.Y. Misc. LEXIS 637 (N.Y. Civ. Ct. 1998).

Motion to stay a contempt proceeding filed against a group of landowners who were ordered to correct the hazardous violations on their premises was denied where: (1) it was irrelevant whether one of the landowner's at issue was guilty of unlawful eviction for the court to determine whether the landowners collectively were in contempt for failing to carry out a court order; (2) the landowner at issue would provide different evidence in the contempt and criminal proceedings; (3) the landowners failed to proffer what the sole landowner's testimony might be for the contempt court to determine whether said testimony was critical or necessary; (4) the contempt court could not ascertain whether the sole landowner would assert his Fifth Amendment right in the contempt hearing; and (5) a prospective tenant would be prejudiced by a delay, as his right to possession would be affected by such a stay. Laracuenta v Mora, 784 N.Y.S.2d 921, 2 Misc. 3d 1012(A), 2004 N.Y. Misc. LEXIS 413 (N.Y. Sup. Ct. 2004).

Petitioner was entitled to a brief stay of the proceeding pending resolution of another case before the Third Department because the Court of Appeals rendered a decision that arguably could impact the Third Department's holding, oral argument in the Third Department had already occurred, the Third Department typically rendered its decisions within 30 to 45 days of argument, and the petitioner acknowledged that it could not prevail in the underlying proceeding unless the rationale in the Third Department's decision was overruled. *Matter of Level 3 Communications LLC v Essex County*, 54 Misc. 3d 291, 42 N.Y.S.3d 528, 2016 N.Y. Misc. LEXIS 4092 (N.Y. Sup. Ct. 2016).

## **8. —Federal proceedings**

Though a state action was for breach of contract, where the record revealed that the dominant issue was not construction of the contract but rather the validity of the patent on which the contract was based, as the licensee might avoid payment of all accrued royalties if it could prove the invalidity of the patent, the trial court, in the interest of comity, orderly procedure and uniformity, properly exercised its discretion in granting a stay and deferring to the United States Court in which an action involving the validity of the patent was pending. *Research Corp. v Singer-General Precision, Inc.*, 36 A.D.2d 987, 320 N.Y.S.2d 818, 1971 N.Y. App. Div. LEXIS 4099 (N.Y. App. Div. 3d Dep't 1971).

In reference to derivative suits brought in state court on behalf of corporation and companion derivative suits brought by different stockholders in federal court involving overlapping claims, judicial economy required that action be disposed of in one court, if at all possible, and that litigants and court should not be burdened with prosecuting, defending and adjudicating cases in two courts and accordingly, further proceedings in state court would be stayed pending disposition of federal court actions. *Wechsler v Exxon Corp.*, 55 A.D.2d 875, 390 N.Y.S.2d 111, 1977 N.Y. App. Div. LEXIS 10069 (N.Y. App. Div. 1st Dep't 1977).

Criteria to be applied to question of staying state suit in favor of similar federal suit include: whether state or federal forum is better suited to resolve all issues and whether state or federal

forum has greater expertise in trial of such issues. *Grand Cent. Bldg., Inc. v New York & H. R. Co.*, 59 A.D.2d 207, 398 N.Y.S.2d 888, 1977 N.Y. App. Div. LEXIS 13542 (N.Y. App. Div. 1st Dep't 1977).

In general, proceedings in state action will not be stayed while related action is pending in federal court, where it appears that the state action will have to be determined no matter how the federal case is decided. *Grand Cent. Bldg., Inc. v New York & H. R. Co.*, 59 A.D.2d 207, 398 N.Y.S.2d 888, 1977 N.Y. App. Div. LEXIS 13542 (N.Y. App. Div. 1st Dep't 1977).

In an action that was stayed pending the resolution of prior filed actions in Federal court, the trial court erred in dissolving the stay solely on the ground that more than five years had passed and the Federal actions were not yet resolved, since the stay expressly provided for its vacation upon a showing of prejudice, and demonstration of prejudice was made prior to the vacation, in that the condition attached to the prior order continued in effect. *Kwiatkowski v National Student Marketing Corp.*, 85 A.D.2d 559, 445 N.Y.S.2d 703, 1981 N.Y. App. Div. LEXIS 16350 (N.Y. App. Div. 1st Dep't 1981).

The court properly granted a stay in a state action between two companies involving allegedly fraudulent securities filings and other violations of the Securities and Exchange Act by one company in the acquisition of the other's stock, where a pending federal action on the same violations was the proper forum for disposition of the issues in the state action, and where the stay would allow time for the issuance of a preliminary injunction to prevent the acquisition of the complaining company by the other. *Reliance Ins. Co. v Tiger International, Inc.*, 91 A.D.2d 925, 457 N.Y.S.2d 813, 1983 N.Y. App. Div. LEXIS 16210 (N.Y. App. Div. 1st Dep't 1983).

A motion to stay actions to recover the sum claimed to be due on a contract, on the ground that some or all of the issues involved would be resolved in a federal court action brought in another jurisdiction, would be denied where plaintiff was not a party to the federal court action and would not be bound thereby and, although the issues to be litigated were similar, it was not certain that they would be identical and a stay pursuant to CPLR § 2201 requires complete identity of parties, causes of action and judgment sought. *Hope's Windows v Albro Metal Products Corp.*,

93 A.D.2d 711, 460 N.Y.S.2d 580, 1983 N.Y. App. Div. LEXIS 17538 (N.Y. App. Div. 1st Dep't), app. dismissed, 59 N.Y.2d 968, 1983 N.Y. LEXIS 5240 (N.Y. 1983), app. dismissed, 59 N.Y.2d 968, 1983 N.Y. LEXIS 5239 (N.Y. 1983).

Guarantor was entitled to stay of action seeking enforcement of guarantee agreement, pending outcome of similar consolidated federal action brought by other parties affecting guarantor's obligation under agreement, where (1) all necessary parties were joined in both state and federal actions, (2) guarantor stipulated to allowing parties in federal action to amend plea to include issues relating to guarantee agreement, (3) both actions involved same issues and presentation of proof, as well as same defenses by several parties including guarantor, (4) there was similarity of parties between both actions, and it was not necessary that parties in each action be identical or assume identical positions, (5) federal action was commenced first and federal court had expertise to adjudicate issues in state action in accordance with state law, and (6) stay avoided unnecessary risk of inconsistent adjudications as to defenses asserted by guarantor and other parties, duplication of proof, and consequent waste of judicial resources. *Goodridge v Fernandez*, 121 A.D.2d 942, 505 N.Y.S.2d 144, 1986 N.Y. App. Div. LEXIS 59044 (N.Y. App. Div. 1st Dep't 1986).

Action to recover balance due on promissory note was properly stayed pending outcome of federal class action suit where both obligee and guarantor on note were among defendants named in the federal suit, which alleged massive securities and other fraud and pattern of racketeering activity defrauding hundreds of investors, including maker of note, and where resolution of federal suit might encompass claim on note; nevertheless, undertaking would be required to protect obligee's right of recovery on note in event that its claim was not disposed of in federal suit. *Bank of New York v Levy*, 123 A.D.2d 589, 506 N.Y.S.2d 767, 1986 N.Y. App. Div. LEXIS 60740 (N.Y. App. Div. 2d Dep't 1986).

In contract action, Special Term abused its discretion in denying defendants' application, pursuant to CLS CPLR § 2201, for stay pending resolution of federal antitrust action commenced by defendants against plaintiff, where alleged violations of antitrust laws arose

directly out of contract provisions sought to be enforced in state action; state court will not enforce contract if it is found to be illegal under federal law. *Theatre Confections, Inc. v Andrea Theatres, Inc.*, 126 A.D.2d 969, 511 N.Y.S.2d 744, 1987 N.Y. App. Div. LEXIS 42082 (N.Y. App. Div. 4th Dep't 1987).

Court properly stayed plaintiff's action for judgment on personal guarantee executed by defendants pending outcome of earlier-commenced federal action in which defendants, inter alia, were seeking judgment declaring that guarantee was null and void for lack of consideration, and alternatively demanding money damages based on allegations that plaintiff fraudulently induced them to enter into guarantee agreement, since (1) parties in both actions were virtually identical, (2) issues overlapped, (3) more complete disposition could be obtained in federal action, and (4) imposition of stay would avoid risk of inconsistent adjudications, duplication of proof, and potential waste of judicial resources. *El Greco, Inc. v Cohn*, 139 A.D.2d 615, 527 N.Y.S.2d 256, 1988 N.Y. App. Div. LEXIS 4391 (N.Y. App. Div. 2d Dep't 1988).

Stay would be granted in Article 78 proceeding to challenge determination by Department of Social Services which denied application of petitioner's husband, who had since died, for retroactive medical assistance without first applying "resource spend-down" to determine his eligibility since federal class action, which included petitioner's husband as member of class, was pending; stay would continue until federal district court made determination on merits since federal action, being broader and more extensive than petitioner's proceeding, would provide more complete and appropriate disposition of underlying issues, and potential prejudice to department which would flow from inconsistent determinations outweighed any prejudice to petitioner as result of stay. *Howard on behalf of Howard v New York State Dep't of Social Services*, 142 A.D.2d 773, 530 N.Y.S.2d 665, 1988 N.Y. App. Div. LEXIS 7265 (N.Y. App. Div. 3d Dep't 1988).

In action by former shareholders of corporation to recover on notes executed by corporation which were amended and reissued in connection with shareholders' sale of corporation, it was error for court to grant stay under CLS CPLR § 2201 pending resolution of federal action by

purchaser of corporation, alleging violations of federal securities law and common-law fraud, although both actions involved same alleged fraudulent scheme, since purchaser of corporation was not party in state action to recover on corporation's notes, and there was no claim regarding reissued notes in federal action. *Abrams v Xenon Industries, Inc.*, 145 A.D.2d 362, 535 N.Y.S.2d 616, 1988 N.Y. App. Div. LEXIS 13336 (N.Y. App. Div. 1st Dep't 1988).

Court properly granted stay in action for fraud, misrepresentation, unjust enrichment, breach of contract and breach of warranty pending federal court's determination of plaintiffs' motion to reinstate federal RICO action based on same allegations; however, court erred in continuing stay after federal court denied motion for reinstatement, since interests of justice would not be served by further stay of action pending plaintiff's appeal from denial of reinstatement. *Gunn v Palmieri*, 158 A.D.2d 671, 552 N.Y.S.2d 129, 1990 N.Y. App. Div. LEXIS 2296 (N.Y. App. Div. 2d Dep't 1990).

Defendant's unsubstantiated allegations that general partner of plaintiff partnership was dominated and controlled by defendants in related federal action was insufficient to establish identity of issues or parties to warrant stay of action. *Bennell Hanover Assocs. v Neilson*, 215 A.D.2d 710, 627 N.Y.S.2d 439, 1995 N.Y. App. Div. LEXIS 5743 (N.Y. App. Div. 2d Dep't 1995).

Trial court properly granted that part of a cross motion of an operator and business entities for a stay of a civil action against them pending the resolution of a federal criminal proceeding against the operator; both the civil action and the pending criminal proceeding were sufficiently similar such that the goals of preserving judicial resources and preventing an inequitable result were properly served in granting a stay. *Burgdorf v Kasper*, 83 A.D.3d 1553, 921 N.Y.S.2d 769, 2011 N.Y. App. Div. LEXIS 3357 (N.Y. App. Div. 4th Dep't 2011).

While respondent, by the prior service of its answer, waived its right to move to dismiss the cause of action on the ground of another action pending between the same parties for the same cause of action in a federal court, respondent's motion would be treated as one for a stay under CPLR 2201, and granting a stay thereunder was clearly appropriate to the circumstances of all

the proceedings between the parties. *Theatre Confections, Inc. v Cate Enterprises*, 87 Misc. 2d 155, 385 N.Y.S.2d 237, 1976 N.Y. Misc. LEXIS 2177 (N.Y. J. Ct. 1976).

Proceeding to compel religious organization and its founder to comply with subpoena issued by Attorney General in connection with investigation of fraudulent charitable solicitations would not be stayed, nor would Attorney General be enjoined from continuing investigation on ground of another action pending between parties in federal district court, since district court had deferred to Supreme Court issues raised by organization and its founder. *Abrams v Temple of Lost Sheep, Inc.*, 148 Misc. 2d 825, 562 N.Y.S.2d 322, 1990 N.Y. Misc. LEXIS 557 (N.Y. Sup. Ct. 1990).

In products liability action in which federal court assigned, to state court, responsibility of supervising pretrial proceedings for all silicone breast implant cases filed in New York, state court ordered severance of claims for local and systemic injuries pursuant to CLS CPLR § 603, and stay of litigation of systemic injury claims pursuant to CLS CPLR § 2201 pending federal panel's review of scientific studies and research, as claims for local injuries and for systemic diseases were distinct claims that could be tried separately, and severance would further convenience by allowing management of state court's docket. *In re New York State Silicone Breast Implant Litig.*, 171 Misc. 2d 980, 656 N.Y.S.2d 97, 1997 N.Y. Misc. LEXIS 102 (N.Y. Sup. Ct. 1997).

Since the port authority's claims in regard to the corporation's lease of a pier that were before the Federal Maritime Commission (FMC) and the court were so inextricably intertwined that a decision by the FMC would effectively dispose of the issues before the court, the court stayed the proceeding. *Port Auth. of N.Y. & N.J. v American Warehousing of N.Y., Inc.*, 794 N.Y.S.2d 839, 7 Misc. 3d 515, 2005 N.Y. Misc. LEXIS 302 (N.Y. Civ. Ct. 2005).

## **9. — —Bankruptcy proceedings**

Proceeding by corporate lessee against two railroads and corporation acting as lessor on their behalf seeking declaratory relief as to identity of its lessor and interpretation of its rights and



duties beginning with lease year ending April 30, 1972 would not be stayed in favor of federal bankruptcy suit in Pennsylvania involving one of railroads in which stipulation of jurisdiction ran through April 1972 where other defendants were not parties to bankruptcy, required expertise to apply New York law to New York real estate transactions and contractor relationships was present in New York forum, and matters involved in state proceeding were not involved in bankruptcy proceeding. *Grand Cent. Bldg., Inc. v New York & H. R. Co.*, 59 A.D.2d 207, 398 N.Y.S.2d 888, 1977 N.Y. App. Div. LEXIS 13542 (N.Y. App. Div. 1st Dep't 1977).

In an action by a purchaser of timber against the general partners of a partnership that owned the land on which the timber was situated and the partnership's attorney for breach of written contract for the sale of timber, it was improper to dismiss the complaint on the ground that the action was stayed by the Bankruptcy Rules since the partnership was in bankruptcy and not the individual named defendants and the partnership was not a party to the plaintiff's action. The action would be stayed, however, pending further proceedings in Bankruptcy Court where the resolution of the action was predicated on the Bankruptcy Court's determination of the extent, if any, of the partnership's contractual obligations and liability and the extent to which the partnership assets could satisfy the plaintiff's claims. *Pine Plains Lumber Corp. v Messina*, 78 A.D.2d 271, 435 N.Y.S.2d 381, 1981 N.Y. App. Div. LEXIS 9631 (N.Y. App. Div. 3d Dep't 1981).

In two actions to foreclose mechanic's and public improvement liens and to enforce a trust the court improperly denied defendant's motion to stay all proceedings in the actions pending determination of a bankruptcy proceeding pending in a United States Bankruptcy Court and the matter would be remitted to the trial court for a hearing to determine the present status of the related bankruptcy proceeding and whether a stay of the actions would be proper at this time, where the record furnished the court on appeal was inadequate in that except for the sworn statements of counsel it was bereft of any verified documentation detailing the extent, nature, character and status of the related bankruptcy proceeding, such as copies of the bankruptcy petition or any orders of the Bankruptcy Court relating thereto, and where defendant alleged in its motion papers and in its reply brief on appeal that the trustee in bankruptcy was in the

process of liquidating the assets of a codefendant and that he would soon commence an action to resolve the interests of the various parties. *American Air Filter Co. v Nassau County Industrial Development Agency*, 89 A.D.2d 919, 453 N.Y.S.2d 769, 1982 N.Y. App. Div. LEXIS 18103 (N.Y. App. Div. 2d Dep't 1982).

Pendency of general contractor's bankruptcy proceeding did not entitle owner to stay of subcontractor's action to enforce mechanics' lien since general contractor was not necessary party to foreclosure action. *Strober Bros. v Kitano Arms Corp.*, 224 A.D.2d 351, 638 N.Y.S.2d 90, 1996 N.Y. App. Div. LEXIS 1481 (N.Y. App. Div. 1st Dep't 1996).

Action alleging that attorney committed malpractice by failing to file claim with Bankruptcy Court after defendant in underlying action filed for bankruptcy was stayed until plaintiff's rights in bankruptcy proceeding, and his contingent right to prosecute underlying action, were finally settled. *Stettner v Bendet*, 227 A.D.2d 202, 642 N.Y.S.2d 253, 1996 N.Y. App. Div. LEXIS 4983 (N.Y. App. Div. 1st Dep't 1996).

Court properly denied defendants' motion to stay personal injury action against lessor and driver of offending vehicle, despite bankruptcy proceeding against lessee of vehicle and lease agreement requiring lessee to indemnify lessor for first \$250,000 of any liability arising from accident involving vehicle, since lessor's potential liability, which stemmed from its ownership of vehicle, was independent of any contractual obligation nonparty lessee may have to indemnify lessor, and should not be affected by bankruptcy. *Alleyne v Penske Truck Leasing Corp.*, 235 A.D.2d 372, 653 N.Y.S.2d 19, 1997 N.Y. App. Div. LEXIS 699 (N.Y. App. Div. 1st Dep't 1997).

A motion for a stay would be denied, notwithstanding that the automatic stay provisions of the bankruptcy law, 11 USCS § 362(a) clearly prohibit plaintiffs' personal injury action to continue as against the bankrupt defendant, since nothing in the statute precludes the action from going forward as against solvent codefendants who are allegedly joined to tortfeasors, in that to conclude otherwise would permit a solvent codefendant to use the statute as a shield which was created not to protect him but primarily the debtor, and secondarily, the creditors of the

bankrupt. *Friend v Dibble*, 124 Misc. 2d 151, 475 N.Y.S.2d 765, 1984 N.Y. Misc. LEXIS 3165 (N.Y. Sup. Ct. 1984).

Pursuant to CLS CPLR § 2201, consolidated turnover and CLS CPLR § 5239 proceeding involving escrowed funds was stayed during pendency of bankruptcy proceeding in which bankruptcy trustee asserted that escrowed funds were property of debtor or debtor's estate, as there was substantial identity with respect to overlapping issues, parties and relief requested. *Pappas v Freund*, 172 Misc. 2d 466, 660 N.Y.S.2d 302, 1997 N.Y. Misc. LEXIS 206 (N.Y. Sup. Ct. 1997).

Although an insured's affiliate, which with the insured had potential asbestos liability, had filed a voluntary petition in bankruptcy, and although the insured had filed an adversary action in the bankruptcy court with regard to the claims and the liability of its insurers to pay those claims, a state court nevertheless erred in issuing a stay of the insurers' declaratory judgment action in state court. The case in bankruptcy court would not have decided all of the issues of coverage, the stay was in effect a ruling that the coverage issues were not presently justiciable, which was erroneous, and the asbestos liability exposure in the bankruptcy court itself even demonstrated that the coverage dispute between the insurers and the insured raised a presently justiciable controversy that should not have been stayed. *Mt. McKinley Ins. Co. v Corning Inc.*, 33 A.D.3d 51, 818 N.Y.S.2d 73, 2006 N.Y. App. Div. LEXIS 8525 (N.Y. App. Div. 1st Dep't 2006).

As the non-debtor doctors fails to sustain their burden of demonstrating grounds to stay a malpractice action based on the bankruptcy filing of a medical center which was also sued, their application for a stay of the proceedings was denied. *Brash v Richards*, 910 N.Y.S.2d 346, 30 Misc. 3d 436, 2010 N.Y. Misc. LEXIS 5183 (N.Y. Sup. Ct. 2010), transferred, 87 A.D.3d 556, 929 N.Y.S.2d 745, 2011 N.Y. App. Div. LEXIS 6090 (N.Y. App. Div. 2d Dep't 2011).

## **10. —Sister state proceedings**

In action alleging interference with employment contract, defendants were entitled to stay of proceedings pending disposition of prior Connecticut action which defendants brought against

plaintiff where favorable ruling in Connecticut action for defendants would, in all likelihood, establish truth of alleged statements and thus undermine plaintiff's action; fact that there was complete identity of parties and issues between New York and Connecticut actions only in first cause of action of plaintiff's that had been previously dismissed, not in plaintiff's viable and related second cause of action, was not sufficient to deny stay since substantial, not complete, identity of parties is all that is required to invoke CLS CPLR § 3211, and essential identity of parties in second cause of action remained intact. *Graham v Dim-Rosy U.S.A. Corp.*, 128 A.D.2d 417, 512 N.Y.S.2d 700, 1987 N.Y. App. Div. LEXIS 44124 (N.Y. App. Div. 1st Dep't 1987).

Texas resident was entitled to stay of surety's New York action against him to recover payments under financial guarantee bond, pending resolution of Texas action on underlying note, where plaintiffs in Texas action alleged that surety had actual notice of impairment of collateral which secured note, and sought estoppel of any recovery by surety; surety had engaged Texas counsel to litigate claims against it in Texas action, and convenience and judicial economy would be better served if its claim against Texas resident were filed as counterclaim there. *National Union Fire Ins. Co. v Weir*, 131 A.D.2d 380, 517 N.Y.S.2d 141, 1987 N.Y. App. Div. LEXIS 47859 (N.Y. App. Div. 1st Dep't 1987).

General contractor's action against subcontractor, commenced in New York, would be stayed pending outcome of subcontractor's North Carolina action where general contractor answered North Carolina complaint and asserted counterclaim which duplicated its subsequently-served New York complaint; should revival of New York action prove necessary, subcontractor would be free to renew its motion to dismiss for lack of personal jurisdiction. *George Hyman Constr. Co. v Precision Walls, Inc.*, 132 A.D.2d 523, 517 N.Y.S.2d 263, 1987 N.Y. App. Div. LEXIS 49053 (N.Y. App. Div. 2d Dep't 1987).

Plaintiffs were not entitled to stay as to 6 of 9 defendants named in medical malpractice action in New York who were not parties in action brought in New Jersey based on same incident, and where decision in New Jersey action would not determine all questions in New York action;

however, as to 3 defendants named in both lawsuits, stay of action pending resolution of New Jersey matter would be appropriate. *Hollendonner v Kiem*, 138 A.D.2d 230, 525 N.Y.S.2d 43, 1988 N.Y. App. Div. LEXIS 1937 (N.Y. App. Div. 1st Dep't 1988).

Shareholders' action against investment bankers for faulty advice to directors in connection with stock auction should be decided in New York, notwithstanding pendency in Delaware of prior, fairly well-advanced, "highly related" action instituted by same shareholders against directors, where (1) shareholders preferred New York due to right to jury trial and potential for class action certification, (2) action was governed by New York substantive law, (3) New York was bankers' residence, (4) advice was given in New York, (5) loss of potential procedural economies from consolidation could be hedged with stay of New York action pending outcome of Delaware case, and (6) even if Delaware action did not have significant preclusive effect on shareholders in New York action, loss of procedural economies would simply be price of federal system when more than one jurisdiction has significant contacts with single transaction. *Schneider v Lazard Freres & Co.*, 159 A.D.2d 291, 552 N.Y.S.2d 571, 1990 N.Y. App. Div. LEXIS 2698 (N.Y. App. Div. 1st Dep't 1990).

Shareholders' action against investment bankers for negligently advising directors on value of bids for stock, and for not advising them to seek additional bids, would be stayed due to possibility of collateral estoppel in related Delaware action by same shareholders against directors where (1) even though issue in Delaware was whether bankers' valuation was "implausible," court might go further and determine valuation not only plausible but correct, (2) Delaware court might decide that auction was effective in obtaining highest possible price, thus undermining argument that additional bids should have been invited, and (3) shareholders might obtain injunction in Delaware, making money relief sought in New York superfluous. *Schneider v Lazard Freres & Co.*, 159 A.D.2d 291, 552 N.Y.S.2d 571, 1990 N.Y. App. Div. LEXIS 2698 (N.Y. App. Div. 1st Dep't 1990).

Executors, who coincidentally filed Delaware lawsuit seeking settlement of testamentary trust accounting, were not entitled to stay of voluntary accounting proceeding in Surrogate's Court

pending resolution of Delaware action since New York State Attorney General, who filed objections to executors' accounting, was not named as party in Delaware action, and Surrogate could dispose of all issues in controversy whereas Delaware complaint concerned only part of objections and would only cause delay and unnecessary expense. *In re Bozorth*, 161 A.D.2d 405, 555 N.Y.S.2d 131, 1990 N.Y. App. Div. LEXIS 5385 (N.Y. App. Div. 1st Dep't 1990).

Court would stay action, but would not dismiss it, where plaintiff had brought similar action in Florida, in which defendant had raised 5-year statute of limitations, and plaintiff had commenced New York action, in which statute of limitations was 6 years, to protect its right to pursue claim in New York. *SafeCard Servs. v American Express Travel Related Servs. Co.*, 203 A.D.2d 65, 610 N.Y.S.2d 23, 1994 N.Y. App. Div. LEXIS 3589 (N.Y. App. Div. 1st Dep't 1994).

Action on behalf of financing banks against guarantors of contract to build electric cogeneration facility in North Carolina, for damages arising from contractor's alleged breach of construction contract, was stayed pending North Carolina arbitration panel's resolution of issue of whether contractor defaulted in performance under construction contract; controversy would be determined by outcome of arbitration proceeding, notwithstanding plaintiff's argument that financing banks' rights under guaranties were distinct from their rights under construction contract, that arbitration provision of contract was inapplicable to guaranties, and that financing banks were not parties to arbitration. *Bank of Tokyo-Mitsubishi v Kvaerner a.s.*, 243 A.D.2d 1, 671 N.Y.S.2d 905, 1998 N.Y. App. Div. LEXIS 3796 (N.Y. App. Div. 1st Dep't 1998).

Defendant was entitled to stay of New York declaratory judgment action where sole issue presented was whether Missouri court had personal jurisdiction in defendant's breach of contract action pending in Missouri, since that issue had been determined by Missouri court and would be finally decided following appropriate review in that state. *Kubricky Constr. Corp. v Bucon Inc.*, 282 A.D.2d 796, 722 N.Y.S.2d 823, 2001 N.Y. App. Div. LEXIS 3447 (N.Y. App. Div. 3d Dep't 2001).

Motion to stay civil action for fraud as against particular defendant would be granted pending resolution of related criminal case in New Jersey against defendant's principals, since discovery

would not be possible under circumstances where principals would invoke their Fifth Amendment rights while extensive indictment against them was extant. *Banco Nacional Ultramarino, S.A. v Chan*, 169 Misc. 2d 182, 641 N.Y.S.2d 1006, 1996 N.Y. Misc. LEXIS 133 (N.Y. Sup. Ct. 1996), *aff'd*, 240 A.D.2d 253, 659 N.Y.S.2d 734, 1997 N.Y. App. Div. LEXIS 6510 (N.Y. App. Div. 1st Dep't 1997).

## **11. Vacating or lifting stay**

Stay of legal malpractice action would be vacated where (1) action was filed in 1984, (2) action was stayed in 1986 on ground that defendant attorneys' insurer had been placed under supervision by Pennsylvania Department of Insurance, (3) in early 1988, motion to vacate stay was denied pending soon-expected expiration of suspension of insurer, and (4) expiration of insurer did not occur; stay was no longer predicated upon such terms as may be just within meaning of CLS CPLR § 2201 and passage of time threatened to make it impossible for plaintiffs to reconstruct facts necessary to prove their case. *Haenel v November & November*, 144 A.D.2d 298, 534 N.Y.S.2d 176, 1988 N.Y. App. Div. LEXIS 11246 (N.Y. App. Div. 1st Dep't 1988).

Motion to vacate stay on grounds that it is no longer serving ends of justice may be made at any time while stay remains in effect. *Blittner v Filroben Assoc.*, 183 A.D.2d 645, 584 N.Y.S.2d 46, 1992 N.Y. App. Div. LEXIS 7357 (N.Y. App. Div. 1st Dep't 1992).

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

### **12. Generally**

Where the issues in an action against a temporary administrator are in no way related to the issues in a will contest, it is error to stay such action pending the determination of the will contest. *Croker v New York Trust Co.*, 206 A.D. 11, 200 N.Y.S. 103, 1923 N.Y. App. Div. LEXIS 7136 (N.Y. App. Div. 1923).

Courts have inherent power to stay a proceeding where a former attorney of a party subsequently represents his adversary. *Feldman v Bernham*, 6 A.D.2d 498, 179 N.Y.S.2d 881, 1958 N.Y. App. Div. LEXIS 4128 (N.Y. App. Div. 1st Dep't 1958), *aff'd*, 7 N.Y.2d 772, 194 N.Y.S.2d 41, 163 N.E.2d 145, 1959 N.Y. LEXIS 993 (N.Y. 1959).

Defendant was entitled to a stay of action where plaintiff, having been permitted to amend complaint to claim increased damages for alleged brain injury, asserted physician-patient privilege and refused to permit defendant to inspect her hospital records or to examine her doctor with respect to injuries claimed. *Kruger v Holland Furnace Co.*, 12 A.D.2d 44, 208 N.Y.S.2d 285, 1960 N.Y. App. Div. LEXIS 6673 (N.Y. App. Div. 2d Dep't 1960).

Mere priority in action is insufficient to entitle prior plaintiff to stay subsequent action against him. *Burke v Betts*, 214 N.Y.S. 208, 126 Misc. 601, 1926 N.Y. Misc. LEXIS 619 (N.Y. Sup. Ct. 1926).

All proceedings stayed until attorney for plaintiff produced evidence of authority to institute the action. *O. G. Orr & Co. v Fireman's Fund Ins. Co.*, 253 N.Y.S. 2, 141 Misc. 330, 1931 N.Y. Misc. LEXIS 1749 (N.Y. Sup. Ct. 1931), *rev'd*, 235 A.D. 1, 256 N.Y.S. 79, 1932 N.Y. App. Div. LEXIS 7864 (N.Y. App. Div. 1932).

Independently of statute it has been held in the Second Department that the court in the exercise of discretion may consolidate actions or stay one or more actions pending determination of other actions and the rule in respect of postponing one action until after trial of another is one of convenience and order in practice and not always one of strict right. *Goldstein v Goldstein*, 13 Misc. 2d 1084, 178 N.Y.S.2d 555, 1958 N.Y. Misc. LEXIS 2762 (N.Y. Sup. Ct. 1958).

In action on account by distributor of books against publisher, latter's application to stay all proceedings until determination of pending federal anti-trust suits, one by federal government and one by publisher, was denied, because mere fact that issues in defendant's anti-trust action stand to be affected by findings in government suit does not constitute necessary identity of issues between instant action and government suit, which is prerequisite to stay order. *American*



News Co. v Avon Publishing Co., 140 N.Y.S.2d 533, 1955 N.Y. Misc. LEXIS 3161 (N.Y. Sup. Ct. 1955).

### **13. Action in another court**

Where in an action for divorce in Supreme Court a reference was had upon plaintiff's motion for a new trial on condition that she give bond to pay the cost of reference, and following confirmation of the referee's report against a new trial defendant sued upon the bond in Municipal Court, the Supreme Court was without power to stay proceedings in the Municipal Court, the proper procedure being either a motion to stay in the Municipal Court, or an action for injunction against the prosecution of the action in the Municipal Court. *Thorne v Thorne*, 203 A.D. 786, 197 N.Y.S. 377, 1922 N.Y. App. Div. LEXIS 7303 (N.Y. App. Div. 1922).

Stay of action by State against contractor and surety for breach of contract until determination of subsequent claim by contractor in Court of Claims denied. *People v C. & W. Const. Co.*, 246 A.D. 373, 286 N.Y.S. 51, 1936 N.Y. App. Div. LEXIS 9505 (N.Y. App. Div. 1936).

Plaintiff's action for goods sold and delivered instituted in New York court was not stayed because plaintiff had interposed counterclaim for same relief in action instituted by defendant in federal court. *Admiral Corp. v Reines Distributors, Inc.*, 9 A.D.2d 410, 194 N.Y.S.2d 932, 1959 N.Y. App. Div. LEXIS 5233 (N.Y. App. Div. 3d Dep't 1959), *aff'd*, 8 N.Y.2d 773, 201 N.Y.S.2d 784, 168 N.E.2d 118, 1960 N.Y. LEXIS 1300 (N.Y. 1960).

State court will not as a matter of law restrain a party to an action pending therein from taking a deposition or otherwise proceeding with or in a federal court action. *Star Constr. Corp. v St. Paul Fire & Marine Ins. Co.*, 12 A.D.2d 738, 209 N.Y.S.2d 82, 1961 N.Y. App. Div. LEXIS 13387 (N.Y. App. Div. 1st Dep't 1961).

Proceedings to settle intermediate accounts of trustees of inter vivos trusts were stayed pending construction of settlor's will by court of domiciliary state of deceased settlor as to whether such trusts should bear their pro rata share of death taxes, since identical issue was involved in New

York proceeding, and New York courts, though not bound by the foreign decision, will generally follow such decision as to will construction. *In re Huntington's Trust*, 14 A.D.2d 312, 220 N.Y.S.2d 664, 1961 N.Y. App. Div. LEXIS 8381 (N.Y. App. Div. 1st Dep't 1961).

Defendant's motion to stay action pending determination of companion suit in federal court was denied where both actions were in the preliminary stages prior to joinder of issue, and defendant had refused to stipulate for stay of federal action, preferring to litigate in federal court. *Ackert v Ausman*, 29 Misc. 2d 974, 218 N.Y.S.2d 814, 1961 N.Y. Misc. LEXIS 2864 (N.Y. Sup. Ct. 1961).

In action on account by distributor of books against publisher, latter's application to stay all proceedings until determination of pending federal anti-trust suits, was denied, where there was no showing that trials of instant and federal actions are imminent and that publisher has prosecuted his federal action with diligence. *American News Co. v Avon Publishing Co.*, 140 N.Y.S.2d 533, 1955 N.Y. Misc. LEXIS 3161 (N.Y. Sup. Ct. 1955).

In action on account by distributor of books against publisher, latter's application to stay all proceedings until determination of pending federal anti-trust suits is premature before answer; until his answer is interposed and its validity sustained against possible attack by plaintiff, there can be no assurance of such identity of issues as may in exercise of proper discretion justify stay of one action until another be tried. *American News Co. v Avon Publishing Co.*, 140 N.Y.S.2d 533, 1955 N.Y. Misc. LEXIS 3161 (N.Y. Sup. Ct. 1955).

Where action in New York court is to recover unpaid royalties under licensing agreement and federal court action is to declare invalidity of such agreement, and where there are common issues in both actions, basic issue which would be determinative of issues in New York court should be left for federal court. *Cye, Haberdashers, Inc. v Crummins*, 142 N.Y.S.2d 682, 1955 N.Y. Misc. LEXIS 3519 (N.Y. Sup. Ct.), *aff'd*, 286 A.D. 1077, 146 N.Y.S.2d 668, 1955 N.Y. App. Div. LEXIS 5213 (N.Y. App. Div. 1955).

Application by defendants to stay proceeding in New York court pending determination of federal court action is addressed to court's discretion. *Cye, Haberdashers, Inc. v Crummins*, 142

N.Y.S.2d 682, 1955 N.Y. Misc. LEXIS 3519 (N.Y. Sup. Ct.), aff'd, 286 A.D. 1077, 146 N.Y.S.2d 668, 1955 N.Y. App. Div. LEXIS 5213 (N.Y. App. Div. 1955).

In absence of clear showing of inherent illegality, stay of state court action for unpaid balance of account, on ground that federal court action for anti-trust violation, is unwarranted; and, even then, should be granted only if deemed justified after due consideration of all relevant factors. *American News Co. v Avon Publishing Co.*, 152 N.Y.S.2d 575, 1956 N.Y. Misc. LEXIS 2535 (N.Y. Sup. Ct.), aff'd, 1 A.D.2d 1005, 153 N.Y.S.2d 535, 1956 N.Y. App. Div. LEXIS 5240 (N.Y. App. Div. 1st Dep't 1956).

#### **14. Parties**

Where two actions, instituted by different plaintiffs, seeking to collect the same moneys, are pending against a defendant who does not admit liability, and all the plaintiffs are parties to one of the actions, the other action will be stayed pending determination of the one in which all are parties. *Lieberman v Manfred Amusement Co.*, 211 A.D. 860, 206 N.Y.S. 875, 1924 N.Y. App. Div. LEXIS 8416 (N.Y. App. Div. 1924).

Action for partition of real estate of decedent will not be stayed pending disposition of alleged will of decedent in probate proceedings, merely because all necessary and proper parties had not been named defendants, since ample provision exists for bringing in all who have any possible interest in the matter. *St. John v Putnam*, 220 N.Y.S. 141, 128 Misc. 714, 1927 N.Y. Misc. LEXIS 809 (N.Y. Sup. Ct. 1927).

Where action based upon accident is commenced by one of defendants against remaining two defendants in Queens County such action may be stayed until present action brought by insurance company for declaratory judgment decided and such stay not unnecessary and unfair, multiplicity of actions will be avoided and rights of all interested parties best protected by staying the action. *Westchester Fire Ins. Co. v Lipsky*, 9 Misc. 2d 390, 170 N.Y.S.2d 566, 1958 N.Y. Misc. LEXIS 4060 (N.Y. Sup. Ct. 1958).

An insurance carrier although not technically a formal party is entitled to a stay of proceedings until determination of its action in federal court for declaratory judgment to determine its obligation with respect to the defense of its insured but stay granted upon condition that the insurance carrier defend if declaratory judgment action is decided against it. *Goldstein v Goldstein*, 13 Misc. 2d 1084, 178 N.Y.S.2d 555, 1958 N.Y. Misc. LEXIS 2762 (N.Y. Sup. Ct. 1958).

In action on account by distributor of books against publisher, latter's application to stay all proceedings until determination of pending federal civil anti-trust suit by government was denied, where defendant is not party to said suit and where allegations of government's complaint do not refer to any transactions alleged in instant action. *American News Co. v Avon Publishing Co.*, 140 N.Y.S.2d 533, 1955 N.Y. Misc. LEXIS 3161 (N.Y. Sup. Ct. 1955).

## **15. Counterclaim**

Where there was summary judgment for that part of plaintiff's claim not covered by a counterclaim, plaintiff was restrained from taking further action until hearing upon the counterclaim, upon defendant giving a bond for the amount of the judgment. *Dairymen's League Co-op. Ass'n v Egli*, 228 A.D. 164, 239 N.Y.S. 152, 1930 N.Y. App. Div. LEXIS 12127 (N.Y. App. Div. 1930).

Action will not be stayed, merely because the plaintiff therein, had he so desired, might have set up the cause of action alleged in his complaint as a counterclaim in a prior action commenced by defendant, since it is only where a decision in the action sought to be continued would finally determine all questions presented in the other action that a proper case for stay is presented. *Burke v Betts*, 214 N.Y.S. 208, 126 Misc. 601, 1926 N.Y. Misc. LEXIS 619 (N.Y. Sup. Ct. 1926).

## **16. Appeal from dismissal**

Where an appeal had been taken from judgment of dismissal, the court properly stayed the turning over of money in dispute pending the outcome of the appeal. *Hoffstadt v Copeland*, 230 A.D. 85, 243 N.Y.S. 567, 1930 N.Y. App. Div. LEXIS 8551 (N.Y. App. Div. 1930).

### **17. Defensive steps**

Defensive steps, taken by party against whom stay of all proceedings is operative, are not regarded as within bar of stay. *Marco v Sachs*, 1 A.D.2d 849, 149 N.Y.S.2d 440, 1956 N.Y. App. Div. LEXIS 6197 (N.Y. App. Div. 2d Dep't 1956).

### **18. Examination before trial**

Order staying all proceedings included examination before trial. *Thomson & McKinnon v Filactos*, 148 N.Y.S.2d 470, 1956 N.Y. Misc. LEXIS 2288 (N.Y. App. Term 1956).

### **19. Examination of witnesses**

Order staying a foreign corporation from proceeding until an examination of witnesses could be had, not justified by the facts and circumstances shown. *National Bank of North Hudson v Kennedy*, 223 A.D. 680, 229 N.Y.S. 323, 1928 N.Y. App. Div. LEXIS 6292 (N.Y. App. Div. 1928).

### **20. Derivative action against corporation**

The prosecution of a class or a representative action subsequently brought will be enjoined as a matter of right only upon the entry of judgment in the first action. *Pollak v Long Island Lighting Co.*, 246 A.D. 765, 283 N.Y.S. 913, 1935 N.Y. App. Div. LEXIS 10099 (N.Y. App. Div. 1935).

A derivative action against a corporation commenced in New York will be stayed without prejudice where it has not been noticed for trial and where a similar action by another minority stockholder instituted in Delaware two days later has been completely tried, and where there is

no proof of inadequate prosecution or bad faith in the Delaware action. *Levy v Pacific Eastern Corp.*, 277 N.Y.S. 659, 154 Misc. 655, 1935 N.Y. Misc. LEXIS 990 (N.Y. Sup. Ct. 1935).

## **21. Settlement of case on appeal**

The trial court is without power to hold the settlement of a defendant's case on appeal "in abeyance" until he shall comply with the terms of the judgment and the order for a counsel fee. *Allen v Allen*, 243 A.D. 526, 275 N.Y.S. 584, 1934 N.Y. App. Div. LEXIS 5726 (N.Y. App. Div. 1934).

## **22. Non-payment of costs.**

Non-payment of costs in an action entitles the defendant in whose favor they are awarded to stay all proceedings in a subsequent action brought by the same plaintiff upon the same cause of action. *Robbins v Rogers*, 247 A.D. 603, 288 N.Y.S. 127, 1936 N.Y. App. Div. LEXIS 8330 (N.Y. App. Div. 1936).

The nonpayment of costs in an action entitled the defendant in whose favor they are awarded to stay all proceedings in a subsequent action brought by the same plaintiff on the same cause of action, unless there be special facts and circumstances presented which show that it would be unjust and inequitable to apply the general rule. *Dichter v Wolf Housing Corp.*, 267 N.Y.S. 790, 149 Misc. 660, 1933 N.Y. Misc. LEXIS 1723 (N.Y. City Ct. 1933).

## **23. Execution**

Pending tenant's application to vacate stipulation authorizing issuance of warrant of eviction at specified time, court may allow discretionary stay pending determination of application. *Application of Freedman*, 87 N.Y.S.2d 377, 194 Misc. 708, 1949 N.Y. Misc. LEXIS 1933 (N.Y. Sup. Ct. 1949).

An action for breach of contract marked “confidential” by army would not be dismissed or stayed where affirmative defense alleged that subject matter involves national security, but pretrial examinations, depositions, discoveries and inspections may be had, and appropriate postponements of trial may be directed by court. *Ticon Corp. v Emerson Radio & Phonograph Corp.*, 134 N.Y.S.2d 716, 206 Misc. 727, 1954 N.Y. Misc. LEXIS 2817 (N.Y. Sup. Ct. 1954).

Execution on money judgment on counterclaim should not be stayed on giving bond, to enable party to bring new action for similar relief. *Kalesh v Antebi*, 71 N.Y.S.2d 771, 1947 N.Y. Misc. LEXIS 2626 (N.Y. App. Term 1947).

Where there was no proof of compliance with order as to filing surety bond, stay was denied. *Wesling v Solovey*, 93 N.Y.S.2d 618 (N.Y. App. Div.), dismissed, 93 N.Y.S.2d 715 (N.Y. App. Div. 1949).

#### **24. Stay of equitable action pending determination of action at law**

Wife’s subsequent action against husband and another for declaration that she was his legal wife and that defendants’ marriage was void was stayed since a determination in her favor in her pending separation action would resolve the issues raised. *Hunter v Hunter*, 10 A.D.2d 937, 201 N.Y.S.2d 961, 1960 N.Y. App. Div. LEXIS 9664 (N.Y. App. Div. 1st Dep’t 1960).

Where insurer commenced action in equity for cancellation of policies and the beneficiary subsequently brought an action at law in the same court to recover on the policies and motions were filed to stay trial of either action pending determination of the other, a motion to stay the equitable action was properly granted. *Mutual Life Ins. Co. v Marzec*, 262 N.Y.S. 558, 146 Misc. 26, 1932 N.Y. Misc. LEXIS 1773 (N.Y. Sup. Ct. 1932).

A motion by the beneficiary of a life insurance policy to stay the trial of a suit in equity to rescind the policy until the trial of an action at law by the beneficiary to recover the amount of the policy was denied, where the defendant beneficiary by interposing a counterclaim demanding judgment for the amount of the policy in the suit in equity indicated that she was satisfied to

have the matters at issue disposed of in the equity suit. *New York Life Ins. Co. v Marcin*, 299 N.Y.S. 832, 164 Misc. 781, 1937 N.Y. Misc. LEXIS 1876 (N.Y. Sup. Ct. 1937).

## **25. Labor disputes**

On appeal in litigation between labor unions, stay was granted prohibiting interference with plaintiff's members in holding or seeking and obtaining work until appeal decided. *Cavanagh v Hutcheson*, 232 A.D. 470, 252 N.Y.S. 113, 1931 N.Y. App. Div. LEXIS 13850 (N.Y. App. Div. 1931).

## **26. Posting of bond**

In litigation between labor unions, stay not granted respecting provisions of the judgment requiring deposit pending appeal, unless bond posted. *Cavanagh v Hutcheson*, 232 A.D. 470, 252 N.Y.S. 113, 1931 N.Y. App. Div. LEXIS 13850 (N.Y. App. Div. 1931).

## **27. Jurisdictional doubts**

Where there is substantial doubt under Surrogate Court Act, § 143, whether such court has jurisdiction to probate lost or destroyed will, proceedings for partition of real estate of testatrix will not be stayed in supreme court until determination of probate proceedings. *St. John v Putnam*, 220 N.Y.S. 141, 128 Misc. 714, 1927 N.Y. Misc. LEXIS 809 (N.Y. Sup. Ct. 1927).

## **28. Arbitration proceedings**

Action in Supreme Court stayed pending application to compel arbitration. *In re Engel*, 242 A.D. 505, 275 N.Y.S. 786, 1934 N.Y. App. Div. LEXIS 6109 (N.Y. App. Div. 1934).

Plaintiff is not entitled to an order staying an arbitration proceeding until the other party to the contract shall have made an application to determine whether he is in default for failing to



comply with terms of contract providing for arbitration. *Kanter v Edward Bloom Co.*, 259 N.Y.S. 46, 144 Misc. 602, 1932 N.Y. Misc. LEXIS 1188 (N.Y. Sup. Ct. 1932).

## **29. Review of discretion**

Denial of defendant's motion for stay of action was an abuse of discretion where after action had been noticed for trial plaintiff had been permitted to amend complaint to claim increased damages due to alleged brain injuries resulting from the accident, and, thereafter, asserting physician-patient privilege had refused to permit defendant either to inspect her hospital records or to examine her doctors with respect to claimed injuries. *Kruger v Holland Furnace Co.*, 12 A.D.2d 44, 208 N.Y.S.2d 285, 1960 N.Y. App. Div. LEXIS 6673 (N.Y. App. Div. 2d Dep't 1960).

## **30. Proceedings to settle trustees' accounts**

Proceedings to settle intermediate accounts of trustees of inter vivos trusts were stayed pending construction of settlor's will by court of domiciliary state of deceased settlor as to whether such trusts should bear their pro rata share of death taxes, since identical issue was involved in New York proceeding, and New York courts, though not bound by the foreign decision, will generally follow such decision as to will construction. *In re Huntington's Trust*, 14 A.D.2d 312, 220 N.Y.S.2d 664, 1961 N.Y. App. Div. LEXIS 8381 (N.Y. App. Div. 1st Dep't 1961).

## **Research References & Practice Aids**

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### **Codes, Rules and Regulations:**

Stay of good behavior allowance. 7 NYCRR Part 263.

### **Federal Aspects:**

Stays or injunctions pending appeal in United States appellate courts, Rule 8 of Federal Rules of Appellate Procedure, USCS Court Rules.

## § 2201. Stay

Stay of proceedings to enforce judgment in United States District Courts, Rule 62 of Federal Rules of Civil Procedure, USCS Court Rules.

Stays granted by United States Supreme Court, Rule 23 of United States Supreme Court Rules, USCS Court Rules.

Stay of state court proceedings in habeas corpus proceedings, 28 USCS § 2251.

Stay of state court proceedings by three-judge courts, 28 USCS § 2283.

### **Jurisprudences:**

1 NY Jur 2d Actions §§ 25—27., 29., 34., 36., 37., 39. .

6 NY Jur 2d Article 78 and Related Proceedings § 319. .

73A NY Jur 2d Judicial Sales § 26. .

75 NY Jur 2d Liens § 61. .

90 NY Jur 2d Real Property—Possessory and Related Actions §§ 260., 266., 271., 272. .

1 Am Jur 2d, Actions § 75.— 80.

5 Am Jur 2d, Appellate Review §§ 436.— 438., 441., 443., 444.

42 Am Jur 2d, Injunctions § 348.

48 Am Jur 2d, Labor and Labor Relations § 2116.

18 Am Jur Pl & Pr Forms (Rev), Motions, Rules, and Orders, Forms 11.— 13.

### **Treatises**

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

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2201, Stay.

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

CPLR Manual § 1.04. The courts and their jurisdiction.

CPLR Manual § 4.03. Procedure.

CPLR Manual § 15.09. Motions after filing the note of issue.

CPLR Manual § 15.11. Stays.

CPLR Manual § 17.01. In general.

CPLR Manual § 21.03. CPLR 3211 — Grounds for dismissal.

CPLR Manual § 26.09. Stay pending appeal.

**Warren's Weed New York Real Property:**

Warren's Weed: New York Real Property § 75.22.

**Annotations:**

Stay of civil proceedings pending determination of action in another state or country. 19 ALR2d 301.

Stay of civil proceedings pending determination of action in federal court in same state. 56 ALR2d 335.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators. 65 A.L.R.2d 755.

Appealability of order staying, or refusing to stay, action because of pendency of another action. 18 ALR3d 400.

Validity and construction of state statutory provision forbidding court to stay, pending review, judgment or order revoking or suspending professional, trade, or occupational license. 42 ALR4th 516.

Stay of action in federal court until determination of similar action pending in state court. 5 ALR Fed 10.

Appealability of order staying, or refusing to stay, proceedings in Federal District Court pending arbitration proceedings. 11 ALR Fed 640.

What are proceedings by governmental units to enforce police or regulatory powers which are excepted from operation of automatic stay provisions of Bankruptcy Code of 1978 (11 USCS § 362(b)(4), (5)). 58 ALR Fed 282.

What constitutes lack of “adequate protection” of interest in property of estate for which relief may be granted from automatic stay provision of Bankruptcy Code of 1978 (11 USCS § 362(a)). 66 ALR Fed 505.

Who is “party in interest” entitled to request relief from automatic stay provision of bankruptcy code of 1978 (11 USCS § 362(d)). 73 ALR Fed 324.

Considerations affecting grant or vacation of stay or injunction by individual justice of Supreme Court. 24 L Ed 2d 925.

### **Forms:**

Bender's Forms for the Civil Practice Form No. CPLR 2201:1 et seq.

LexisNexis Forms FORM 70-CV51:5.—Attorney's Affirmation Opposing Plaintiff's Motion for Summary Judgment in Action by Dancer Against Adult Nightclub for Unauthorized Use of Picture and Videotape.

LexisNexis Forms FORM 75-CPLR 2201:1.—Notice of Motion for Stay in Action- General Form.

LexisNexis Forms FORM 75-CPLR 2201:10.—Order Staying Negligence Action Pending Outcome of Declaratory Judgment Action.

LexisNexis Forms FORM 75-CPLR 2201:11.—Notice of Motion to Vacate Stay.

LexisNexis Forms FORM 75-CPLR 2201:12.—Order to Show Cause to Vacate Stay, With Temporary Restraining Order.

LexisNexis Forms FORM 75-CPLR 2201:13.—Affidavit Upon Motion to Vacate Stay.

LexisNexis Forms FORM 75-CPLR 2201:14.—Affidavit in Support of Motion to Vacate Stay Where Event Upon Which Stay Was Based Failed to Occur.

LexisNexis Forms FORM 75-CPLR 2201:15.—Order Vacating Stay.

LexisNexis Forms FORM 75-CPLR 2201:16.—Affidavit in Support of Motion to Stay a Sale Pursuant to the Lien Law.

LexisNexis Forms FORM 75-CPLR 2201:2.—Order to Show Cause With Temporary Restraining Order.

LexisNexis Forms FORM 75-CPLR 2201:3.—Order to Show Cause to Dismiss or, in the Alternative, to Stay Action on Ground of Another Action Pending.

LexisNexis Forms FORM 75-CPLR 2201:4.—Affidavit Upon Motion to Dismiss, or for Stay of Action on Ground of Another Action Pending.

LexisNexis Forms FORM 75-CPLR 2201:5.—Additional Allegations in Support of Motion to Stay State Action Where Federal Action Pending.

LexisNexis Forms FORM 75-CPLR 2201:6.—Order Granting Stay of Action.

LexisNexis Forms FORM 75-CPLR 2201:7.—Order Denying Motion to Stay Action.

LexisNexis Forms FORM 75-CPLR 2201:8.—Order to Show Cause Staying Negligence Action Pending Outcome of Declaratory Judgment Action.

LexisNexis Forms FORM 75-CPLR 2201:9.—Affidavit in Support of Order to Show Cause for Order Staying Negligence Action Pending Outcome of Declaratory Judgment Action.

LexisNexis Forms FORM 70-CV52:1.—Affidavit of Attorney in Support of Newspaper's Motion to Permit Still Photographic Coverage of Criminal Trial.

LexisNexis Forms FORM 70-CV51:11.—Attorney's Affidavit in Support of Defendant City's Motion to Dismiss Complaint Where Plaintiff's Pistol Permit Application Photo Mistakenly Used in Broadcast Documentary to Depict Murder Suspect With Same Name.

LexisNexis Forms FORM 70-CV51:12.—Attorney's Affirmation in Support of Defendant County's Motion to Dismiss Complaint Where Plaintiff's Pistol Permit Application Photo Mistakenly Used in Broadcast Documentary to Depict Murder Suspect With Same Name.

LexisNexis Forms FORM 70-CV51:6.—Affidavit of Nightclub President Opposing Plaintiff's Motion for Summary Judgment in Action by Dancer Against Adult Nightclub for Unauthorized Use of Picture and Videotape.

LexisNexis Forms FORM 70-CV79:1.—Affirmation of Counsel in Opposition to Motion of Inmate to Compel State of New York to Pay Litigation Expenses.

LexisNexis Forms FORM 70-CV74:4.—Affidavit of Newspaper Reporter in Support of Motion for Summary Judgment Dismissing Complaint in Defamation Action Where Newspaper Admittedly Published Inaccurate Statement.

LexisNexis Forms FORM 461-41:12.—Order to Show Cause to Stay Foreclosure Pending Discovery and Granting Leave to Reargue Summary Judgment.

LexisNexis Forms FORM 461-41:13.— Affirmation in Support of Order to Show Cause to Stay Foreclosure Pending Discovery and Granting Leave to Reargue Summary Judgment.

LexisNexis Forms FORM 461-41:2.—Affirmation in Support of Order to Show Cause to Vacate Stay.

LexisNexis Forms FORM 140-201.—Retail Store Lease.

LexisNexis Forms FORM 140-209.—Office Lease.

LexisNexis Forms FORM 140-360.10.—Application to Remove Landlord-Tenant Proceeding To Join in Supreme Court Action: Order to Show Cause.

LexisNexis Forms FORM 140-360.11.—Application to Remove Landlord-Tenant Proceeding: Movant's Affidavit.

LexisNexis Forms FORM 70-CV50-d:1.—Notice to Court Officer of Application in Civil Proceeding for Disclosure of Officer's Personnel Records.

LexisNexis Forms FORM 70-CV50-b:2.—Order Granting Application for Access to Court Files Pertaining to Sex Offense Where Victim Deceased and Identity Previously Disclosed Due to Related Murder of Victim.

LexisNexis Forms FORM 70-CV50-d:2.—Affidavit of Court Officer in Opposition to Disclosure of Personnel Records.

LexisNexis Forms FORM 70-CV79-e:1.—Attorney's Affidavit in Support of Motion to Dismiss Complaint Based on Employer's Breast-Feeding Policy.

LexisNexis Forms FORM 70-CV76-a:2.—Notice of Motion for Summary Judgment Dismissing Complaint and on Counterclaim in Action for Defamation Involving Public Petition and Participation.

LexisNexis Forms FORM 70-CV76-a:3.—Affidavit in Support of Motion for Summary Judgment Dismissing Complaint and on Counterclaim in Action for Defamation Involving Public Petition and Participation.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 11:101 et seq .(stays, motions, orders and mandates).

**Texts:**

New York Insurance Law (Matthew Bender's New York Practice Series) § 30.02[4][a].

2 Bergman on New York Mortgage Foreclosures (Matthew Bender) § 23.17.; 3 Bergman on New York Mortgage Foreclosures (Matthew Bender) §§ 41.02., 41.07.

### Hierarchy Notes:

NY CLS CPLR, Art. 22

## Forms

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### Forms

#### Form 1

#### Notice of Motion for Stay of Action

[Caption]

PLEASE TAKE NOTICE that, on the annexed affidavit of \_\_\_\_\_, sworn to on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a motion will be made at motion term [Part \_\_\_\_\_], of the Supreme Court, \_\_\_\_\_ County, to be held at the county court house in the County of \_\_\_\_\_, City of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day, or as soon thereafter as counsel can be heard, for an order staying the plaintiff from prosecuting the trial of this action, and for such other, further and different relief as to the court may seem just and proper.

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Attorney for Defendant

Office and P. O. Address

Telephone No. \_\_\_\_\_



To: \_\_\_\_\_

Attorney for Plaintiff

Office and P. O. Address

## Form 2

### Order to Show Cause on Motion to Stay Action

[Caption]

On the annexed affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and on all the proceedings heretofore had herein, and on the motion of \_\_\_\_\_, attorney for the defendant, it is

ORDERED that the plaintiff above named, or his attorneys, \_\_\_\_\_, show cause before this court, at a motion term, to be held at the county court house of \_\_\_\_\_ county, in the City of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day or as soon thereafter as counsel can be heard, why an order should not be entered herein staying \_\_\_\_\_, the plaintiff herein, and his attorneys, \_\_\_\_\_, from taking any further steps or proceedings in the above-entitled action, and for such other, further, and different relief as to the court may seem just and proper, and it is further

ORDERED that the plaintiff herein and his attorneys are hereby stayed from taking any other or further steps in this action, except to oppose this motion, until after the hearing and determination of the motion brought on by this order to show cause, and it is further

ORDERED that service of a copy of this order, together with the papers on which the same was granted, upon \_\_\_\_\_, attorneys for the plaintiff herein, either personally or at their office, on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ shall be deemed sufficient service.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_, New York.

Enter

\_\_\_\_\_  
[Print signer's name below signature]

Justice, Supreme Court

County

### Form 3

#### Affidavit on Motion for Stay

[Caption and introductory paragraph]

1. I am the defendant [or as the case may be] in the above-entitled action.
2. This action is brought to recover \_\_\_\_\_ [state briefly the nature of the cause of action].
3. This action was commenced by service of a summons and complaint upon me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and I duly appeared herein on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, my attorney, and served an answer; the action has been noticed for trial for the \_\_\_\_\_ term of this court but will not actually be reached for trial prior to the month of \_\_\_\_\_.
4. [State facts to show why stay is proper.]

WHEREFORE, deponent asks that an order be made staying all further proceedings in said action until \_\_\_\_\_.

\_\_\_\_\_

[Print signer's name below signature]

[Jurat]

#### **Form 4**

#### **Affidavit on Application for Order to Show Cause why Stay Should not be Granted**

[Caption and introductory paragraph]

1. I am the defendant [or as the case may be] in the above-entitled action.
2. This action was brought to recover \_\_\_\_\_ [state briefly the nature of the cause of action].
3. This action was commenced by the service of a summons and complaint upon me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and I duly appeared herein on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, my attorney, and served an answer; and the said case has been noticed for trial at the \_\_\_\_\_ term of this court but will not actually be reached for trial prior to the month of \_\_\_\_\_.
4. [State facts to show why stay is proper.]
5. An order to show cause is asked herein for the reason that \_\_\_\_\_ [state facts to show why ordinary notice of motion is insufficient].
6. No previous application has been made for the relief sought herein or for similar relief.

WHEREFORE, deponent asks that an order to show cause issue, returnable in less than the usual time, requiring \_\_\_\_\_ to show cause why an order should not be made staying the plaintiff above named, and his attorney, from further proceeding herein and staying the plaintiff from taking any further proceedings herein until the hearing and determination of this motion and the entry of an order thereon.

\_\_\_\_\_

[Print signer's name below signature]

[Jurat]

**Form 5**

**Affidavit on Motion for Stay Where Another Action is Pending**

[Caption and introductory paragraph]

1. He is the attorney for the defendant in the above-entitled action.
2. This action was brought to partition \_\_\_\_\_ parcels of real estate, situate in the County of \_\_\_\_\_.
3. Deponent has examined the records in the office of the county clerk of the County of \_\_\_\_\_ and finds that the summons and complaint and notice of pendency of action herein were filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
4. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, deponent filed in the office of the clerk of the County of \_\_\_\_\_, the summons and complaint and notice of pendency of the action entitled \_\_\_\_\_, Plaintiff, against \_\_\_\_\_, Defendant. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ deponent served \_\_\_\_\_ and \_\_\_\_\_, all of the defendants in said action with copies of the summons and complaint and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ deponent filed in the office of the clerk of the County of \_\_\_\_\_, affidavits of service of the summons and complaint upon the said defendants.
5. The action aforesaid, with \_\_\_\_\_, as plaintiff and \_\_\_\_\_ as defendants, is for the partition of the same \_\_\_\_\_ parcels of real estate, situate in the County of \_\_\_\_\_ as are described in the complaint in the above-entitled action in

which \_\_\_\_\_ is the plaintiff and \_\_\_\_\_ and \_\_\_\_\_ are the defendants.

6. All the parties in the action in which \_\_\_\_\_ is plaintiff are the same as the action in which \_\_\_\_\_ is plaintiff and the relief asked for in each of the actions is the same.

7. The above-entitled action was commenced more than one week after the action in which \_\_\_\_\_ is plaintiff and more than one week after the affidavits had been filed in the office of the county clerk of the County of \_\_\_\_\_ showing that all of the defendants had been served.

8. The plaintiff above-named will secure from the action commenced by \_\_\_\_\_ all of the relief which she is entitled to receive in this action and in order that the estate should not be burdened with the expense of an entirely unnecessary and subsequent partition action, deponent asks that an order be made perpetually staying the plaintiff above-named and her attorneys from taking any further steps or proceedings herein.

9. No harm or injury can result to the plaintiff herein from the granting of this motion.

10. An order to show cause is sought herein for the reason that the defendant desires not to serve an answer in the above-entitled action and an order to show cause is necessary to prevent his being in default for failure to answer the action.

11. No prior application for the relief sought herein or for any similar relief has been made to this or any other court.

WHEREFORE, deponent requests that an order be entered directing the plaintiff to show cause why he should not be perpetually stayed and enjoined from prosecuting this action and taking any further proceedings herein and deponent respectfully requests that the said order to show cause be returnable in less than the usual time and that the order contain a provision enjoining

the defendant from further proceedings herein until the hearing and determination of this motion and the entry of an order thereon.

\_\_\_\_\_  
[Print signer's name below signature]

[Jurat]

## Form 6

### Order Staying Prosecution of Action

[Caption]

The defendant, \_\_\_\_\_, having obtained an order to show cause dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, requiring the plaintiff to show cause on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, why the above-entitled action should not be stayed and why he should not be granted such other relief as to the court may seem just and proper, and said order having come on for hearing and argument,

NOW, on reading and filing the order to show cause made by Mr. Justice \_\_\_\_\_ and dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ together with due proof of service of said order and affidavit on the plaintiff, in support of said motion, and the affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ in opposition thereto and after hearing \_\_\_\_\_, attorney for the defendant in support of said motion and \_\_\_\_\_, attorney for the plaintiff in opposition thereto and due deliberation having been had,

NOW, on motion of \_\_\_\_\_, attorney for the defendant, it is

ORDERED that the said motion for a stay be and it is hereby granted and it is further

ORDERED that the plaintiff, above named, and his attorneys are hereby stayed from all further proceedings in the above-entitled action until \_\_\_\_\_ [state the length of stay].

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_, New York.

Enter

\_\_\_\_\_  
[Print signer's name below signature]

Justice, Supreme Court

\_\_\_\_\_ County

## Form 7

### **Affidavit in Support of Cross Motion for Stay Pending Appeal of Another Action on Motion for Summary Judgment**

[Caption and introductory paragraph]

I am the defendant in the above-entitled action, and respectfully submit this affidavit in support of my motion for a stay of all proceedings in this action, and in opposition to plaintiff's motion for summary judgment.

Deponent is aware of the decision in the Supreme Court proceeding whereby an arbitration of my counterclaims only are directed. I understand that this has the effect of severing the trials of the complaint and counterclaims by separate tribunals, although, as I contend, all transactions arose out of and in connection with my employment agreement, and the matters set forth both in the complaint and counterclaims are interrelated. I have instructed my attorney to appeal from the order of Mr. Justice \_\_\_\_\_ in the Supreme Court proceeding, and I

believe that by the time this motion is argued, the notice of appeal will have been served and filed.

I am informed and advised, however, that on this motion, this court has the right to examine into all the facts and determine whether the facts as alleged by the plaintiff are sufficiently controverted by me so as to require a trial, or whether they can be disposed of summarily without a trial.

\_\_\_\_\_ [State facts and issues in both actions to show merits, and necessity and right to stay of other action.]

The plaintiff is a \_\_\_\_\_ [Connecticut] corporation. It has no assets in this state, nor is it authorized to do business in this state. The basis upon which the courts of this state can acquire jurisdiction to enter a judgment against the plaintiff (as upon an award by the arbitrator), rests upon the submission of the plaintiff to this jurisdiction by commencing its suit in this court. Therefore, aside from all other considerations, it seems highly unjust that if, after trial, plaintiff be entitled to some judgment against me on its independent claim, I should be compelled to pay it immediately, whereas if an award is made in my favor by the arbitrator, and judgment is entered thereon against the plaintiff, I would then be compelled to retain a \_\_\_\_\_ attorney to sue the plaintiff in the \_\_\_\_\_ courts on that judgment. And it should be borne in mind throughout, that both plaintiff's alleged claim and my counterclaims arose out of and in connection with my employment agreement. Had that agreement never been entered into, in all likelihood our paths would never have crossed.

Deponent, therefore, respectfully prays this court to deny plaintiff's motion for summary judgment and to grant deponent's motion for a stay of all proceedings in this action pending the determination of my appeal to the Appellate Division, and until an arbitration of my counterclaims have been had. It is obvious, of course, that if I am successful on my appeal, a stay of all proceedings in this court would follow automatically.



That no previous application for this relief has been made pursuant to Section 2201 of the Civil Practice Law and Rules, and an order to show cause is applied for, instead of the usual notice of motion, in order that this application for a stay and plaintiff's motion for summary judgment may be heard at the same time.

\_\_\_\_\_  
[Signature, with name printed underneath]

[Jurat]

## Form 8

### Order to Show Cause on Cross Motion on Motion for Summary Judgment

[Caption]

On the annexed affidavits of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, all sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

LET the above-named plaintiff show cause at a \_\_\_\_\_ Term, Part \_\_\_\_\_ of this Court, to be held at the County Courthouse, in the City of \_\_\_\_\_, New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day, or as soon thereafter as counsel can be heard, why an order should not be made, pursuant to Section 2201 of the Civil Practice Law and Rules, staying all proceedings in this action pending the determination of the appeal from the order of Mr. Justice \_\_\_\_\_, in the proceeding instituted in the Supreme Court between the same parties, and pending the prior determination of any award made in the arbitration proceeding pursuant to said order, and for such other and further relief as may be just.

Sufficient cause appearing, let service by mail of a copy of this order to show cause and the papers upon which it is made, on \_\_\_\_\_, Esq., attorney for the plaintiff

herein, made on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, be deemed sufficient.

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
[Signature, with name printed underneath]

County Judge of \_\_\_\_\_ County

## Form 9

### Order Denying Summary Judgment and Granting Cross Motion for Stay Pending Appeal of Another Action

[Caption]

The above-named plaintiff having moved this Court by Notice of Motion dated \_\_\_\_\_, 20\_\_\_\_\_, for an order, pursuant to Rule 3212, Civil Practice Law and Rules, for summary judgment dismissing the counterclaims contained in defendant's answer to the amended complaint herein, and for summary judgment for the relief demanded in said amended complaint, and the above-named defendant having made a cross motion, by order to show cause dated \_\_\_\_\_, 20\_\_\_\_\_, for an order pursuant to Section 2201 of the Civil Practice Law and Rules, staying all proceedings in this action pending the determination of the defendant's appeal from the order of Mr. Justice \_\_\_\_\_, in the proceeding instituted in the Supreme Court between the same parties, and pending the prior determination of any award made in the arbitration proceeding pursuant to said order, and both said motion and cross motion having been duly adjourned, and the same having regularly come on to be heard at a \_\_\_\_\_ Term, Part \_\_\_\_\_, of this Court, on \_\_\_\_\_, 20\_\_\_\_\_;

Now, upon reading and filing the aforesaid Notice of Motion dated \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_ [recite papers on motion and cross motion and appearances of counsel], and due deliberation having been had, and upon filing the decision of the Court herein;

Now, on motion of \_\_\_\_\_, Esq., Attorney for defendant, it is hereby

ORDERED, that plaintiff's motion for summary judgment be, and the same hereby is, in all respects, denied; and it is hereby further

ORDERED, that defendant's cross motion for a stay of all proceedings in this action pending the determination of the defendant's appeal to the Appellate Division from the order of Mr. Justice \_\_\_\_\_, in the arbitration proceeding instituted in the Supreme Court between the same parties, be and the same hereby is, in all respects, granted; and it is hereby further

ORDERED, that defendant's cross motion for a stay of all proceedings in this action pending the prior determination of defendant's counterclaims in the arbitration proceedings as ordered by the aforesaid order of Mr. Justice \_\_\_\_\_, be and the same hereby is in all respects, granted.

Enter

\_\_\_\_\_  
[Signature, with name printed underneath]

County Judge of \_\_\_\_\_ County

**Form 10**

**Order Granting Stay of Action Asserting Claim to Money Payable Under or on Account of Contract Where Notice of Pending Action has been Served**

[Caption]

§ 2201. Stay

The defendant, having obtained an order to show cause dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, requiring the plaintiff to show cause on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, why the above-entitled action should not be stayed for a period of one year from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the date when notice of pending action was deemed to have been given to \_\_\_\_\_, a claimant to the sum of money [or part of the sum of money] sued for herein and for such other and further relief as to the court may seem just and proper and said order to show cause having regularly come on to be heard,

NOW, on reading and filing the affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the order to show cause, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in support of said motion, and the affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, [by which plaintiff demanded that defendant furnish a suitable undertaking or pay the sum of money sued for into court as a condition of granting a stay herein] in opposition thereto, and after hearing \_\_\_\_\_, attorney for defendant, in support of said motion and \_\_\_\_\_, attorney for plaintiff, in opposition thereto, and due deliberation having been had,

AND it appearing to the satisfaction of the court that this action is for the recovery of a sum of money due and payable under a contract, that a person not a party to the action, without collusion with the defendant, has claimed said sum of money exceeding Fifty Dollars in amount and that notice of the pendency of this action had been given to the said claimant, it is

ORDERED that said motion for a stay be and it hereby is granted, and it is further

ORDERED that the plaintiff be and he hereby is stayed from further proceedings in the above-entitled action for a period of one year from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the date when notice of pending action was deemed to have been given to \_\_\_\_\_, a claimant to the sum of money sued for herein, and it is further

ORDERED that the stay directed herein shall become inoperative unless within ten days of the date hereof the defendant files a surety company bond in the principal sum of \_\_\_\_\_ Dollars to be approved by the court, conditioned that the defendant will pay to the plaintiff all damages and costs, including interest, or in lieu thereof that the plaintiff pay into court the sum of \_\_\_\_\_ Dollars and it is further

ORDERED that upon satisfactory proof being submitted to this court that said claimant, \_\_\_\_\_, has intervened herein or has instituted another action in any court of this state to recover the sum of money sued for in the complaint herein or any part thereof exceeding Fifty Dollars in amount, the stay granted herein shall be vacated and the undertaking provided for herein shall be discharged or modified.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, New York.

Enter

\_\_\_\_\_  
[Signature, with name printed underneath]

Justice, Supreme Court

\_\_\_\_\_ County

## Form 11

### Provision in Order Granting Stay on Condition

and it is further

ORDERED that a stay of this action be and the same hereby is granted pending the trial of an action in the Supreme Court, \_\_\_\_\_ County, entitled \_\_\_\_\_, Plaintiff against \_\_\_\_\_, Defendant on condition that the defendant herein give a bond in the amount of \$\_\_\_\_\_, the amount

of the claim sued for in this action, said bond to be approved by the court and conditioned that the defendant will pay to the plaintiff all damages which may subsequently be awarded in this action.

## **Form 12**

### **Provision for Stay in Order to Show Cause Where Stay is Merely Incidental**

In the meantime and until the determination of this motion and the entry of an order thereon, all proceedings in this action on the part of the plaintiff herein, his agents, servants, and attorneys, except to oppose this motion or review this order, are hereby stayed until after the hearing and determination of the motion brought on by this order to show cause.

## **Form 13**

### **Body of Undertaking on Staying Proceedings in an Action Before Trial**

Whereas the above \_\_\_\_\_, plaintiff, has applied to the Supreme Court of the State of New York for an injunction against the above named \_\_\_\_\_, to stay proceedings at law in a certain action for the recovery of money only, pending in the said court, wherein the said \_\_\_\_\_ is plaintiff, and the said \_\_\_\_\_ is defendant.

Now, therefore, the condition of this obligation is that the above \_\_\_\_\_ shall well and truly pay unto the said \_\_\_\_\_, his executors, administrators or assigns, all damages and costs which may be recovered by him in the action stayed by the injunction not exceeding \_\_\_\_\_ dollars, and all damages and costs that may be awarded to him in the action in which the injunction order is granted, then this obligation to be void, otherwise to be of full force and effect.

## **Form 14**

### **Body of Undertaking to Stay Proceedings After Trial and Before Judgment**

Whereas, the above-named \_\_\_\_\_ has applied to \_\_\_\_\_ Court of \_\_\_\_\_ County for an injunction to stay proceedings by said \_\_\_\_\_ in a certain action tried in said court wherein the complaint demanded judgment for a sum of money only, and wherein said \_\_\_\_\_ is plaintiff and said \_\_\_\_\_ is defendant, after verdict [or "report" or "decision"] rendered and before judgment therein:

Now the condition of this obligation is such that if the above bounden \_\_\_\_\_ shall well and truly pay unto said \_\_\_\_\_, his executors, administrators and assigns, the sum of \_\_\_\_\_ dollars, and all costs of said action, with interest thereon from \_\_\_\_\_, 20\_\_\_\_\_, then this obligation to be void, otherwise to remain in full force and effect.

## Form 15

### Notice of Motion For Stay Pending Determination of Another Matrimonial Action

[Caption]

PLEASE TAKE NOTICE, that upon the annexed affidavit of \_\_\_\_\_, sworn to herein on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the Exhibits and papers to said affidavit annexed, all the papers and proceedings heretofore had in a certain action now pending in the Supreme Court, \_\_\_\_\_ County, New York, between the above-named defendant and the above-named plaintiff, entitled \_\_\_\_\_, Plaintiff, against \_\_\_\_\_, also known as \_\_\_\_\_, Defendant," and upon all the papers and proceedings heretofore had in the above-entitled action, a motion will be made herein at \_\_\_\_\_ Term, Part \_\_\_\_\_, of this Court, to be held at the County Courthouse, \_\_\_\_\_ Street, \_\_\_\_\_, County and City of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day,

or as soon thereafter as counsel can be heard, before the Justice then sitting in said \_\_\_\_\_ Term, for an order herein staying the trial of the above-entitled action until after the trial and final determination of the aforesaid action now pending in the Supreme Court, \_\_\_\_\_ County, New York, entitled “\_\_\_\_\_, Plaintiff, against \_\_\_\_\_, also known as \_\_\_\_\_, Defendant,” and for such other and further relief herein as to the Court may seem just and proper.

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Attorney for Defendant

Office and P. O. Address,

Telephone Number \_\_\_\_\_

To: \_\_\_\_\_

Attorney for Plaintiff

Office and P. O. Address \_\_\_\_\_

## Form 16

### Affidavit in Support of Motion For Stay Pending Determination of Another Matrimonial Action

[Caption and introductory paragraph]

1. I am the defendant in the above-entitled action, and I make this affidavit in support of my instant motion for an order herein (1) staying \_\_\_\_\_, the above-named plaintiff, and her attorney, or attorneys, from proceeding with the trial of the above-entitled action until after the trial and final determination of a certain annulment and injunction action now pending in the Supreme Court of New York, \_\_\_\_\_ County, entitled



“\_\_\_\_\_, Plaintiff, against \_\_\_\_\_, Defendant,” and (2) staying said \_\_\_\_\_, (the defendant in said \_\_\_\_\_ County action), from taking any further proceedings in the above-entitled action until after the trial and final determination of the aforesaid annulment and injunction action, Supreme Court, \_\_\_\_\_ County, entitled “\_\_\_\_\_, Plaintiff, against \_\_\_\_\_, Defendant,” and (3) granting this deponent such other and further relief in the premises as to this Court may seem just and proper.

2. The above-entitled action was commenced by the above-named plaintiff against deponent on or about \_\_\_\_\_, 20\_\_\_\_\_, to recover alleged damages against deponent for alleged breaches by the deponent of an alleged Separation Agreement dated \_\_\_\_\_, 20\_\_\_\_\_, between deponent and \_\_\_\_\_, and also for the recovery of a sum of money claimed by plaintiff to be due her from deponent under said alleged Separation Agreement, all in the total sum of \$\_\_\_\_\_.

Annexed hereto, marked Exhibit “A” is a copy of the complaint in the above-entitled action.

3. The deponent, in and by his verified answer in the above-entitled action, has raised substantial issues of fact and law, as more fully appears by the deponent’s said answer herein, with counterclaims.

The deponent makes a part of this affidavit, with the same force and effect as if herein fully set forth, all the allegations contained in the deponent’s said verified answer herein, a copy of which answer is annexed hereto, marked Exhibit “B”.

The above-named plaintiff’s Reply herein to deponent’s said Answer is annexed hereto, marked Exhibit “C”.

4. \_\_\_\_\_ [give history and status of both actions].

5. As more fully appears from the deponent's verified Amended Complaint in said annulment and injunction action, Supreme Court, \_\_\_\_\_ County, New York, the deponent seeks judgment therein against \_\_\_\_\_, the defendant therein (the above-named plaintiff in this action), (1) adjudging and decreeing that the marriage between the deponent and the said \_\_\_\_\_ be annulled and declared void because of fraudulent representations made by the said \_\_\_\_\_ to the deponent prior to their marriage, and because of the fraudulent concealment from the deponent by the said \_\_\_\_\_, and prior to her marriage with the deponent, of certain material facts; and (2) adjudging and decreeing that the aforesaid Separation Agreement, dated \_\_\_\_\_, 20\_\_\_\_\_, be declared void and a nullity; and (3) adjudging and decreeing that \_\_\_\_\_ (the defendant in said action, and the plaintiff in the above-entitled action), be restrained and enjoined from proceeding to a trial of the above-entitled action until after the trial and final determination of the issues in said annulment and injunction action, Supreme Court, \_\_\_\_\_ County, New York; and (4) adjudging and decreeing that deponent have such other and further relief as the Court might deem just and proper.

Annexed hereto, marked Exhibit "E" and made a part hereof with the same force and effect as if herein fully set forth, is a copy of deponent's said Amended Complaint in said Supreme Court \_\_\_\_\_ County action entitled "\_\_\_\_\_, Plaintiff, against \_\_\_\_\_, Defendant."

6. Heretofore, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the deponent's Note of Issue was duly served and filed in the office of the County Clerk of \_\_\_\_\_ County in the deponent's annulment and injunction action, for the trial at the \_\_\_\_\_ Term of the Supreme Court, \_\_\_\_\_ County, beginning \_\_\_\_\_, 20\_\_\_\_\_; and, as deponent is informed and verily believes the aforesaid annulment and injunction action entitled "\_\_\_\_\_, Plaintiff, against \_\_\_\_\_, Defendant,"

will be duly reached for trial during the \_\_\_\_\_ Term of said Supreme Court,  
\_\_\_\_\_ County, commencing \_\_\_\_\_,  
20\_\_\_\_\_.

7. The deponent expects and intends to be ready to try the aforesaid annulment and injunction action in the Supreme Court, \_\_\_\_\_ County, at the time said action is reached for trial.

8. Thereafter, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the above-named plaintiff served her verified Answer in the aforesaid annulment and injunction action entitled “\_\_\_\_\_, Plaintiff against \_\_\_\_\_, Defendant,” Supreme Court, \_\_\_\_\_ County.

Annexed hereto, marked Exhibit “H”, is a copy of said verified Answer herein.

9. After the aforesaid reversal by the said Appellate Division, Second Department, of the said injunction and restraining Order, dated \_\_\_\_\_, 20\_\_\_\_\_, in the aforesaid annulment and injunction action, the above-entitled action, the trial of which had been stayed by said Order, dated \_\_\_\_\_, 20\_\_\_\_\_, until \_\_\_\_\_, 20\_\_\_\_\_, appeared on the \_\_\_\_\_ Term July Calendar of this Court on \_\_\_\_\_, 20\_\_\_\_\_; and was, upon the call on that day, put over, upon the request of \_\_\_\_\_, Esq., the Attorney for the above-named plaintiff herein, to \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_\_, upon the ground that the above-named plaintiff was abroad, in the service of the \_\_\_\_\_, and could not, therefore, proceed with the trial of the above-entitled action.

10. \_\_\_\_\_ [show possible effect of prior decisions in actions—i.e. that a favorable decision in other action would defeat opponent in action sought to be stayed, whereas a decision in action sought to be stayed unfavorable to deponent would nevertheless leave matter still to be tried in other action].

Such multiplicity of suits, trials, and court proceedings is not only unnecessary and undesirable, but it will work a considerable inconvenience and hardship against all the parties concerned and their witnesses.

In view of the fact that a judgment in favor of the deponent in the aforesaid annulment and injunction action, Supreme Court, \_\_\_\_\_ County, New York, which will be reached for trial in about three weeks (early \_\_\_\_\_, 20\_\_\_\_\_), would in itself nullify any judgment which the plaintiff might obtain in the above-entitled action against the deponent, it becomes extremely impractical to now try the above-entitled action—which has become, in reality, only a subsidiary and corollary suit to the main issues between the deponent and said \_\_\_\_\_ as raised in the said annulment and injunction action, and to be tried and determined therein. For assuming, for the sake of argument, that the above-named plaintiff might for some reason, recover in the above-entitled action upon the alleged separation agreement, that recovery would immediately be nullified by a judgment in favor of the deponent in the aforesaid annulment and injunction action.

Economy, orderly procedure, conservation of the time of the Courts, and the interests of the parties, therefore, indicate that the said primary issues involving the invalidity of the alleged marriage between the deponent and said \_\_\_\_\_ and the invalidity of the alleged marriage between the deponent and said \_\_\_\_\_ and the invalidity of the alleged Separation Agreement should be first tried out and determined in said annulment and injunction action, Supreme Court, \_\_\_\_\_ County.

11. Upon information and belief, the above-named plaintiff will not be in any way prejudiced if she and her Attorney, or Attorneys, are stayed from trying the above-entitled action until after the trial and final determination of the aforesaid annulment and injunction action, Supreme Court, \_\_\_\_\_ County, New York, which, as above pointed out, will be less than three (3) weeks from trial when the above-entitled action next appears on the \_\_\_\_\_ Term, Part II Calendar of this Court, on \_\_\_\_\_, 20\_\_\_\_\_.

Furthermore, as the deponent is informed and verily believes, the above-named plaintiff is now, and has been for some time, profitably employed by the \_\_\_\_\_ at a salary of approximately \$\_\_\_\_\_ to \$\_\_\_\_\_ a week; she will not, therefore, be seriously inconvenienced financially or economically in the matter of her livelihood in the event the trial of the above-entitled action is stayed pending the trial and final determination of the aforesaid annulment and injunction action, Supreme Court, \_\_\_\_\_ County, New York.

As the deponent is informed and verily believes, the said \_\_\_\_\_ is financially irresponsible. Therefore, in the event a judgment were rendered against the deponent in favor of the above-named plaintiff in the above-entitled action and she collected thereunder, the deponent would thereafter be unable to actually recover or recoup the amount thereof from the above-named plaintiff. For notwithstanding the circumstance that the above-named plaintiff now is, and has been for some time, earning a good salary on which she is able to live comfortably, she nevertheless has no substantial resource other than her current salary. The financial irresponsibility of the above-named plaintiff confirmed and stated by \_\_\_\_\_, Esq., her Attorney in the above-entitled action and in the said annulment and injunction action, Supreme Court, \_\_\_\_\_ County, in and by an affidavit, sworn to by \_\_\_\_\_, as recent as \_\_\_\_\_, 20\_\_\_\_\_, in which the said \_\_\_\_\_ stated, with respect to his client, the above-named \_\_\_\_\_: \_\_\_\_\_ [develop further facts to show lack of prejudice to other party from stay, and prejudice to deponent from failure to stay subject action, as financial responsibility of deponent or financial irresponsibility of opponent].

12. It is evident, therefore, from the aforesaid facts and circumstances that a gross injustice may result in the event of a trial of the above-entitled action prior to the trial of the said annulment and injunction action, Supreme Court, \_\_\_\_\_ County, New York, and that the above-named plaintiff may be unjustly enriched, at the expense of the deponent and without

any adequate remedy or redress, thereafter, to him, notwithstanding he thereafter succeeds in the said annulment and injunction action. This is a case, therefore, where the power of the Court to enjoin and stay the trial of the above-entitled action should, in the Court's discretion and in good conscience, be invoked.

WHEREFORE, the deponent respectfully prays that an Order be made and entered herein in all respects staying the trial of the above-entitled action and any all further proceedings on the part of the above-named plaintiff, and her Attorney, or Attorneys, until after the trial and final determination of the aforesaid annulment and injunction action entitled "\_\_\_\_\_, Plaintiff, against, \_\_\_\_\_, also known as \_\_\_\_\_, Defendant," now pending in the Supreme Court, \_\_\_\_\_ County, New York.

[Jurat]

\_\_\_\_\_  
[Signature of affiant, with  
name printed underneath]

## Form 17

### Affidavit of Attorney in Support of Motion For Stay of Trial and to Place Case on Military Suspense Calendar

[Caption and introductory paragraph]

1. I am an attorney-at-law associated with \_\_\_\_\_, attorney for the \_\_\_\_\_ defendants in the above-entitled actions.
2. These consolidated actions are brought to recover for \_\_\_\_\_ [alleged damage to a parcel of real property which the plaintiffs purchased from \_\_\_\_\_. The plaintiffs complain that, due to the inadequacy of a sewer which adjoined the property, said property was flooded by rainwater during heavy storms].

The property involved was purchased by plaintiffs from \_\_\_\_\_ in 20\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. [The sewer referred to was deeded to the Town of \_\_\_\_\_ in 20\_\_\_\_\_, and an entirely new sewer system has since been installed.] The alleged damage to the plaintiff's property has been repaired and the plaintiffs are now in actual occupancy of said property.

3. The complaint in this action alleges causes of action against the \_\_\_\_\_ defendants for [negligence, nuisance and fraud]. Therefore, \_\_\_\_\_ [a judgment against the \_\_\_\_\_ defendants may subject them to arrest and imprisonment]. Accordingly, it is important to said defendants that they have every opportunity properly to defend this action. Furthermore, \_\_\_\_\_ [the complaint and bill of particulars in these actions accuse \_\_\_\_\_, personally, of making the alleged oral fraudulent misrepresentations, as follows: \_\_\_\_\_].

4. \_\_\_\_\_ is presently in the \_\_\_\_\_ [Naval] Service of the United States Government and on active combat duty as a \_\_\_\_\_ in \_\_\_\_\_ [the United States Navy Construction Battalion]. Therefore, although he is personally a defendant and is an absolutely indispensable witness to the other \_\_\_\_\_ defendants, he has been and is unable to attend a trial of this action.

5. \_\_\_\_\_ [Recite unsuccessful efforts to take depositions and interrogatories, showing impossibility of attendance at trial or taking depositions, etc.].

6. Upon the foregoing facts, I respectfully submit (1) that there is no imperative need for an immediate trial of this action, (2) that the proper defense of this action is important to \_\_\_\_\_ and his codefendants and that the testimony of \_\_\_\_\_ is indispensable thereto, (3) that \_\_\_\_\_ is presently in the active \_\_\_\_\_ [Naval] Service of the United States Government and is, accordingly, unable to personally be present at a trial of these actions and (4) that, despite diligent effort beyond formal legal requirements, the deposition of

\_\_\_\_\_ is unobtainable. Therefore, the trial of these actions must now be stayed until \_\_\_\_\_ is available for deposition.

WHEREFORE, I respectfully ask that trial of these actions be placed on the Military Suspense Calendar of this Court for the duration of the Military Service of \_\_\_\_\_.

\_\_\_\_\_  
[Signature, with name  
printed underneath]

[Jurat]

## Form 18

### Notice of Motion to Stay Trial and Place Case on Military Suspense Calendar

[Caption]

Sirs:

PLEASE TAKE NOTICE that, upon the annexed affidavit of \_\_\_\_\_, verified \_\_\_\_\_, 20\_\_\_\_\_, and upon all pleadings and proceedings heretofore had herein, a motion will be made at a \_\_\_\_\_ Term of the Supreme Court of the State of New York, to be held in the County of \_\_\_\_\_ and for the County of \_\_\_\_\_ at the \_\_\_\_\_ County Courthouse, \_\_\_\_\_ Street, \_\_\_\_\_, New York, on \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ (\_\_\_\_\_) o'clock in the \_\_\_\_\_ noon or as soon thereafter as counsel can be heard, to stay the trial of the above-entitled actions and place said actions on the Military Suspense Calendar of this Court because of the fact that \_\_\_\_\_, a party-defendant and principal witness, is in the \_\_\_\_\_ [Naval] Service of the United States Government and unavailable to testify personally or by deposition, and for such other and further relief as may be proper.



Dated, \_\_\_\_\_, N.Y., \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Attorney for Defendant

Office and P. O. Address,

Telephone Number \_\_\_\_\_

To:\_\_\_\_\_

Attorney for Plaintiff

[Office and P. O. Address]

## Form 19

### Order Placing Cause on Military Suspense Calendar

[Caption]

A motion having been made by the defendant \_\_\_\_\_, for an order to place the above-entitled action on the Military Suspense Calendar of this court, and on reading the affidavit of \_\_\_\_\_, attorney for the defendant, verified the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and \_\_\_\_\_ [recite other papers on motion], and after hearing \_\_\_\_\_ in favor of said motion, and \_\_\_\_\_, attorney for the plaintiff in opposition thereto, and due deliberation having been had,

Now, on motion of \_\_\_\_\_, attorney for defendant, and on the decision of the court filed herein, it is hereby

ORDERED, that this action be stayed during the military service of defendant, \_\_\_\_\_, and for \_\_\_\_\_ days thereafter, and be placed on the Military Suspense Calendar of this court in accordance with \_\_\_\_\_ [refer to applicable rule of court and add any further terms or conditions required or appropriate].

Signed at \_\_\_\_\_, N. Y. this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

Enter:

\_\_\_\_\_  
[Signature, with name

printed underneath]

Justice, Supreme Court

County

## Form 20

### Notice of Motion to Stay Action

#### (Creditor's Action Against Distributees)

[Caption]

PLEASE TAKE NOTICE that on the annexed affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, an application will be made at a Special Term of this court to be held at the county courthouse in the city of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order staying the above-entitled action until the proceeding now pending in the Surrogate's Court of the county of \_\_\_\_\_ for the judicial settlement of the accounts of \_\_\_\_\_, as executor of the last will and testament [as administrator of the goods, chattels, and credits], of \_\_\_\_\_, deceased, is disposed of, unless the plaintiff herein elects to discontinue this action, and for such other and further relief as may be just and proper.

[Attorney for Defendants]

[Office & P. O. Address

and Telephone Number]

To \_\_\_\_\_, Esq.,

Attorney for Plaintiff

**Form 21**

**Affidavit to Obtain Stay.**

**(Creditor's Action Against Distributees)**

[Caption and introductory paragraph]

That he is one of the defendants in the above-entitled action.

That this action is brought under the provisions of Article 12 of the EPTL for the purpose of enforcing the liability of defendants as distributees [testamentary beneficiaries] of \_\_\_\_\_ for a debt of the said \_\_\_\_\_ against certain real property described in the complaint herein and of which the said \_\_\_\_\_ died seised and possessed.

That this action has been commenced by the service upon all the defendants of copies of the summons and complaint herein. That your petitioner has appeared by \_\_\_\_\_, his attorney, and \_\_\_\_\_ [show condition of action].

That at the time of the commencement of this action there was and still is pending in the Surrogate's Court of the county of \_\_\_\_\_, that being the court having jurisdiction of the estate of the said decedent, a proceeding for the judicial settlement of the accounts of \_\_\_\_\_ as executor of the last will and testament [as administrator of the goods, chattels, and credits] of \_\_\_\_\_, the said

decendent, in which proceeding an order to dispose of the real property of the decedent for the payment of his debts may be made. That the letters testamentary issued to the said \_\_\_\_\_ as executor of the last will and testament of the said decedent [that the letters of administration issued to the said \_\_\_\_\_ on the estate of the said decedent] were issued on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and that the proceeding for the judicial settlement of the accounts of the said executor [administrator] was commenced by the filing in the said Surrogate's Court of a properly verified petition and account within eighteen months after the letters were so issued, to wit: on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[Signature, with name printed underneath]

[Jurat]

## Form 22

### Order Staying Action

#### (Creditor's Action Against Distributees)

[Caption]

On reading and filing the affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, whereby it appears that a proceeding is pending in the Surrogate's Court of the county of \_\_\_\_\_ for the judicial settlement of the accounts of \_\_\_\_\_ as executor of the last will and testament [as administrator of the goods, chattels, and credits] of \_\_\_\_\_, deceased, and that this action is brought to enforce the liability of the defendants herein for debts of the said \_\_\_\_\_, deceased, declared in Section 12-1.1 of the EPTL and due notice of this motion having been given, and after hearing \_\_\_\_\_ of counsel for the defendants in support of the said motion, and \_\_\_\_\_ of counsel for the

plaintiff in opposition thereto, and the said plaintiff not having elected to discontinue this action, now on motion of \_\_\_\_\_, attorney for the defendants, it is

ORDERED, that all proceedings in this action subsequent to the complaint be and they hereby are stayed until the proceeding in the Surrogate's Court of the county of \_\_\_\_\_ for the judicial settlement of the accounts of \_\_\_\_\_ as executor of the last will and testament [as administrator of the goods, chattels, and credits] of \_\_\_\_\_ deceased, be disposed of unless the said plaintiff should hereafter elect to discontinue this action.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_, N. Y.

Enter,

[Signature, with name printed underneath]

Justice of the Supreme Court

## Form 23

### Notice of Motion to Vacate Stay

[Caption]

PLEASE TAKE NOTICE that on the annexed affidavit of \_\_\_\_\_, sworn to on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a motion will be made at a motion term of this court to be held in and for the County of \_\_\_\_\_ at the County Court House in the City of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the opening of court on that day or as soon thereafter as counsel can be heard, for an order vacating and setting aside the stay of proceedings granted herein by the order of this court [or "by Mr. Justice \_\_\_\_\_"] made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, on the ground that \_\_\_\_\_ and for such other or further relief as may be just.

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Attorney for \_\_\_\_\_

Office and P. O. Address

Telephone No. \_\_\_\_\_

To: \_\_\_\_\_

Attorney for \_\_\_\_\_

Office and P. O. Address

## Form 24

### Affidavit on Motion to Vacate Stay

[Caption and introductory paragraph]

1. He is the attorney for the defendant in the above-entitled action.

2. This action is now pending in the \_\_\_\_\_ Court of  
\_\_\_\_\_ County and was brought for the purpose of  
\_\_\_\_\_ [set forth nature of action].

3. This action was commenced by the service of a summons and complaint on the defendant on  
the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ and issue was duly joined by  
the service of an answer on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

4. Thereafter, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an  
order was made and entered by this court staying all proceedings on the part of the plaintiff  
herein until \_\_\_\_\_ [set forth provisions of stay] as will more fully appear  
from a copy of said order hereto annexed and made a part of this affidavit.

5. Said order, staying further proceedings in this action, was granted without notice to the plaintiff of the application therefor and was improvidently granted because [show facts indicating that the order was improperly granted].

WHEREFORE, an order is requested vacating and setting aside the stay of proceedings granted herein by the prior order of this court and for such other and further relief as to the court may seem just and proper.

\_\_\_\_\_  
[Print signer's name below signature]

[Jurat]

## Form 25

### Order Vacating Stay

[Caption]

An order having been made and entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ staying all proceedings on the part of the defendant herein until \_\_\_\_\_ [state nature of stay] and an application having been made to this court by the said defendant for an order vacating the said stay of proceedings on the ground that the said order was improvidently granted without notice of the application therefor to the said defendant because [state the grounds for vacating the stay],

NOW, on reading and filing the notice of motion dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ and the affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ with proof of due service thereof in support of said application and the affidavit of \_\_\_\_\_, sworn to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ in opposition thereto and after hearing \_\_\_\_\_, attorney for the defendant in support of said application

and \_\_\_\_\_, attorney for the plaintiff in opposition thereto and due deliberation having been had

NOW, on motion of \_\_\_\_\_, attorney for the defendant it is

ORDERED that the stay of proceedings contained in the order of this court made and entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, staying all proceedings on the part of the defendant until \_\_\_\_\_ [set forth nature of stay] be and the same hereby is vacated and set aside.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_, New York.

Enter \_\_\_\_\_ [Print signer's name below signature] Justice, Supreme Court  
3 \_\_\_\_\_ County

New York Consolidated Laws Service

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