NY CLS CPLR § 3005

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Consolidated Laws Service ***>***

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

Article 30 Remedies and Pleading (§§ 3001 — 3045)

§ 3005. Relief against mistake of law

When relief against a mistake is sought in an action or by way of defense or counterclaim, relief shall not be denied merely because the mistake is one of law rather than one of fact.

History

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

Annotations

Notes

Derivation Notes:

Earlier statutes: CPA § 112-f.

Advisory Committee Notes:

Except for a minor language change, this section is the same as CPA § 112-f, enacted in 1942. Laws 1942, c 558.

Commentary

PRACTICE INSIGHTS:

JUDICIAL INTERPRETATION NOT ALWAYS FORGIVING

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INSIGHT

Although CPLR 3005 changes the common law rule that there was no relief from a mistake of law, the practitioner should be aware that the statute does not offer universal forgiveness. Originally, the statute was invoked to recover taxes paid without protest under a mistaken obligation, but has been applied to all levels of mistakes of law, unilateral or mutual. The pleader seeking to take advantage of the statutory reprieve should set out the factual circumstances for the mistake with some detail. The pleader need not characterize the error as one of law, however, because CPLR 3005 is supposed to put mistakes of law and fact on an equal footing. Nevertheless, the practitioner must recognize that equitable relief is not always granted and the line between mistakes of law and fact may not be bright.

ANALYSIS

Mistakes of law may — but not must — be forgiven.

Mistakes of law were unforgivable at common law, because of perceived proof problems regarding the allegedly mistaken motives of the allegedly mistaken litigant and justification for his or her reliance on an error of law. Equity thereafter built in a host of exceptions and differentiated “mistakes of fact,” which would seem to suffer from the same problems of proof. To tidy up the messy case law, CPLR 3005 ensures that relief from a mistake is not denied solely because it is determined to be of law, rather than of fact. *See* *Kirby McInerney & Squire, LLP v. Hall Charne Burce & Olson, S.C.*, 15 A.D.3d 233, 790 N.Y.S.2d 84 (1st Dep't 2005). However, current views of the appellate courts illustrate how difficult the distinction often can be.

Equitable waters are often muddy.

A cable TV subscriber, asserting fraud, brought a class action suit to recover $5 late fees assessed for untimely payments of monthly charges. The plaintiff alleged that she paid the late fee under misconception of both fact and law. The trial court, deciding it was neither, dismissed the action. The appellate court affirmed, with costs, and held that a contracting party faced with an allegedly unjust demand cannot voluntarily pay it and subsequently seek reimbursement, stating that the statute “does not require all mistakes of law to be treated as mistakes of fact." *Dillon v. U-A Columbia Cablevision of Westchester, Inc.*, 292 A.D.2d 25, 27, 740 N.Y.S.2d 396, 397 (2d Dep't 2002).

The Court of Appeals unanimously agreed, finding plaintiff's claim barred by the voluntary payment doctrine, “[t]hat common-law doctrine [which] bars recovery of payments voluntarily made with full knowledge of the facts, and in the absence of fraud or mistake of material fact or law …. Here, no fraud or mistake is alleged in that, according to the complaint, plaintiff knew she would be charged a $5 late fee if she did not make timely payment. Alleged mischaracterization of the $5 late fee as an administrative fee does not overcome application of the … doctrine." *Dillon v. U-A Columbia Cablevision of Westchester, Inc.*, 100 N.Y.2d 525, 526, 760 N.Y.S.2d 726, 727, 790 N.E.2d 1155, 1156 (2003). *See also Lonner v. Simon Property Group, Inc.*, 57 A.D.3d 100, 866 N.Y.S.2d 239 (2d Dep’t 2008).

Notes to Decisions

I.Under CPLR

1.Generally

II.Under Former Civil Practice Laws

2.Generally

3.Common law rule

I. Under CPLR

1. Generally

A plaintiff who, in conformity with a void regulation, paid over moneys to a village voluntarily and without protest is entitled to recover under the provisions of this section where the village had not adversely changed its position subsequent to the receipt of the funds. Jenad, Inc. v Scarsdale, 23 A.D.2d 784, 258 N.Y.S.2d 777, 1965 N.Y. App. Div. LEXIS 4407 (N.Y. App. Div. 2d Dep't 1965), rev'd, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 218 N.E.2d 673, 1966 N.Y. LEXIS 1170 (N.Y. 1966).

Stipulation, by which wife agreed that she would withdraw her action for divorce and allow husband to prove his counterclaim without opposition, on condition that she would be awarded alimony in an amount to be determined by the court, was void where both parties were mistaken as to the law, which provided that alimony may not be awarded to a wife guilty of conduct constituting grounds for divorce, and equity would permit the court to return the parties to their status at time the agreement was made. Gullo v Gullo, 46 A.D.2d 991, 361 N.Y.S.2d 769, 1974 N.Y. App. Div. LEXIS 3475 (N.Y. App. Div. 4th Dep't 1974).

Where settlement was reached during the course of trial and after a period of prolonged negotiations during which all parties were ably represented by counsel entirely familiar with the

problems presented and their legal implications, where, upon the termination of negotiations, a contract was entered into, where the subsequent entry of an order on notice embodying the agreed terms thereof was a mere formality, and where the content and terminology of that order was in accord with the stipulation, the trial court had no discretion to disturb such agreement. Covert v Covert, 50 A.D.2d 622, 374 N.Y.S.2d 432, 1975 N.Y. App. Div. LEXIS 12426 (N.Y. App. Div. 3d Dep't 1975).

Ex-wife, whose former husband died 2 months after divorce, was not entitled to vacatur of divorce on ground that parties did not know that divorce would automatically revoke husband's testamentary bequests to wife and that if they had known, they would not have consented to divorce, which wife claimed she obtained to be free from financial responsibility for her husband's medical bills, since it was not shown that husband had been mistaken; moreover, if husband had lived for many years by application of heroic medical measures that consumed his fortune, wife would be protected by dint of divorce, whereas if he died quickly (as he did), vacatur of divorce would allow her to take residuary bequest, and it is not function of equity to give people such option. Jossel v Meyers, 212 A.D.2d 55, 629 N.Y.S.2d 9, 1995 N.Y. App. Div. LEXIS 6622 (N.Y. App. Div. 1st Dep't 1995).

Stipulation of settlement whereby plaintiff resigned as officer and director of 3 corporations formerly owned by decedent, and assigned all of his shares to defendants in exchange for $50,000, was improperly vacated because parties' alleged mistake as to applicable tax law was not mutual, but rather constituted unilateral misunderstanding on part of defendants, and there was no unjust enrichment of plaintiff at expense of defendants that should be remedied by equity. Weissman v Bondy & Schloss, 230 A.D.2d 465, 660 N.Y.S.2d 115, 1997 N.Y. App. Div. LEXIS 6751 (N.Y. App. Div. 1st Dep't 1997), app. dismissed, 91 N.Y.2d 887, 668 N.Y.S.2d 565, 691 N.E.2d 637, 1998 N.Y. LEXIS 109 (N.Y. 1998).

Preferred remedy to correct inaccuracy in judgment of divorce is motion to trial court for resettlement or vacatur, not appeal. Simonson-Carlson v Carlson, 266 A.D.2d 871, 698 N.Y.S.2d 206, 1999 N.Y. App. Div. LEXIS 11775 (N.Y. App. Div. 4th Dep't 1999).

Cable service customer did not act under a mistake of law when the customer made late payments for service and voluntarily paid the late fee, despite the customer's knowledge that the fee may have been excessive. Dillon v U-A Columbia Cablevision, 292 A.D.2d 25, 740 N.Y.S.2d 396, 2002 N.Y. App. Div. LEXIS 3558 (N.Y. App. Div. 2d Dep't 2002), aff'd, 100 N.Y.2d 525, 760 N.Y.S.2d 726, 790 N.E.2d 1155, 2003 N.Y. LEXIS 897 (N.Y. 2003).

Drawee bank which paid a forged instrument was not entitled to retain amount paid to it by collecting bank which mistakenly believed it had a legal obligation to reimburse drawee, and which further mistakenly believed that collecting bank's depositor would not object to being charged with funds represented by a forged check. Valley Bank v Bank of Commerce, 74 Misc. 2d 195, 343 N.Y.S.2d 191, 1973 N.Y. Misc. LEXIS 2044 (N.Y. Civ. Ct. 1973), aff'd in part and rev'd in part, 1973 N.Y. Misc. LEXIS 2356 (N.Y. App. Term Oct. 30, 1973).

Decedent's former wife, who had been granted a judgment of separation providing, pursuant to stipulation, that she was to be irrevocable beneficiary of decedent's $10,000 national service life insurance policy but who was not designated as beneficiary of policy at time of decedent's death, was not statutorily precluded from recovering policy proceeds from assets of decedent's estate, though the designated beneficiary of policy was sole beneficiary of the estate. Will of Hilton, 88 Misc. 2d 760, 388 N.Y.S.2d 985, 1976 N.Y. Misc. LEXIS 2741 (N.Y. Sur. Ct. 1976).

Whether or not two men considered themselves married in nature, one of the parties, a sophisticated businessman, must have considered the strong possibility of illegality while the law was in such a developing state; accordingly, his position that there was a mutual mistake of fact which impaired the validity of a "seperation agreement" was disingenuous. Nor was the agreement invalid under the doctrine of mutual mistake of law. Gonzalez v Green, 831 N.Y.S.2d 856, 14 Misc. 3d 641, 2006 N.Y. Misc. LEXIS 3925 (N.Y. Sup. Ct. 2006).

Under CPLR § 3005, providing that when relief against a mistake is sought in an action or by way of defense or counterclaim, relief shall not be denied merely because the mistake is one of law rather than one of fact, payments made, voluntarily in good faith because of understandable mistake, by domestic importers of goods to foreign interventors who had no right to receive or

retain such payments were recoverable by way of setoff against the amounts bound to be due to the interventors from the importers for post-intervention shipments. Menendez v Faber, Coe & Gregg, Inc., 345 F. Supp. 527, 1972 U.S. Dist. LEXIS 14616 (S.D.N.Y. 1972), modified, 485 F.2d 1355, 1973 U.S. App. LEXIS 7783 (2d Cir. N.Y. 1973).

II. Under Former Civil Practice Laws

2. Generally

Where town and city agreed to pay for maintenance and repair of connecting bridge, apportioned on basis of assessed valuation, their division of costs equally between them did not bar town from later recovery of overpayment. Pelham v Mt. Vernon, 278 A.D. 79, 103 N.Y.S.2d 494, 1951 N.Y. App. Div. LEXIS 3746 (N.Y. App. Div. 1951), rev'd, 304 N.Y. 15, 105 N.E.2d 604, 304 N.Y. (N.Y.S.) 15, 1952 N.Y. LEXIS 777 (N.Y. 1952).

Where divorced wife was induced to marry defendant by his false representation that she was under no disability to marry again, and husband obtained annulment of marriage on ground of such disability, wife was not entitled to maintain action of fraud against him. Pluchino v Pluchino, 1 A.D.2d 831, 148 N.Y.S.2d 508, 1956 N.Y. App. Div. LEXIS 6437 (N.Y. App. Div. 2d Dep't 1956).

Possibility that development companies may in future find that they do not have powers of private management claimed by them and that they then may seek rescission on ground of mutual mistake was so speculative as to bar present judicial interference with performance of their contract. Pratt v La Guardia, 47 N.Y.S.2d 359, 182 Misc. 462, 1944 N.Y. Misc. LEXIS 1773 (N.Y. Sup. Ct.), aff'd, 268 A.D. 973, 52 N.Y.S.2d 569, 1944 N.Y. App. Div. LEXIS 4483 (N.Y. App. Div. 1944).

Where school board directed teacher holding permanent certificate to choose between applying for sick leave and submitting to physical examination, she had right to rely on its direction as

authorized order. Dushane v Kazmierczak, 79 N.Y.S.2d 293, 192 Misc. 23, 1948 N.Y. Misc. LEXIS 2396 (N.Y. Sup. Ct.), aff'd, 274 A.D. 1025, 86 N.Y.S.2d 480, 1948 N.Y. App. Div. LEXIS 4523 (N.Y. App. Div. 1948).

Where defendant had not completed work for which he had been paid in full, and violation was placed against plaintiff's property by department of housing, plaintiff was entitled to recover reasonable value of uncompleted work and removal of such violation. Allen v Miller, 1 Misc. 2d 102, 150 N.Y.S.2d 285, 1955 N.Y. Misc. LEXIS 2227 (N.Y. App. Term 1955).

Where parties assumed that tax assessment was legal, but Appellate Division held it was illegal as matter of law, payment was made under mistake of both law and fact, and taxpayer may recover. One Fifty-Seven Prince Street Corp. v Michelini, 62 N.Y.S.2d 148, 1946 N.Y. Misc. LEXIS 2200 (N.Y. Sup. Ct.), aff'd, 271 A.D. 777, 66 N.Y.S.2d 406, 1946 N.Y. App. Div. LEXIS 2981 (N.Y. App. Div. 1946).

Advice of attorney, followed by client, did not bar client from recovering excess of emergency rent. Century Oxford Mfg. Corp. v Eppens Smith Co., 86 N.Y.S.2d 405, 1949 N.Y. Misc. LEXIS 1773 (N.Y. App. Term), aff'd, 275 A.D. 834, 89 N.Y.S.2d 898, 1949 N.Y. App. Div. LEXIS 4695 (N.Y. App. Div. 1949).

CPA § 112-f, provided that relief against mistake should not be denied merely because mistake was one of law, related to that branch of equity jurisprudence which was called mistake, and had no relation whatever to misrepresentation as ground for either damages or rescission. Jacob Goodman & Co. v Pratt, 138 N.Y.S.2d 89, 1954 N.Y. Misc. LEXIS 2605 (N.Y. Sup. Ct. 1954).

Rescission of contract to purchase realty cannot be allowed merely because plaintiff vendor expressed erroneous opinion as to whether there was writing which would satisfy requirement of statute of frauds, if his opinion was erroneous. Jacob Goodman & Co. v Pratt, 138 N.Y.S.2d 89, 1954 N.Y. Misc. LEXIS 2605 (N.Y. Sup. Ct. 1954).

Welfare payment, made to Nassau County, by commissioner of welfare of City of New York under mistake of law, was recoverable. McCarthy v Wallace, 145 N.Y.S.2d 277, 1955 N.Y. Misc. LEXIS 3325 (N.Y. Sup. Ct. 1955).

3. Common law rule

Formerly a mistake of law availed nothing but such rule was changed by CPA § 112-f. Tanner v Imperial Recreation Parlors, 265 A.D. 371, 39 N.Y.S.2d 99, 1943 N.Y. App. Div. LEXIS 6303 (N.Y. App. Div.), aff'd, 290 N.Y. 801, 50 N.E.2d 110, 290 N.Y. (N.Y.S.) 801, 1943 N.Y. LEXIS 1403 (N.Y. 1943).

4. Retroactive effect

Compromise agreement, made in 1940, was not within CPA § 112-f, effective in 1942. Steinhardt v Steinhardt, 78 N.Y.S.2d 481, 192 Misc. 815, 1947 N.Y. Misc. LEXIS 3754 (N.Y. Sup. Ct. 1947).

CPA § 112-f, by its terms, did not apply to transactions which occurred before its effective date, and so was not available to aid plaintiff in action to cancel notes given for pinball machines sold for operation in violation of law, where sale took place before effective date of statute. Rudnick v Vassar, 43 N.Y.S.2d 542, 1943 N.Y. Misc. LEXIS 2268 (N.Y. Sup. Ct. 1943).

5. Trusts

Rule against recovery of money against mistake of law should not apply to payments made by trustee, or other fiduciary, of funds, whose equitable ownership was in their persons. In re Lawyers Title & Guaranty Co., 270 A.D. 294, 58 N.Y.S.2d 857, 1945 N.Y. App. Div. LEXIS 2853 (N.Y. App. Div. 1945), aff'd, 296 N.Y. 611, 68 N.E.2d 886, 296 N.Y. (N.Y.S.) 611, 1946 N.Y. LEXIS 1191 (N.Y. 1946).

Where one cestui seeks to recover from another cestui moneys paid out by trustee, moneys paid under mistake of law are not recoverable. In re Lawyers Title & Guaranty Co., 51 N.Y.S.2d 122, 184 Misc. 241, 1944 N.Y. Misc. LEXIS 2468 (N.Y. Sup. Ct. 1944), modified, 270 A.D. 294, 58 N.Y.S.2d 857, 1945 N.Y. App. Div. LEXIS 2853 (N.Y. App. Div. 1945).

6. Banking transactions

Where plaintiff bank paid check under mistake of fact, or in ignorance of fact that payment thereon had been stopped before check was presented for certification, and in any event before it was paid, plaintiff was entitled to recover amount so paid, even if payment be considered as made under mistake of fact as to its obligation to cash check. Chase Nat'l Bank v Battat, 105 N.Y.S.2d 13, 1951 N.Y. Misc. LEXIS 1851 (N.Y. Sup. Ct. 1951).

7. Corporations

Where dissenting stockholders objected to consolidation of corporations and filed demands for payment of their stock, failure of petitioners, seeking determination of value of their stock, to submit stock certificates for notation thereon of fact of stockholder’s demand for payment, did not bar relief sought. Application of Wood, 103 N.Y.S.2d 110, 1951 N.Y. Misc. LEXIS 1600 (N.Y. Sup. Ct. 1951).

8. Recovery of taxes

In action to recover amount paid as business tax under alleged mistake whereby city and officials became unjustly enriched, defense of voluntary payment was sufficient despite CPA § 112-f. Bellefont Dyeing Corp. v Joseph, 148 N.Y.S.2d 895, 1956 N.Y. Misc. LEXIS 2329 (N.Y. Sup. Ct. 1956).

9. Illegal agreement

Where city and disabled fireman signed illegal agreement for his retirement, he had right to assert mistake of law as basis for order directing that he be restored to payroll of city and that he be given opportunity to retire from State Retirement System. Robida v Mirrington, 1 Misc. 2d 968, 149 N.Y.S.2d 152, 1956 N.Y. Misc. LEXIS 2110 (N.Y. Sup. Ct. 1956).

Research References & Practice Aids

Federal Aspects:

Relief from mistake, Rule 60 of the Federal Rules of Civil Procedure, USCS Court Rules.

Jurisprudences:

19A NY Jur 2d Compromise, Accord, and Release § 108. .

84 NY Jur 2d Pleading § 152. .

84 NY Jur 2d Pleading § 145. .

99 NY Jur 2d Taxation and Assessment § 1082. .

102 NY Jur 2d Taxation and Assessment § 2966. .

105 NY Jur 2d Trial § 474. .

Treatises

Matthew Bender’s New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3005, Relief Against Mistake of Law.

Matthew Bender’s New York CPLR Manual:

CPLR Manual § 19.09. Particular pleading requirements in certain actions.

Forms:

Bender’s Forms for the Civil Practice Form No. CPLR 3005:1 et seq.

LexisNexis Forms FORM 75-CPLR 3005:1.— CPLR 3005 Complaint in Action for Rescission of Contract Because of Mistake of Law.

LexisNexis Forms FORM 75-CPLR 3005:2.— CPLR 3005 Complaint in Action to Set Aside Assignment of Mortgage on Ground It was Obtained Through Misrepresentation of Law.

Hierarchy Notes:

NY CLS CPLR, Art. 30