SMALL CLAIMS MANUAL

A GUIDE TO SMALL CLAIMS LITIGATION IN THE NEW YORK STATE COURTS

Sixth Edition 2022

Hon. Gerald Lebovits &
Mark H. Shawhan, Esq.

(in association with the Small Claims Arbitrators Association,
New York City Civil Court)

FOREWORDS BY:
Hon. Janet DiFiore, Chief Judge of the State of New York &
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Chief Judge of the State of New York

Janet DiFiore

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Each year, tens of thousands of New Yorkers appear in Small Claims Courts across the state to resolve disputes ranging up to $10,000 in value, depending on the court. Most of these individuals appear without a lawyer. For many, it is their one and only experience with the justice system. That is why the Small Claims Court is truly the "People's Court." And while the issues may not be as weighty or complex as those heard in our other civil courts, they are every bit as important to the individuals and small-business owners who appear in Small Claims Court.

Upon becoming Chief Judge in 2016, I announced the "Excellence Initiative," our systemwide campaign to improve the efficiency and quality of justice services in all of our courts. In Small Claims Court, the Excellence Initiative has improved operations, increased staffing levels and hours of operation, and expanded mediation services. The progress we have made to deliver fair and timely justice in the Small Claims Court has been made possible by the hard work and dedicated efforts of countless judges, court professionals and volunteers.

A case in point is this extraordinarily comprehensive, helpful and up-to-date "Small Claims Manual" prepared by Gerald Lebovits, an Acting Supreme Court Justice in New York County, and his Principal Court Attorney, Mark Shawhan. This excellent Manual has been used by the New York State Judicial Institute to provide in-depth training to judges across the state on small claims practice and procedure. It is organized and written in a comprehensible, user-friendly format and contains official Unified Court System Small Claims forms. It is the definitive guide to Small Claims litigation, and it is available to all, free of charge.

On behalf of the New York State Unified Court System, I extend my sincere thanks and appreciation to Justice Lebovits and Mr. Shawhan for preparing this Small Claims Manual. They have rendered a service of inestimable value to every individual who serves the public in our Small Claims Courts, and to the many thousands of ordinary New Yorkers who seek justice there each and every day.

Gratefully,

Janet DiFiore

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CAROLYN WALKER-DIALLO
ADMINISTRATIVE JUDGE

FOREWORD

This manual is the most comprehensive and detailed manual on small-claims litigation available to judges, court attorneys, arbitrators, referees, and practitioners in the State of New York. As the Administrative Judge of the Civil Court of the City of New York, I am deeply honored that my colleague Judge Gerald Lebovits asked me to provide a brief Foreword to the manual, which I consider to be the gold standard for small-claims litigation in New York State.

As the leader of the "People's Court," everyday I am tasked with the responsibility of ensuring efficient and effective justice to all people who walk through our doors to have their cases heard. For many New Yorkers, Small Claims Court may be the first and only time they have contact with our court system. As such, it is vital that all stakeholders know and understand the intricacies of Small Claims Court. This manual assists the Court, anyone who appears before the Court, or on behalf of a party to the litigation, with all the information necessary to navigate a small-claims case.

And there is no one better to present this needed information than Judge Gerald Lebovits. I have had the pleasure of attending his lectures and he has the knowledge, experience, skill, talent, and passion needed to bring the law to life for the most experienced attorney to the every-day New Yorker who has a controversy that needs to be adjudicated in our Court. I cannot forget the manual's co-author, Mark H. Shawhan, Esq., for his invaluable contributions, including his exceptional research and due diligence, which were integral in bringing this manual to fruition.

Thank you, Judge Lebovits, for inviting me to say a few words in this truly remarkable manual. Readers get ready to learn all you need to know by immersing yourself in the *Small Claims Manual: A Guide to Small Claims Litigation in the New York State Courts.* You will not regret it.

Yours in Service,

Hon. Carolyn Walker-Diallo
Administrative Judge
Civil Court of the City of New York

INTRODUCTION TO THE SIXTH EDITION

At more than 60,000 words, this is a big book about small claims. It aims to provide a comprehensive, and comprehensible, guide to small-claims litigation in New York State in all its diversity and complexity. The *Small Claims Manual* slightly emphasizes practice in the New York City Civil Court to aid the many lawyers who serve as volunteer arbitrators hearing small-claims cases in New York City—the angels of the People's Court. But its coverage and analysis extend to all courts statewide: from Buffalo City Court, to Suffolk County District Court, to Potsdam Town Court. And the *Manual* is intended to be helpful to a wide range of readers: not only to the judges, court attorneys, and arbitrators and referees who hear and decide small-claims cases, but also to lawyers who litigate those cases and to the litigants themselves.

This is the 6th edition of the *Small Claims Manual*. It replaces the 5th edition, published in 2001 by the Association of Small Claims Arbitrators of the New York City Civil Court. Although the 6th edition has drawn on past editions' expertise in, and passion for, small-claims litigation, this edition represents a fundamental rewrite and update of the *Manual* to maintain its relevance and value to a new generation of small-claims adjudicators, litigators, and litigants. This is no small undertaking. The authors have benefitted from the thoughts and efforts of other judges, clerks, and lawyers who also care deeply about small claims.

Much appreciation goes to Hon. Janet DiFiore, Chief Judge of the State of New York, and Hon. Carolyn Walker-Diallo, Administrative Judge of the New York City Civil Court, for their generous forewords and for encouraging this project.

For their assistance, thanks as well to Hon. Arthur F. Engoron, Supreme Court, New York County (principal author of the *Manual*'s 5th Edition), and his law clerk, Allison Greenfield; Hon. Nicholas Moyne and Hon. Ilana J. Marcus of Civil Court, and their court attorneys past and present, Nicholas Grafstrom, Jamie Gold, and Anthony Graniere; Hon. Richard Tsai and Hon. James G. Clynes of Civil Court; Ananias Grajales, Chief Clerk, Supreme Court, Nassau County, and David Seigel, small-claims clerk, Civil Court, New York County; attorneys David Colodny and Fred Magovern; Patricia Lin, law-student intern for Judge Lebovits, and Audrey Felton, Jared Harbour, and Thomas Reuter, undergraduate interns for Judge Lebovits; and Nick Inverso and Michael Gigante of the Office of Court Administration print shop.

Gratitude also to the Judicial Institute of the New York State Courts; the Board of Judges of the New York City Civil Court; and the Civil Court Practice Section of the New York County Lawyers Association.

The authors offer special appreciation to the New York City Small Claims Arbitrators Association (Darren Marks, president), an independent bar association that serves as an adjunct to Civil Court. This edition of the *Small Claims Manual*, like all prior editions of this *Manual*, has been written in collaboration with the Arbitrators Association. For their help with prior editions of the *Manual*, thanks also to Hon. Barbara

Jaffe, Supreme Court, New York County, who preceded Judge Lebovits as president of the Arbitrators Association, and to the late Joseph A.J. Gebbia, "Mr. Small Claims."

Most of all, we recognize all volunteer small-claims arbitrators, the Angels of the Court.

Although the authors have received assistance and suggestions from many judicial quarters, the views expressed in the *Manual*—including, in some places, the authors' recommendations for changes to statutory and decisional law and disagreement with current caselaw—remain those of the authors alone.

This *Manual* matters because Small Claims Court matters: Its importance belies the amount of money at stake in each small claim. New York courts hear huge numbers of small-claims cases, covering the substantive gamut, from airline-flight-bumping claims to wage-and-hour suits. Small-claims litigation enables thousands and thousands of New Yorkers every year to have their day in court without undue delay or expense and to receive equal justice under law. Small Claims Court is the face of justice to countless New Yorkers who will never see another court.

Small Claims Court is a jewel in New York's judicial crown—long may it continue to be so.

Gerald Lebovits
Mark H. Shawhan

July 2022

Hon. Gerald Lebovits is an acting New York State Supreme Court justice in New York County. He is the president of the New York State Association of Acting Supreme Court Justices and an adjunct professor at Columbia, Fordham, and NYU law schools. He was also the President of the Association of Small Claims Arbitrators of the New York City Civil Court from 1996 to 1998. Judge Lebovits dedicates this book to Eugene Lebovits, his late father, a man of courage, honor, and principle. He was proud that his son was a Small Claims Arbitrator.

Mark H. Shawhan, a Small Claims Arbitrator, has served as Justice Lebovits's Principal Court Attorney since February 2019. He is a graduate of Columbia University and Yale Law School. Mr. Shawhan dedicates this book to his parents, who brought him up to value equal justice under law.

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OVERVIEW

Small-claims litigation in the New York State courts is a procedurally streamlined, less-formal means of fairly, rapidly, and inexpensively adjudicating small-dollar cases. These cases are heard in dedicated parts of four of New York's limited-jurisdiction trial courts: the New York City Civil Court, the District Courts on Long Island, the City Courts elsewhere in the State, and the Town and Village Courts, also known as the Justice Courts. This *Manual* refers to these four courts collectively as the Lower Courts, and the statutes setting up and governing these courts as the Lower Court Acts.

The Small Claims parts of the Lower Courts are often referred to collectively as Small Claims Court—New York's true People's Court. These parts have geographic and monetary limits on their subject-matter jurisdiction over claims and counterclaims. (The party asserting a claim in Small Claims Court is referred to as "claimant" or "counterclaimant," rather than plaintiff; the party defending against a claim remains "defendant.") These limits vary depending on the court. In the Civil Court, the District Courts, and the City Courts, the small-claims limits are below the monetary limit for cases heard in the regular parts of those courts. In the Justice Courts, the limits are the same.

With narrow exceptions, the Lower Courts hearing small claims are also limited to jurisdiction over (i) *legal* claims for (ii) *money only*. That is, the courts generally lack jurisdiction to hear claims seeking nonmonetary relief, or to hear claims seeking monetary relief that is equitable in nature. And the courts lack jurisdiction to award either of those types of relief.

Small-claims litigation may be further subdivided into "small-claims actions" (brought by individuals) and "commercial-claims actions" (brought by corporations, partnerships, or associations). As a corollary, these two types of actions are subject to slightly different party-related and geographic jurisdictional requirements, although the same monetary limits apply to each. A party that satisfies the monetary and geographic requirements for jurisdiction may choose between bringing a claim in Small Claims Court, in the regular plenary part of the appropriate Lower Court, or even in Supreme Court.

Small and commercial claims are commenced in roughly the same fashion: in each case, the claimant gives a short, simple version of the claim—in Civil Court, limited to a one-page-form—to a clerk in the small-

claims clerk's office. The clerk then mails the claim to defendant and schedules a prompt hearing date (*i.e.*, a trial) for the claim.

Neither claimant nor defendant need be represented by counsel. Cases in which both parties have attorneys are generally transferred to the Lower Court's regular part. A case must also be transferred to the court's regular part if defendant demands a jury trial. And a judge hearing a small-claims case may—and should—transfer the case to the court's regular part if the case is complex and will require the exchange of discovery. If a claimant or counterclaimant is seeking an amount in damages exceeding the monetary limit, the court should give that party the opportunity to reduce the amount sought to the limit, rather than simply dismiss the claim or counterclaim outright.

Small/commercial claims are not held to any sort of pleading standard. The statement of the claim given to the small-claims clerk need not be sworn. The proper place to bring out the nature of the claim and its supporting evidence is instead at the trial on the claim before a judge. (If the court's rules provide for it, cases may be heard instead before an arbitrator, if the parties consent to arbitral adjudication and waive their right to appeal.) There is thus very limited pretrial discovery; and pretrial motion practice, though occasionally appropriate, is strongly discouraged.

When the adjudicator (judge or arbitrator) holds the trial on a claim, or an inquest on damages following a default, all oral testimony or written statements must be made under oath or affirmation. Otherwise, few of the typical procedural and evidentiary rules apply. For example, hearsay is admissible, although it may not form the sole basis for the court's ruling. The adjudicator should also be sure to elicit from the parties or witnesses the relevance and significance of any documents or other materials brought to the hearing (and to ensure that those materials are formally offered into evidence), if the parties do not do so themselves. The aim is for the adjudicator to conduct the hearing in a comparatively informal manner to ensure that the parties get a quick and inexpensive decision, that the parties get a full and fair opportunity to be heard, and that due allowance is made for the needs of unrepresented and unsophisticated litigants.

If a party fails to appear for the scheduled hearing, the court should enter a default, and either dismiss the case (if claimant defaults) or refer the matter for an immediate inquest (if defendant defaults). Inquests in New York City are often conducted by arbitrators acting as referees rather than judges. The referee will prepare a report including brief findings of fact and conclusions of law. The report may recommend that the judge enter a

money judgment for claimant based on claimant's evidence at the inquest. Alternatively, if the referee concludes that claimant's evidence at the inquest is insufficient to prove the claim, the report may recommend that the judge dismiss the claim altogether. The court will then enter a default judgment on the referee's report. Should defendant then move to vacate the default judgment, the judge will often grant the motion to allow claimant's claim to be resolved on its merits. Claimant may also move to vacate the default judgment on the ground that it does not award sufficient damages, or because the referee dismissed the claim. If either party's motion to vacate is denied, the aggrieved party may appeal from the order denying the motion. That appeal will bring up for review the findings of fact and conclusions of law in the referee's report on which the underlying judgment was entered.

If the hearing in the case goes forward as scheduled, the adjudicator (judge or arbitrator) will render a decision shortly after the hearing. (To avoid unnecessary conflict with litigants, the decision should not be provided to the litigants at the time of decision, but only later, in writing.) An arbitrator's decision need identify only the prevailing party and, if finding for claimant, the amount of the award and interest-accrual date; though arbitrators may, if they choose, write brief explanations of their rulings. No appeal lies from an arbitrator's decision after a trial, except from the *denial* of a motion to vacate that decision. A motion to vacate the arbitrator's decision will be granted only if the movant satisfies one of the narrow grounds listed in CPLR 7511. An error of law alone will not suffice.

A decision after hearing by the judge must briefly, but clearly, present the judge's findings of fact and conclusions of law in writing to permit meaningful review on appeal. These findings are not entitled to issue-preclusive effect in any later action. The judgment itself may, in appropriate circumstances, be entitled to claim-preclusive effect. An award for claimant or counterclaimant should not exceed the amount sought in the claim as filed or amended. Any party aggrieved by the judge's decision after hearing may appeal that decision directly, without first needing to move to vacate.

Appeals from trial-court decisions in a small or commercial claim are taken either to the applicable Appellate Term of Supreme Court or to County Court, and from there to the Appellate Division. The scope of appeal is limited to whether the decision below rendered substantial justice between the parties according to the applicable substantive law. In applying this standard, a reviewing court will not reverse if it disagrees with the trial court on a close, arguable question of fact or law—it instead must be clear on appeal that the trial court erred.

CHAPTER I

SMALL CLAIMS LAW

A. The Adjudicator's Duty to Follow the Law

Before discussing the details of small-claims law and litigation in New York, one global point must be addressed: the extent to which judges and arbitrators deciding small-claims actions should regard themselves as bound by law.

The statutes governing small-claims actions provide that they shall be heard "in such manner as to do substantial justice between the parties according to the rules of substantive law."[1] Similarly, the sole issue that may be raised on appeal is an argument that "substantial justice has not been done between the parties according to the rules and principles of substantive law."[2]

As Lower Court Acts §§ 1804 and 1807 themselves make clear, an adjudicator's resolution of a small claim will be considered to have done "substantial justice between the parties" only if that resolution accords with "the rules of substantive law."[3] This approach follows from the nature of small-claims litigation. A limited-jurisdiction trial court hearing a small claim is a court like any other in New York's Unified Court System—including being subject to the same obligation "to be faithful to and competent in the law."[4]

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[1] New York City Civil Court Act §§ 1804, 1807, 1804-A, 1807-A; Uniform District Court Act §§ 1804, 1807, 1804-A, 1807-A; Uniform City Court Act §§ 1804, 1807, 1804-A, 1807-A; Uniform Justice Court Act §§ 1804, 1807.

[2] *Id.*

[3] James E. Morris, Robert G. Bogle, Thomas F. Liotti & Maryrita Dobiel, *Village, Town, and District Courts in New York* § 11:18 (2021) (explaining that "[a]lthough the procedure for small claims is informal," Lower Court Acts § 1807 provides that "substantial justice must be done between the parties according to the rules and principles of substantive law"); *see also generally id.* at ch. 11 (providing overview of small-claims litigation in the District and Justice Courts). As an example of courts' adherence to the rules of substantive law, see *Balacki v Long Is. Power Auth.* (2013 NY Slip Op 51244[U], at *2 [Nassau Dist Ct July 30, 2013] [dismissing post-Hurricane Sandy small claim on the ground that, although substantial justice in the abstract would warrant awarding plaintiff damages suffered due to defendant's negligence, applicable appellate precedent barred a damages award absent defendant's *gross* negligence, which plaintiff had not shown]).

[4] *Matter of Degenhardt*, 1998 WL 477767, at *2 (NY Commn on Jud Conduct July 27, 1998) (admonishing judge, in an action on allegedly unpaid loans, for entering a

The late professor David Siegel (author of the Civil Court Act) and Professor Patrick Connors contend instead that "when conflict is at hand or when the technical rule of law is not clear, giving 'substantial justice' the stronger role will result in something more in tune with the purpose of the small claim."[5] With due respect to these learned commentators, this contention misses the mark.

What makes small-claims litigation in New York distinctive is the *procedural* allowances made for low-dollar claims frequently brought and defended by self-represented litigants. Thus, as Lower Court Acts § 1804's caption reflects, these claims are heard under an "[i]nformal and simplified procedure" in which, with limited exceptions, adjudicators "shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence." The process has been made simple, informal, easy to understand, and inexpensive. But the statutes providing for small-claims litigation do not alter the substantive law to be channeled through this simplified process.

Professors Siegel and Connors suggest that requiring strict adherence to substantive law imposes an unsustainable burden on small-claims adjudicators, given their relative lack of resources (and, in many of the Justice Courts, their lack of a law degree). But the aim is not to ensure that courts and arbitrators deciding small-claims cases will always be able to wield the same command of the law as might the judges of the Court of Appeals. It is that those adjudicating small claims should follow the substantive law as they understand it, rather than bending it when in their subjective opinion doing so might be needed to do "substantial justice."[6]

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judgment against defendant for the amount of those loans, notwithstanding that some of plaintiff's claims were time-barred and other claims were not supported by evidence, based on what the judge considered to be defendant's "moral obligation" to repay the loans).

[5] David D. Siegel & Patrick A. Connors, *New York Practice* § 582 (6th ed 2021), noting disagreement with Gerald Lebovits, *Small Claims Courts Offer Prompt Adjudication Based on Substantive Law*, NY St Bar J, Dec. 1998, at 6, 9 (arguing that small-claims adjudicators "must strictly follow substantive law when deciding the merits of a claim"), available at https://works.bepress.com/gerald_lebovits/56/ (last visited July 21, 2022); *see also* Gerald Lebovits, *Outgoing President's Message*, 10 Small Claims L J 2, 12 (1998) (emphasizing that small-claims arbitrators must "uphold the law—the same law we expect others to follow—because principled, honest decisionmaking and fair consistency of result are the foundations of a just society"), available at https://works.bepress.com/gerald_lebovits/140/ (last visited July 21, 2022).

[6] Indeed, Professors Siegel and Connors's argument about resource and training limitations would also apply when an adjudicator believes that "the technical rule of law" *is* clear—a situation in which these commentators agree that the adjudicator must strictly

That the resources of the parties, their counsel (if any), and the adjudicators in small-claims litigation might be less should not change that our courts are courts of law, and not of whim and caprice.[7] The results of litigation should not differ depending on whether a party chooses to bring a claim in Small Claims Court or in the regular part of one of the Lower Courts. To do differently risks fostering distrust of the New York courts as unbounded by law.

With respect to small-claims arbitration in the New York City Civil Court, arbitrators hear and determine on consent cases that otherwise would have been decided by judges in the Civil Court's Small Claims Part. Arbitrating small claims plays the same role relative to judicial resolution of those claims as does small-claims litigation relative to litigation generally: a procedurally simpler and more expeditious form of adjudication. By the same token, small-claims arbitrators hearing cases referred to them by Civil Court judges have the same obligation as those judges to follow the governing substantive law. In that respect, small-claims arbitration differs from other types of arbitral proceedings, in which arbitrators are not "bound by principles of substantive law" but are obliged merely "to reach a just result regardless of the technicalities."[8]

To the extent that a small number of trial-court decisions have equated small-claims arbitrations with arbitral proceedings generally,[9] those decisions should be rejected, lest they endanger the value of small-claims arbitration as a simple, efficient, and fair means of resolving smaller-scale disputes among the people of this State.

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apply the governing substantive law. (*See* Siegel & Connors, *New York Practice*, *supra* at note 5, at § 582.)

[7] *See Woodson v Frankart Kings Inc.*, 98 Misc 2d 1101, 1102-1103 (Civ Ct, Kings County 1979) (making a version of this point).

[8] *Matter of Associated Teachers of Huntington v Board of Educ., Union Free Sch. Dist. No. 3, Town of Huntington*, 33 NY2d 229, 235 (1973).

[9] *See e.g. NY Commercial Fin. Corp. v Clinton Hous. Dev. Fund Co.*, 2009 NY Slip Op 51882(U), at *2 (Civ Ct, Kings County Aug. 13, 2009); *Landro v D'Amond*, 180 Misc 2d 420, 424 (Civ Ct, NY County 1998). These decisions rely incorrectly on arbitration decisions outside the small-claims context, without considering that small-claims arbitrators are subject to different, more restrictive rules as adjuncts of the court under regulations implementing the Lower Court Acts. Those regulations are discussed in the next subsection.

B. Substantive Authorities

1. The Small-Claims Articles of the Lower Court Acts

Small-claims cases in the Lower Courts are dealt with by parallel provisions in each court's governing act. When those provisions are identical, cases decided under one act "ha[ve] equal application to all small claims courts."[10]

In the New York City Civil Court, small-claims actions are governed by article 18 of the New York City Civil Court Act (CCA). CCA § 1809 (1) bars small-claims actions by business corporations, partnerships, or associations. Actions brought by those entities seeking damages within the monetary limits of the Small Claims Part of Civil Court—also known as commercial claims—are governed instead by CCA article 18-A.[11]

In the Nassau and Suffolk County District Courts, small and commercial claims are governed by articles 18 and 18-A, respectively, of the Uniform District Court Act (UDCA). Similarly, in City Courts outside New York City, small and commercial claims are governed by articles 18 and 18-A, respectively, of the Uniform City Court Act (UCCA).

In the Town and Village Courts (collectively called the Justice Courts), small claims are governed by article 18 of the Uniform Justice Court Act (UJCA). Unlike the other Lower Court Acts, the UJCA does not also include provisions providing for and governing commercial claims within the Justice Court's Small Claims Part.

2. Uniform Trial Court Rules

By statute, the chief administrator of the courts in New York has the authority to "regulate the practice and procedure controlling the determination" of small and commercial claims.[12] The chief administrator has exercised this authority in enacting the following sets of rules governing small/commercial claims practice in the Lower Courts:

Uniform Civil Court Rules	22 NYCRR 208.41	Small Claims

[10] *Cohen v Banks*, 160 Misc 2d 159, 160 (S. Nyack Just Ct 1994).

[11] Commercial claims are discussed further in subparagraph I(D)(1)(a)(i), *infra* at 9, and subsection I(F)(1), *infra* at 35.

[12] Lower Court Acts § 1802; CCA, UDCA, UCCA § 1802-A. The chief administrator of the New York State courts is referred to as the chief administrative judge, if a judge holds the position.

Uniform Civil Court Rules	22 NYCRR 208.41-a	Comm. Claims
Uniform City Court Rules	22 NYCRR 210.41	Small Claims
Uniform City Court Rules	22 NYCRR 210.41-a	Comm. Claims
Uniform District Court Rules	22 NYCRR 212.41	Small Claims
Uniform District Court Rules	22 NYCRR 212.41-a	Comm. Claims
Uniform Justice Court Rules	22 NYCRR 214.10	Small Claims

C. Procedural Authorities

New York's Civil Practice Law and Rules (CPLR) 101 provides that the CPLR governs civil judicial proceedings in New York "except where the procedure is regulated by inconsistent statute." The Lower Court Acts are, in many respects, inconsistent with, and thus substitute for, the CPLR. In particular, Lower Court Acts § 1804, and § 1804-A of the CCA, UDCA, and UCCA, provide that with limited exceptions, courts hearing small/commercial-claims actions "shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence." These actions are instead governed by the much simpler and less formal provisions of Lower Court Acts article 18 and article 18-A of the CCA, UDCA, and UCCA.[13]

D. Jurisdiction

1. Subject-Matter Jurisdiction

Subject-matter jurisdiction refers to the court's power to adjudicate the action before it. Questions going to a court's subject-matter jurisdiction may be raised at any time during the action—including by the court on its own—and may not be waived.[14] Nor may subject-matter jurisdiction be created by consent or estoppel where it is otherwise absent.[15]

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[13] For an overview of small-claims practice under the simplified procedural framework of articles 18 and 18-A, see Gerald Lebovits & Mark Snyder, *Practitioner's Guide to Small Claims Part*, NYLJ, Feb. 25, 1997, at 1, col 3, available at https://works.bepress.com/gerald_lebovits/84/ (last visited July 21, 2022).

[14] *See Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d 200, 203-204 (2013).

[15] *See Matter of Hook v Snyder*, 193 AD3d 588, 589 (1st Dept 2021).

Section 207 of the CCA, UDCA, and UCCA confers subject-matter jurisdiction on the Civil Court, District Courts, and City Courts, respectively, to hear small claims, as defined by article 18 of those statutes.

Oddly, the UJCA does not contain a parallel § 207 that expressly confers small-claims jurisdiction; and the CCA, UDCA, and UCCA lack any provision conferring jurisdiction to hear *commercial* claims, as defined by article 18-A of those statutes. But article 18 of the UJCA and article 18-A of the CCA, UDCA, and UCCA presuppose jurisdiction over these categories of claims. The absence of express jurisdiction-conferring provisions as to these claims should not be taken to undermine the Lower Courts' jurisdiction over them.

That a given action comes within the jurisdiction of Small Claims Court does not mean that the claimant *must* bring the action as a small or commercial claim. Litigants may instead choose between suing in Small Claims Court or bringing an action in the regular parts of the Lower Courts or in Supreme Court.[16]

(a) Requirements for jurisdiction

For subject-matter jurisdiction to exist, a small or commercial claim must (a) be brought by a permissible claimant; (b) seek a permissible form of relief; (c) come within the monetary limit of the court in which the claim is being brought; and (d) comply with the geographic requirements governing the category of claim being brought.

(i) Permissible claimant

Article 18 of the Lower Court Acts does not impose a party-based jurisdictional limitation on small-claims actions. But § 1801-A (a) of the CCA, UDCA, and UCCA limits those courts' jurisdiction over *commercial* claims to claims brought by "corporation[s], partnership[s], or association[s]" that also satisfy the statute's other jurisdictional requirements.

This jurisdictional limit matters in at least two important ways. Section 1809-A (c) of the CCA, UDCA, and UCCA provides that a "corporation, partnership or association, which institutes an action or

[16] *See* Lower Court Acts § 1802 (small claims); CCA, UDCA, UCCA § 1802-A (commercial claims).

proceeding under this article shall be limited to five such actions or proceedings per calendar month." This measure "prevent[s] the people's court from becoming a debtors' court."[17] And §§ 1803-A (a) and 1809-A (c) provide that a commercial-claims claimant must submit a verified certification when filing the action representing that the claimant is complying with this limit.

If claimant does not provide that certification, the court's commercial-claims part lacks jurisdiction over, and must dismiss, the action.[18] Nor could a would-be claimant then go to the court's *Small Claims Part*, instead: As discussed further below, Lower Court Acts § 1809 substantively restricts the ability of corporations, partnerships, and associations to recover on small claims.[19] Articles 18 and 18-A work together to channel small-dollar actions by individuals on the one hand, and by corporations and similar entities on the other, into related-but-distinct forums.[20]

(ii) Permissible forms of relief

A claimant bringing a small claim or commercial claim may properly assert two types of claims—one narrow, one broad.

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[17] Gerald Lebovits, *Equal Justice, Cornerstone of Freedom, May be Found in Small Claims Court*, NYLJ, May 1, 1998, at S8, col 4, available at https://works.bepress.com/gerald_lebovits/83/ (last visited July 21, 2022).

[18] *See* CCA, UDCA, UCCA § 1803-A (a).

[19] Those restrictions are not covered in this section: Properly speaking, they go to the presence or absence of a cause of action, not to jurisdiction. They are discussed in more detail in the Small Claims Versus Commercial Claims section, subsection I(F)(1), *infra* at 35.

[20] Section 1801-A of the CCA, UDCA, and UCCA does not address whether those courts have jurisdiction over commercial claims brought by limited-liability companies. At least one trial court has held that jurisdiction exists, because "an LLC has the attributes of a voluntary association with corporate limited liability protection," such that it should be treated as a cross between the two for jurisdictional purposes. (*Richard G. Roseetti, LLC v Werther*, 2005 NY Slip Op 50377[U], at *2 [Albany City Ct Mar. 24, 2005]); *cf. North40RE Realty LLC v Bishop*, 2 AD3d 1184, 1184-1185 [3d Dept 2003] [affirming judgment in commercial claim brought by LLC, without addressing issue of jurisdiction].) The ruling in *Richard G. Roseetti*, though not compelled by the statutory text, appears sound as a practical matter. (*Cf. Michael Reilly Design, Inc. v Houraney*, 40 AD3d 592, 593-594 [2d Dept 2007] [holding that CPLR 321's requirement that corporations and associations appear only through counsel also applies to LLCs, because "[a]n LLC, like a corporation or voluntary association, is created to shield its members from liability and once formed is a legal entity distinct from its members"].)

1. *Challenges to Attorney-Fee Arbitration Awards*. The narrow category of claims that may be brought in Small Claims Court relates to disputes over legal fees between attorney and client that have been arbitrated under part 137 of the rules of the chief administrator of the courts. A party may bring an action in Civil Court, District Court, or City Court to challenge a part 137 arbitration award.[21] In such an action, the court "shall have the jurisdiction defined in [CPLR 3001] to make a declaratory judgment."[22]

2. *Suits for Money*. The other, much broader category of claims that may be brought in Small Claims Court relates to disputes over money. Lower Court Acts § 1801 provides that a proper party in any of the Lower Courts may assert "any cause of action for money only," such as damages sounding in contract or tort.[23]

In hearing these claims, the courts' jurisdiction extends to cases in which the court must interpret the meaning of a contract (or, for that matter, another court's prior judgment) to determine whether to award a money judgment.[24] It also extends to cases in which the basis of plaintiff's

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[21] CCA, UDCA, UCCA § 1801.

[22] CCA, UDCA, UCCA § 1805 (f). A party's ability to maintain a challenge to a part 137 arbitration award and the court's power to render a declaratory judgment resolving such a challenge are each subject to monetary limits under the applicable statutes. Those limits are discussed further in paragraph I(D)(a)(iii), *infra* at 14.

[23] At least one court has held that the Lower Courts lack jurisdiction to hear a small or commercial claim for money only that arises from a consumer-credit transaction. (*See Kreiten v Scott*, 61 Misc 3d 528, 532-533 [Civ Ct, Bronx County 2018].) This holding is questionable. *Kreiten* relies primarily on the disjunction between the limited information that a small/commercial-claims claimant must provide and the notice to defendants that the Civil Court rules require plaintiffs to include with the summons in a consumer-credit action. (*See id.* at 530-531, citing 22 NYCRR 208.6 [d] [1].) But those rules do not require including the additional notice in *all* actions arising from a consumer-credit transaction—only those actions using Civil Court's standard "form of summons" for a plenary action or a CPLR 3213 motion for summary judgment in lieu of complaint. (22 NYCRR 208.6 [d], [f].) This requirement thus does not apply in the small-claims context. Nor is there an inherent inconsistency between requiring plaintiffs in consumer-credit actions in the regular part of Civil Court to provide additional warnings to defendants, while not imposing that requirement on consumer-credit plaintiffs in the small/commercial-claims part of Civil Court, given the lower monetary limit in Small Claims Court.

[24] *See e.g. Unneland v Greenwood Condominium*, 2018 NY Slip Op 51447(U), at *1-2 (App Term, 2d Dept, 9th & 10th Jud Dists Oct. 11, 2018) (reversing dismissal of claim to recover a fee paid by condominium resident that the condo board allegedly lacked power under condo bylaws to have assessed); *Whitfield v State Farm Mut. Auto. Ins. Co.*, 12 Misc 3d 428, 429-430 (Civ Ct, NY County 2006) (denying motion to dismiss claim for recovery of payments allegedly owed under motor-vehicle insurance policy); *accord Clary v Anson*, 2008 NY Slip Op 52006(U), at *1-2 (Poughkeepsie City Ct May 12, 2008) (determining

damages claim is an alleged constitutional violation.[25] On the other hand, if adjudicating a monetary claim would require the Lower Court to determine the *validity* of a Supreme Court judgment or process issued to enforce the judgment—for example, in an action for damages stemming from an (assertedly) improper restraining notice issued out of Supreme Court—the Lower Court would lack the power to resolve the claim.[26]

The Lower Courts also may not hear, or award relief on, a small claim seeking nonmonetary remedies.[27] A small claim for nonmonetary relief must be dismissed for lack of subject-matter jurisdiction, rather than transferred to the regular part of the court.[28] Similarly, if a defendant in a

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claim for money allegedly owed under separation agreement); *Rahman v New York City Transit Auth.*, 111 Misc 2d 30, 33-34 (Civ Ct, Bronx County 1981) (denying motion to dismiss claim for damages resulting from defendant's failure to honor income execution to enforce a Supreme Court judgment).

[25] *See Lys v New York City Taxi & Limousine Commn.*, 2002 NY Slip Op 50068(U) (Civ Ct, NY County Jan. 14, 2002) (reaching claim asserted under the Fourteenth Amendment of the U.S. Constitution and 42 USC § 1983, and holding that TLC policy of immediately suspending a cabdriver's taxi license upon a claimed service refusal deprived the cabdriver of property without due process of law).

[26] *See Corey v Bankers Trust of Binghamton*, 105 Misc 2d 486, 487-488 (Binghamton City Ct 1980) (dismissing complaint).

[27] *See e.g. Solages v National Grid*, 66 Misc 3d 1, 3-4 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019) (reversing dismissal of small-claims action for refund of alleged billing overcharge, but noting that if claimant later appears to be "seeking injunctive relief or a declaration that he does not owe money to defendant" in addition to a refund, "such relief is not available in this [small claims] forum"); *Esposito v Barr*, 2015 NY Slip Op 51267(U), at *2 (Civ Ct, Richmond County Aug. 20, 2015) (dismissing claim by condominium resident that condominium board had improperly barred her from using the building pool and other amenities for nonpayment of board-assessed penalties). *Cf. Port Vill. HOA, Inc. v Summit Assocs.*, 33 Misc 3d 39, 45 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2011) (noting that a party may not premise a claim for monetary relief on the existence of a lien, because "rights under a lien are enforced by means of foreclosure on the lien, which remedy is outside the limited jurisdiction of the Commercial Claims Part of the Civil Court").

[28] The proper forum for that nonmonetary cause of action, should the would-be claimant endeavor to bring it again, would depend on the claim's value. Thus, for example, claims for equitable relief involving real property may be brought either in Supreme Court, or in the regular part of Civil Court, as long as the value of the property or other basis for the claim (such as a mortgage debt or lien) does not exceed Civil Court's $25,000 statutory jurisdictional limit. (*See* CCA § 203.) Claims worth more than $25,000 may be brought only in Supreme Court.

The voters approved an amendment in November 2021 to article VI, § 15 (b), of the State Constitution that raised Civil Court's constitutional monetary limit from $25,000 to $50,000. As of July 2022, the Legislature has not yet carried that increase through to the *statutory* limit imposed by § 203 of the Civil Court Act. (*See Azzat v Abudayyeh*, 2022 NY Slip Op 22204, at *1-3 [Civ Ct, Richmond County July 6, 2022] [noting this point and

small- or commercial-claim monetary action asserts a counterclaim for nonmonetary relief, the court should dismiss the counterclaim, rather than transfer both claim and counterclaim to the court's regular part.[29]

The First and Second Departments of the Appellate Division have held, in *19 W. 45th St. Realty Co. v Darom Elec. Corp.*[30] and *Matter of Hellman v Ploss*,[31] that when granting relief on a claimant's monetary claim would require the court first to afford the claimant a remedy sounding in equity (such as piercing the corporate veil or determining that the claimant is a trust beneficiary), Civil Court lacks jurisdiction over the claim.[32]

The reasoning of *Darom Electric* and *Matter of Hellman* is open to question: Lower Court Acts § 202 confers jurisdiction over "actions and proceedings for the recovery of money"—without regard to whether the basis for granting a plaintiff recovery or imposing liability on a given defendant sounds in law or in equity. And it is quicker and simpler to decide whether a claimant is (or is not) seeking only money than to decide whether granting the monetary relief sought also entails an equitable remedy. That said, as Appellate Division precedents, these decisions remain binding on the Lower Courts unless and until they are overruled. And although these decisions deal only with Civil Court, their reasoning would seem to apply equally to small/commercial claims in the other Lower Courts.

Some courts have gone a step farther, suggesting that equitable *defenses* like laches and estoppel might be unavailable in small-claims

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holding that Civil Court currently lacks subject-matter jurisdiction over claims valued at $25,001 to $50,000].)

[29] *See Great Am. Restoration Servs, Inc. v Flaton*, 48 Misc 3d 78, 80 (App Term, 2d Dept, 9th & 10th Jud Dists 2015).

[30] *See 19 W. 45th St. Realty Co. v Darom Elec. Corp.*, 233 AD2d 184, 185 (1st Dept 1996) (holding that Civil Court lacks jurisdiction to pierce the corporate veil, "a form of equitable relief").

[31] *Matter of Hellman v Ploss*, 46 AD2d 658, 658 (2d Dept 1974) (holding in small-claims action that Civil Court lacks jurisdiction over action for union's unemployment benefits administered through a trust fund, because resolving claim would require Civil Court first to determine whether claimant was trust beneficiary), *appeal dism* 36 NY2d 786 (1975).

[32] *See also Roslyn v Allyn*, 33 Misc 3d 756, 759 (New Rochelle City Ct 2011) (holding that no jurisdiction exists to award compensation in quantum meruit, because that form of compensation is equitable and "the lower courts have not been granted authority by the legislature to entertain equitable relief").

actions.[33] This suggestion is incorrect as to the New York City Civil Court, which "may consider any defense to a cause of action or claim," whether "denominated or deemed legal or equitable in nature."[34] Nor is there any reason to believe that the other Lower Courts are barred from considering equitable defenses. Lower Court Acts §§ 202, 207, and 1801 confer jurisdiction over *actions* and *claims*, based on the nature of these actions or claims and the relief they seek. Given this claim-oriented analysis, it is difficult to see why a Lower Court should lack the power to resolve an equitable defense if the claim is properly within the court's jurisdiction.[35]

(iii) Monetary limits

Courts and litigants must pay attention to the particular court in which a small claim or commercial claim is being brought: Different Lower Courts have different monetary limits for small-claims actions. The limit in **Civil Court** for small claims and commercial claims is $10,000,[36] exclusive of interest and costs.[37] The limit in the **District Courts** and the **City**

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[33] *See e.g. Broja Realty LLC v Amparo*, 2011 NY Slip Op 51168(U), at *2 (Civ Ct, Bronx County May 16, 2011) (relying on putative lack of equitable jurisdiction in Civil Court); *Robinson v Robles*, 28 Misc 3d 868, 871, 877-880 (Rochester City Ct 2010).

[34] CCA § 905; *see also Miller v Kaminer*, 62 Misc 3d 397, 400 (Civ Ct, Kings County 2018) (noting this point).

[35] "[W]hen necessary to do substantial justice between the parties," the court may "condition the entry of judgment upon such terms as the court shall deem proper." (Lower Court Acts § 1805; CCA, UCCA, UDCA § 1805-A.) Courts hearing small/commercial claims have regularly exercised this conditional-judgment authority to award what is effectively equitable relief, notwithstanding the general bar on equitable remedies. Conditional judgments are discussed further in section I(N), *infra* at 78. Sections 1805 and 1805-A also confer authority on the court to impose post-decision but prejudgment restraints on a defendant's assets to preserve those assets for enforcement of the impending money judgment, "to the same extent as if a restraining notice had been served upon [the defendant] after judgment was entered." This authority is discussed further in paragraph I(P)(3)(a), *infra* at 87.

[36] As of July 2022, it remains to be seen whether the Legislature will increase the statutory monetary limit for the regular part of Civil Court—and, if so, whether the Legislature will enact a parallel increase to the monetary limit for small/commercial claims in Civil Court.

[37] *See* CCA §§ 1801, 1801-A. A potential trap for the unwary exists with respect to attorney-fee claims in Civil Court. In December 2019, the Legislature raised the monetary limit for all small claims in Civil Court—including actions challenging Part 137 arbitration awards—from $5,000 to $10,000. (*See* L 2019, ch 664, § 1.) The Legislature did not, however, raise the parallel monetary limit on the court's authority "to make a *declaratory judgment*" in Part 137 challenges: The court still may exercise that authority only when "the

Courts for small claims and commercial claims is $5,000, exclusive of interest and costs.[38] The limit in the **Justice Courts** for small claims is $3,000, exclusive of interest and costs.[39]

These monetary limits apply equally to counterclaims.[40] A defendant's choice to assert a small or commercial counterclaim that exceeds the applicable monetary limit is deemed a waiver of a later claim to the excess amount.[41]

These monetary limits also apply to actions in which a party is seeking double or treble damages (for example, in claims arising from certain rent overcharges or consumer-law violations). A demand for multiple damages (or punitive damages) is not "a separate cause of action distinct from the substantive cause of action on which it is grounded."[42] Thus, a claim in Civil Court for $5,000 in compensatory damages, plus an additional $10,000 damages after trebling, exceeds the court's $10,000 jurisdictional limit in the same way as a claim for $15,000 in compensatory damages, and is subject to dismissal for that reason.[43]

(1) Separate causes aggregating greater than/less than the limit

An important issue to consider when determining whether a claimant's claims exceed the jurisdictional monetary limit is whether those

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amount in dispute does not exceed *five* thousand dollars." (CCA § 1805 [f] [emphases added].) As of July 2022, no reported decision has addressed this issue. But courts and arbitrators hearing challenges to Part 137 awards in Civil Court should keep a careful eye on the jurisdictional limits on their declaratory-judgment authority in these cases.

[38] *See* UDCA §§ 1801, 1801-A; and UCCA §§ 1801, 1801-A, respectively.

[39] UJCA § 1801. The regular part of the Justice Courts also has a $3,000 monetary limit. (*See* UJCA § 202.) But the Justice Courts' regular part has jurisdiction to hear actions to recover money without regard to the plaintiff's identity, whereas the Justice Courts' Small Claims Part lacks jurisdiction to hear commercial claims. (*See* subsection I(b)(1), *supra* at 7.)

[40] *See* Lower Court Acts §§ 1805 (c), 1805-A (c).

[41] *See Silberstein v Begun*, 232 NY 319, 323-324 (1922); *accord Bluestone v Capogrosso*, 2006 NY Slip Op 51165(U) (App Term, 1st Dept June 26, 2006); *Quereshi v Hanlon*, 18 Misc 3d 955, 957 (Civ Ct, NY County 2008).

[42] *Herbert v Jerome*, 2007 NY Slip Op 50351(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Feb. 14, 2007).

[43] *See Boland v Miller*, 2008 NY Slip Op 51420(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists July 1, 2008).

claims are different components of a single cause of action, or are instead different freestanding causes of action sued on together.

Lower Court Acts § 211 provides that when "several causes of action are asserted in the complaint and each of them would be within the jurisdiction of the court if sued upon separately, the court shall have jurisdiction of the action." The court may render judgment on these claims in excess of the applicable monetary limit "if such excess result solely because of such joinder." But "[a] party may not split a cause of action in order to circumvent the . . . jurisdictional limit applicable to a Small Claims Action."[44]

Causes of action are not separable for these purposes when they involve only "'one primary right of the plaintiff, and one wrong done by the defendant which involves that right.'"[45] Causes of action *are* separable, however, if they pertain in substance to different transactions and involve different defenses, even if the transactions all arise under one overarching contract.[46]

Relatedly, the bar on claimsplitting "requires a plaintiff to join all installments due under a single contract at the time suit is commenced" in one cause of action.[47] This rule does not apply when the contract is divisible into several distinct components involving different transactions.[48] If additional contractual installments accrue *after* commencement, the court

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[44] *Moore v Pecora*, 191 Misc 2d 256, 258 (Nassau Dist Ct 2002).

[45] *Utica Mut. Ins. Co. v Lynton*, 31 Misc 3d 804, 809 (Nassau Dist Ct 2011), quoting *Kemper v Transamerica Ins. Co.*, 61 Misc 2d 7, 8 (Civ Ct, NY County 1969); *see also e.g. Bay Crest Ass'n v Paar*, 47 Misc 3d 9, 11 (App Term, 2d Dept, 9th & 10th Jud Dists 2015) (holding that claims arising from two interdependent sections of claimant's organizational bylaws constituted one cause of action). In *Kass v Syed* (2003 NY Slip Op 51417[U], at *2-3 [Ossining Just Ct Oct. 30, 2003]), the trial court held that two claims originally brought separately would be aggregated for purposes of the jurisdictional limit, when the two plaintiffs "are husband and wife and their claims arise out of the same event and the same alleged derelictions and deceptions of the defendants relating to the wedding of their daughter."

[46] *See e.g. Rielly v Naftal*, 300 AD2d 811, 811-812 (3d Dept 2002) (real-estate commissions on different sales); *Westbury Wholesale Produce Co. v Maine Maid Inn, L.L.C.*, 186 Misc 2d 911, 914 (Nassau Dist Ct 2000) (separately invoiced deliveries of produce).

[47] *Rocco v Badalamente*, 2008 NY Slip Op 51414(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists 2008).

[48] *See A & J Enter. Solutions, Inc. v Business Applications Outsourcing Tech., Inc.*, 11 Misc 3d 173, 176-178 (Nassau Dist Ct 2005); *accord Delson Communications*, 18 Misc 3d at 116.

may properly treat those installments as a new, separately maintainable cause of action when rendering judgment.[49]

(2) Interest

As discussed above, the various monetary limits on the Lower Courts' jurisdiction over small and commercial claims are made "exclusive of interest and costs."[50] This distinction raises the question whether—and when—sums sought by a claimant and denominated "interest" are excluded from the monetary limit.

For example, loan instruments such as promissory notes commonly provide that a default on the loan will result in the assessment of default interest on the principal balance of the loan, at a rate set in the instrument.[51] If the lender then sues for breach of contract, should the contractually agreed default interest be considered part of claimant's recovery on the claim (which would count toward the jurisdictional monetary limit), or part of "interest and costs" (which would not)?

There is currently no appellate decision on this question. Several trial courts, interpreting similar statutory language, have held that such a monetary limit "merely excludes *court-awarded* interest and costs," whereas interest assessed under the terms of the parties' agreement itself still counts toward the limit.[52] Although these decisions were rendered in the regular parts of their respective courts, the distinction they draw is persuasive in the small-claims context as well.

That is, if a given increment of money is sought by a small-claims claimant as part of claimant's cause of action, it should count toward the jurisdictional monetary limit—whether or not that increment is denominated "interest" or "a penalty" or something else. But if the increment of money at issue is awarded by the court *on top of* the money sought by claimant under the cause of action, as a percentage of that claimed

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[49] *See Board of Mgrs. of Mews at N. Hills Condominium v Farajzadeh*, 189 Misc 2d 38, 39-40 (App Term, 2d Dept, 9th & 10th Jud Dists 2001).

[50] Costs are discussed further in section I(L)(2), *infra* at 76.

[51] *See e.g. Kahala Franchising, LLC v A & H Ice Cream Store, Inc.*, 2020 NY Slip Op 51536(U), at *3-4 (Sup Ct, NY County Dec. 21, 2020) (G. Lebovits, J.).

[52] *Irni v Williams*, 146 Misc 2d 894, 895 (Civ Ct, Kings County 1990) (emphasis in original); *accord Teachers Fed. Credit Union v Leal*, 2014 NY Slip Op 50686(U), at *3-4 (Nassau Dist Ct Apr. 28, 2014); *Metrotran Adv. Trust Fund v Cado Trans.*, 156 Misc 2d 725, 726-727 (Civ Ct, Kings County 1993).

amount, it constitutes "interest" for jurisdictional purposes that does not count toward the monetary limit.[53]

To hold otherwise would afford the Lower Courts jurisdiction over small claims that in substance are worth well over the monetary limit before statutory prejudgment interest ever comes into play, merely due to the fortuity of the way the parties structured the terms of the agreement now in controversy. Ruling that way would make little sense.[54]

(3) Changing the ad damnum clause

Another question arises when a small/commercial-claims claimant seeks monetary relief over the applicable jurisdictional limit: Whether the claim should be dismissed for lack of jurisdiction, or whether claimant should be given a chance to reduce the amount of the claim to the limit.

The Court of Appeals long ago suggested in dicta that if the monetary relief sought in a claim exceeds the court's jurisdictional limit, this jurisdictional defect "can immediately be remedied by an amendment of the complaint."[55] The Appellate Term, Second Department, has similarly held in several more-recent decisions that claims over the court's jurisdictional limit must be dismissed unless claimant consents to reduce the complaint's ad damnum clause to that limit.[56] This approach is, in essence, entry of a

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[53] In the latter case, interest should be computed "from the earliest ascertainable date the cause of action existed." (CPLR 5001 [b].)

[54] The one contrary decision, *McPartland v Young*, 2011 NY Slip Op 51024(U), at *1-2 (Suffolk Dist Ct June 7, 2011), rests on a broad definition of "interest" appearing in the statute prohibiting usury. (*See* General Obligations Law § 5-501 [2].) *McPartland* does not explain why that definition should carry over into the different context of the Lower Court Acts. To the contrary, the breadth of § 5-501's definition of interest is consistent "with the longstanding principle that . . . a 'usurer usually seeks to conceal the usury, and to accomplish [the] purpose by indirect methods.'" (*Adar Bays, LLC v GeneSYS ID, Inc.*, 37 NY3d 320, 339 [2021], quoting *Meaker v Fiero*, 145 NY 165, 169 [1895] [alteration in *Adar Bays*].) No similar concern exists in the small-claims context about clever litigants exploiting the Lower Court Acts' definition of "interest" to circumvent the courts' jurisdictional monetary limits.

[55] *Jackson v National Grange Mut. Liability Co.*, 299 NY 333, 335 (1949).

[56] *See Needleman,* 2008 NY Slip Op 511117(U), at *2; *Bing v Fairfield Presidential Mgmt. Corp.*, 2004 NY Slip Op 51297(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Oct. 29, 2004); *see also Teachers Fed. Credit Union v Leal*, 2014 NY Slip Op 50686(U), at *4 (Nassau Dist Ct Apr. 28, 2014) (denying default judgment for seeking damages over monetary limit, but granting claimant leave to refile default-judgment application upon filing of stipulation to reduce claim to limit).

conditional judgment, akin to a damages remittitur, drawing on the court's conditional-judgment authority under Lower Court Acts § 1805.[57]

Some courts have taken a different view. These courts hold that if a request for relief exceeds the applicable monetary limit, this jurisdictional defect cannot be cured by a claimant's consent to reducing the amount sought. Instead, the action must be dismissed for lack of subject-matter jurisdiction.[58] This conclusion is unpersuasive.

The decisions holding that no amendment is permissible have articulated three principal grounds for this conclusion. First, the need to give stare decisis effect to old precedents on this question.[59] But those older cases were based expressly on a provision of New York's 1894 Constitution that made the initial "demand for judgment, contained in the complaint, the sole test of jurisdiction" in courts with a monetary limit on their jurisdiction[60]—thus foreclosing the possibility of a later amendment to reduce the amount sought in the action. That provision was removed when New York adopted the 1938 Constitution.

Second, these decisions point to the basic principle that jurisdiction cannot be conferred by the parties' consent if it is not present already.[61] But as Professor Siegel has pointed out, that is not what happens when a claimant agrees to reduce the amount sought to the jurisdictional limit. Rather than consenting to litigate a case in the absence of jurisdiction, "[a]ll

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[57] Some judges have suggested that a given court's authority to permit an amendment of the ad damnum to come within a jurisdictional monetary limit (or dismiss the action absent amendment) depends on whether that court has the authority to transfer to Supreme Court an action that seeks monetary recovery over the limit. (*See B&R Textiles Corp. v Empire Bias Binding Corp.*, 126 Misc 2d 965, 966-967 [Civ Ct, NY County 1985] [suggesting that Civil Court's power to permit a reduction of the ad damnum to come within the monetary limit flows from the court's constitutional authority to transfer cases to Supreme Court]; *Mend-Foley v Spencer Mgt. Corp.*, 158 Misc 2d 471, 472 [New Rochelle City Ct 1993] [holding that City Court lacks power to permit a reduction of the ad damnum because it lacks Civil Court's transfer authority].) That an order requiring dismissal of an action unless the claimant agrees to reduce a claim is effectively a conditional judgment shows that a Lower Court may properly issue such an order whether or not that court may transfer actions to Supreme Court.

[58] *See Bloom & Krup Appliance Corp. v A.H.C. Appliance Corp.*, 2003 NY Slip Op 51463(U), at *2 (Nassau Dist Ct Nov. 13, 2003); *Lemard v Star Auto Sales Inc.*, 2002 NY Slip Op 50207(U), at *4 (Nassau Dist Ct 2002); *Providian Natl. Bank v Capolino*, NYLJ, Mar. 2, 2000, at 36, col 3 (White Plains City Ct).

[59] *See Capolino*, NYLJ, Mar. 2, 2000, at 36, col 3, citing, among other decisions, *Mansson v Nostrand*, 183 AD 371 (2d Dept 1918); *Lemard*, 2002 NY Slip Op 50207(U), at *4, citing *Dobrikin v Union Ry. Co.*, 130 Misc 796 (Civ Ct, Bronx County 1927).

[60] *See e.g. Mansson*, 183 AD at 372, 373-374.

[61] *See Bloom & Krup Appliance Corp.*, 2003 NY Slip Op 51463(U), at *2.

the plaintiff is consenting to is a reduction of its demand to *fit* the court's subject matter jurisdiction."[62]

Third, these decisions rely on the basic premise that "jurisdiction attaches," or does not, when the action is commenced. Thus, "[i]f the Court is without jurisdiction to consider a matter when the matter is commenced, it cannot get jurisdiction . . . afterwards."[63] Although this view has some intuitive appeal, it seems odd as a practical matter to say that when the court would have subject-matter jurisdiction but for a readily curable flaw in the pleadings, the court may not permit the flaw to be cured, and must instead deem it fatal to the claim. Apart from preserving a kind of metaphysical purity of the concept of jurisdiction, it is difficult to see what is being gained here.[64] The Lower Courts may—and should—offer claimants whose claims exceed the monetary limit the option to reduce their claims to the limit, as an alternative to dismissing the claims outright as jurisdictionally barred.

(4) Setoffs

A related question sometimes arises with respect to the issue of setoffs: whether a claim should be reduced to the monetary limit before or after applying a comparative-fault or counterclaim-based setoff.

Say a claimant brings a small claim in Civil Court for $20,000, defendant counterclaims for $12,000, and the court concludes that each party has established the liability of the other on their respective claims. The issue for the adjudicator (court or arbitrator) is whether claimant should

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[62] Siegel & Connors, *New York Practice*, *supra* at note 5, at § 23 (emphasis in original)

[63] *Lemard*, 2002 NY Slip Op 50207(U) at *3. The court in *Conway v Dejesu Maio & Associates* (44 Misc 3d 277, 278-279 [Suffolk Dist Ct 2014]) raised a different objection. The *Conway* court suggested that because Lower Court Acts §§ 202 and 1801 are worded differently, different ad damnum-reduction rules should apply for the regular part of the Lower Courts and the small/commercial-claims parts. But both statutory provisions link the presence or absence of jurisdiction to the amount sought by claimant, whether phrased in terms of conferring jurisdiction over actions "where the amount sought to be recovered" is below the monetary limit (§ 202) or over "any cause of action for money only not in excess of" the monetary limit (§ 1802). This slight difference in phraseology does not bear the weight the *Conway* court placed on it.

[64] Indeed, the U.S. Supreme Court, which strictly polices subject-matter jurisdiction in federal court, has rejected this approach. It has held that pleadings may be amended—even on appeal—to remedy curable jurisdictional defects. (*See Newman-Green, Inc. v Alfonzo-Larrain*, 490 US 826, 833-837 [1989] ["Because law is an instrument of governance rather than a hymn to intellectual beauty, some consideration must be given to practicalities."] [internal quotation marks omitted].)

recover $8,000 (20 minus 12), or whether neither party should recover anything (10 minus 10). The right answer is that neither side should recover anything, because the parties' equal and opposing claims net out to $0.

This is so for two reasons. *First*, the Lower Courts lack the power even to hear claims or counterclaims seeking more than the jurisdictional limit.[65] *Second*, and relatedly, should a claimant bring a claim seeking an amount within the jurisdictional limit, but then somehow be awarded an amount *over* that limit, the adjudicator must then reduce the amount to be recovered down to the limit.[66]

Thus, if a claimant brings a small claim in Civil Court for $20,000 and defendant counterclaims for $12,000, the adjudicator must first reduce claim and counterclaim to the jurisdictional limit of $10,000 each, and only then consider the parties' respective liability. Should the parties be found equally liable, each party's net recovery is $0.[67]

Needleman v Hewitt is a useful example of the ad damnum-reduction and setoff principles discussed in these paragraphs.[68] There, the Appellate Term held that both parties were liable, and that the recovery defendant sought on her counterclaim exceeded the court's jurisdictional limit. The court therefore modified the judgment below to enter a bifurcated conditional order: (i) if defendant did not consent to reduce the counterclaim's ad damnum to the jurisdictional limit, the counterclaim would be dismissed; (ii) if defendant *did* consent, both parties would be awarded damages for the full amounts sought in their respective claim and

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[65] The ad damnum issue discussed above is limited to whether Lower Courts may permit claimants voluntarily to reduce their claims to the jurisdictional limit to avoid dismissal—not whether a court may hear a claim for more than the limit on the chance that the court will ultimately award an amount under the limit.

[66] *See Izzi v Dolgin*, 42 AD2d 966, 966 (2d Dept 1973); *David A. Kaminsky & Assoc., P.C. v Brenner*, 2020 NY Slip Op 51573(U), at *2 (App Term, 1st Dept Dec. 31, 2020). *Cf. Hurley v Suzuki 112 USA, LLC*, 2008 NY Slip Op 52633(U), at *2 (Suffolk Dist Ct Dec. 18, 2008) (plaintiff brought claim seeking jurisdictional limit of $5,000, trial court found that plaintiff's actual damages were $7,794, and court directed entry of judgment for the jurisdictional maximum amount of $5,000), *affd* 2011 NY Slip Op 50111(U) (App Term, 2d Dept, 9th & 10th Jud Dists Jan. 26, 2011).

[67] *See Barouch v Village of Ossining*, NYLJ, Sept. 21, 2000, at 32, col 6 (Ossining Town Ct), *revd on other grounds Barouch v Vil. of Ossining*, 2002 NY Slip Op 40191(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Mar. 13, 2002).

[68] 2008 NY Slip Op 511117(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists May 28, 2008).

counterclaim, and the damages awards would be set off against each other, which would net out to a $2,500 judgment in favor of *defendant*.[69]

(iv) Residence of the parties

In addition to the monetary limits discussed above, each Lower Court Act imposes geography-based restrictions on the courts' subject-matter jurisdiction to adjudicate small and commercial claims.[70]

The geography-based requirements for subject-matter jurisdiction in the Lower Courts are as follows.

Civil Court: CCA §§ 1801 and 1801-A provide that in small and commercial claims brought in Civil Court, defendant must "either reside[], or ha[ve] an office for the transaction of business or a regular employment, within the city of New York."[71] Section 1801-A (a) also provides that

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[69] *See id.* at *1-2.

[70] Procedural requirements relating to a defendant's residency or transaction of business ordinarily go to *personal*, not subject-matter, jurisdiction. Siegel and Connors suggest that the residency restrictions in the Lower Court Acts should similarly be treated as akin to limits on personal jurisdiction that defendants may forfeit or waive. (*See* Siegel & Connors, *New York Practice*, *supra* at note 5, at § 581.) But § 207 of the CCA, UDCA, and UCCA confers subject-matter jurisdiction over small claims only as "defined in article 18 of this act." Lower Court Acts § 1801 limits the scope of the definition of small claims, not only by the claim's monetary value, but also by defendant's location. That geography-based limitation thus goes to subject-matter, not personal, jurisdiction. (*See Powers v Smith*, 2015 NY Slip Op 50483[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists Mar. 26, 2015] [vacating judgment and dismissing action for lack of subject-matter jurisdiction, where defendant did not live, have a business office, or enjoy regular employment in New York City].)

That said, if a claim does not satisfy the applicable statute's geographic limitations, the court should transfer the action to the court's regular part under Lower Court Acts § 1805 (b), rather than dismiss the action outright, if jurisdiction would otherwise exist. (These discretionary transfers are dealt with in more detail in paragraph I(D)(3)(a), *infra* at 28.) A court considering transfer would need to assure itself that personal jurisdiction exists, taking into account (i) the long-arm provisions of the CPLR and of the CCA, UDCA, and UCCA and (ii) the service requirements of Lower Court Acts § 1803. (*See Katims v DaimlerChrysler Corp.*, 2007 NY Slip Op 51516[U], at *1 [App Term, 2d Dept, 9th & 10th Jud Dists July 26, 2007], *affd on op below* 55 AD3d 559 [2d Dept 2008] [holding that DaimlerChrysler was not properly served under UDCA § 1803 by a mailing delivered to a local DaimlerChrysler dealership].)

[71] Having an *office* to transact business within a court's geographic area is different from—and more narrow than—transacting business within that area under the long-arm provisions of CPLR 302 (a) (1) and of § 404 (a) (1) of the CCA, UDCA, and UCCA. (*See Solomon v Correll*, 157 Misc 2d 387, 388-389 [Binghamton City Ct 1993]; *Wessell v Porter*, 107 Misc 2d 938, 940-941 [Buffalo City Ct 1981].) This distinction can lead to the odd—and potentially unfair—scenario in which "out of county landlords may sue their resident

claimant in a commercial claim must have "its principal office in the state of New York."[72] Because this requirement is jurisdictional, it may not be waived.[73]

District Courts: UDCA § 1801 provides that in small claims brought in the District Courts, the defendant must "either reside[], or ha[ve] an office for the transaction of business or a regular employment, within a district of the court in the county." UDCA § 1801-A (a) provides that in commercial claims in the District Courts, defendant must "either reside[], or ha[ve] an office for the transaction of business or a regular employment, within the district in the county where the court is located"; and claimant must have "its principal office in the state of New York."

Unlike Nassau County District Court, Suffolk County District Court encompasses only *part* of the county—specifically, the county's five western towns (Babylon, Huntington, Smithtown, Islip, and Brookhaven). Careful double-checking is required in Suffolk District Court to ensure that the UDCA's residency requirements have been satisfied.[74]

City Courts: UCCA § 1801 provides that in small claims brought in the City Courts, the defendant must "either reside[], or ha[ve] an office for the transaction of business or a regular employment, within the county." And UCCA § 1801-A (a) provides that in commercial claims in the City Courts, defendant must "either reside[], or ha[ve] an office for the

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tenants in the small claims part, but the resident tenant may not sue his or her out of county landlord." (*Valentino v Principio*, 174 Misc 2d 709, 710 [Geneva City Ct 1997].)

[72] CCA § 1801-A incorporates by reference the requirements of § 1809-A. One requirement is that a corporation, partnership, or association have "its principal office in the *city* of New York"—not merely the *state* of New York—to bring a commercial claim. (CCA § 1809-A [a] [emphasis added].) The Appellate Terms in both the First and Second Departments, though, have deemed the residency-related discrepancy between § 1801-A and § 1809-A merely a legislative "oversight." Thus, notwithstanding the clear statutory language, the Appellate Terms have permitted claimants with their principal offices in New York State, but not New York City, to bring commercial claims. (*See National Arbitration & Mediation, LLC v Raymond Schwartzberg & Assoc. PLLC*, 2018 NY Slip Op 51494[U], at *1-2 [App Term, 1st Dept Oct. 26, 2018]; *Stoessel v Allstate Ins. Co.*, 2010 NY Slip Op 51244[U], at *1 n 1 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists, July 16, 2010].)

[73] *See Commercial Credit Counseling Servs., Inc. v American Off. Furniture*, 2008 NY Slip Op 50834(U), at *2 (Nassau Dist Ct Apr. 24, 2008).

[74] Given the Justice Courts' $3,000 monetary limit (*see* UJCA § 201 [a]), such double-checking is particularly important for those actions seeking between $3,000 and $5,000. That is, if the Small Claims Part of Suffolk District Court lacks jurisdiction over a case in this subset of actions because defendants reside in an eastern town of Suffolk County, the case may not be maintained as a small claim (or commercial claim) at all. It must instead be brought in a regular part of the District Court or in Supreme Court.

transaction of business or a regular employment, within the county in which the court is located"; and claimant must have "its principal office in the state of New York."[75]

Justice Courts: UJCA § 1801 provides that in small claims brought in the Justice Courts, defendant must "either reside[], or ha[ve] an office for the transaction of business or a regular employment, within the municipality where the court is located."[76]

For purposes of these different residency requirements, those in jail or prison retain their pre-incarceration residency, at least absent an affirmative relinquishment of that residency.[77]

(b) Article 78

The Lower Courts have no jurisdiction to hear a CPLR article 78 petition, even one seeking only money: CPLR 7804 (b) provides that petitions may be brought only in Supreme Court. Additionally, when a claim, though perhaps styled as one for breach of contract or another private-law cause of action, challenges a "determination of a governmental body or public official" as legally erroneous or arbitrary and capricious, it is treated as being made in an article 78 proceeding.[78] Thus, the Lower Courts also lack jurisdiction over claims for money that in *substance* seek relief under CPLR article 78.[79]

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[75] Oddly, the geographic requirements governing actions in the regular part of the City Courts are both more and less restrictive than in the small-claims part. On the one hand, UCCA § 213 (a) and (b) provide that either the plaintiff or the defendant must (with narrow exceptions) live, work, or have a place of business within the *city* where the court is located, not merely the county. On the other hand, these requirements do not apply to claims that arise within the city and are within the scope of the UCCA's long-arm provision, § 404. (*See* UCCA § 213 [c] [1].) And § 213's geographic requirements are expressly non-jurisdictional and waivable. (*See id.* at § 213 [d].)

[76] UCJA § 1801. In the unusual circumstance in which a County Court judge exercises authority under CPLR 325 (g) to "transfer[] a small claim from the town or village court having jurisdiction over the matter to another town or village court within the same county," the transferee court "shall have jurisdiction to determine the claim." (*Id.*)

[77] *See Moore v Wagner*, 152 Misc 2d 478, 479-481 (Town of Colonie Just Ct 1991).

[78] *Abiele Contracting, Inc. v New York City Sch. Constr. Auth.*, 91 NY2d 1, 8 (1997).

[79] *See e.g. Anderson v Dutchess County*, 12 Misc 3d 94, 95 (App Term, 2d Dept, 9th & 10th Jud Dists 2006) (dismissing for lack of jurisdiction small claim seeking reimbursement of costs for work-related conference, when claim was that denial of reimbursement was arbitrary and contrary to law); *O'Neil v City of New York*, 10 Misc 3d 30, 31 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2005) (dismissing for lack of

Similarly, the Lower Courts lack jurisdiction over a small-claims action that seeks relief on an issue committed by law to an administrative agency. A party seeking that relief must exhaust the party's administrative remedies and then challenge any resulting unfavorable administrative action through an article 78 proceeding.[80]

(c) Domestic Relations

Family Court and Supreme Court have concurrent and exclusive jurisdiction over "proceedings for support or maintenance."[81] The Lower Courts therefore lack jurisdiction over small claims in the nature of support.[82]

The Lower Courts also lack jurisdiction over actions for arrears in the payment of child support or spousal maintenance obligations imposed by Family Court or Supreme Court orders or judgments. Claims for unpaid child support or maintenance owed under a domestic matrimonial

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jurisdiction consolidated small claim seeking reimbursement of bills assessed by City Department of Health, when basis of claim for reimbursement was that Department of Health acted contrary to law in assessing the bills); *Weber v East Ramapo Cent. Sch. Dist.*, 2003 NY Slip Op 51305(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists July 29, 2003) (dismissing for lack of jurisdiction small claim seeking recovery of school taxes paid under protest, when asserted ground for recovery was that taxes were illegal, excessive, or void).

[80] *See e.g. Boss Prop. Group, LP v Con Edison*, 2011 NY Slip Op 50455(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Mar. 21, 2011) (dismissing for lack of jurisdiction small claim alleging electric-bill overcharge, on the ground that claimant was required to exhaust administrative remedies before the State Public Service Commission); *Troni v City of N.Y.*, 2010 NY Slip Op 50936(U), at *1 (App Term, 1st Dept May 25, 2010) (dismissing for lack of jurisdiction small claim seeking reimbursement of parking tickets, on the ground that claimant was required to exhaust administrative remedies before the Department of Finance Parking Violations Bureau); *cf. Solages*, 66 Misc 3d at 3 (reversing dismissal of small claim for failure-to-exhaust in electric-bill overcharge case, because claimant "does not seem to challenge . . . the reasonableness of defendant's rates or raise any other issue requiring the expertise of the Public Service Commission," but instead raises "merely a dispute over what amount of money he has paid" to defendant).

[81] *See* Family Court Act §§ 115 (a), 411; *Kagen v Kagen*, 21 NY2d 532, 536-537 (1968).

[82] *See e.g. Perlmutter v Fiore*, 47 Misc 3d 62, 63 (App Term, 2d Dept, 9th & 10th Jud Dists 2015) (holding that district court lacked jurisdiction over small claim for unreimbursed expenses incurred in prenatal care and childbirth, brought by child's mother against child's father).

judgment or order must instead be brought by application in the matrimonial action under Domestic Relations Law § 244.[83]

On the other hand, where a separation agreement has been incorporated but not merged into a divorce decree, the agreement is in the nature of a contract. The Lower Courts are not necessarily precluded from exercising jurisdiction over claims for alleged breach of these agreements.[84] No jurisdiction exists even in that instance, however, when the divorce decree itself reserves exclusive enforcement of the separation agreement for Family Court or Supreme Court.[85]

The Lower Courts also have jurisdiction over monetary claims that relate to or arise from matrimonial matters but which do not seek to enforce a separation agreement or to enforce or modify an order for spousal maintenance, child support, or the like.[86]

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[83] *See Tannenberg v Beldock*, 68 AD2d 307, 310-311 (1st Dept 1979); *Celona v Celona*, NYLJ, Mar. 25, 1994, at 36, col 2 (Yonkers City Ct). The Lower Courts *do* have jurisdiction, however, over monetary claims for (i) non-modifiable arrears in payments mandated by (ii) foreign or sibling-state divorce decrees that are (iii) final and (iv) entitled to recognition as a matter of full faith and credit or comity. (*See Oka v Oka*, 92 Misc 2d 1080 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 1977] [comity]; *Slater v Slater*, 65 Misc 2d 322, 323 [Civ Ct, NY County 1971] [full faith and credit].) A court should withhold recognition of a foreign divorce decree if the party opposing recognition makes "some showing of fraud in the procurement of the foreign country judgment" or that "recognition of the judgment would do violence to some strong public policy of this State." (*Greschler v Greschler*, 51 NY2d 368, 375 [1980].)

[84] *See Milman v Milman*, 131 AD2d 826, 826 (2d Dept 1987); *Murphy v Weitz*, 2015 NY Slip Op 50579(U), at *1 (App Term, 1st Dept 2015); *Trivigno v Uryevick*, 2010 NY Slip Op 52384(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Mar. 8, 2010); *Stewart v Stewart*, 190 Misc 2d 438, 439 (White Plains City Ct 2002). *Cf. Oechslin v Oechslin*, 141 Misc 2d 1047, 1048-1049 (Nassau Dist Ct 1988) (dismissing a small claim seeking medical expenses allegedly owed under separation agreement, upon finding that agreement merged into the final divorce decree).

[85] *See Pivarnick v Pivarnick*, 2014 NY Slip Op 50251(U), at *4-6 (Civ Ct, Richmond County Feb. 19, 2014) (vacating damages award by small-claims arbitrator for lack of jurisdiction, when award arose out of claimed breach of terms of separation agreement, and judgment of divorce reserved enforcement of agreement to Supreme Court or Family Court); *Figueroa v Rivera*, 21 Misc 3d 835, 837-838 (Poughkeepsie City Ct 2008) (dismissing for lack of jurisdiction small claim for breach of terms of separation agreement, when agreement gave jurisdiction over matters relating to its enforcement to Supreme Court or Family Court).

[86] *See Sottile v Lopez*, 2014 NY Slip Op 50165(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Jan. 29, 2014) (adjudicating small claim seeking to recover child-support payments made after child-support obligation had been terminated by court order); *Fortune v Marshall*, 2015 NY Slip Op 50654(U), at *3 (Glens Falls City Ct Jan. 28, 2015) (adjudicating small claim seeking to recover child-support payments allegedly obtained by individual not entitled to receive them).

2. Personal Jurisdiction

In addition to jurisdiction over the subject-matter of an action, a court hearing a small or commercial claim must have personal jurisdiction over the parties.[87]

Outside the context of small claims, a challenge to personal jurisdiction can take two forms: (i) challenges to service; or (ii) challenges to the court's power to exercise authority over the defendant even if properly served—for example, because defendant lacks sufficient contact with the jurisdiction to be haled into court.

In the small-claims context, this latter issue will rarely arise: As discussed above, the geographic requirements necessary for *subject-matter* jurisdiction to exist under the Lower Court Acts are already more restrictive than the long-arm and minimum-contacts tests for personal jurisdiction over non-residents.[88] Thus, personal-jurisdiction disputes with respect to small and commercial claims will most likely relate only to whether defendant (or claimant-counterclaim-defendant) has been properly served.[89]

In Supreme Court and in the Lower Courts' regular parts, obtaining personal jurisdiction over a defendant requires that a plaintiff or petitioner serve defendant with the initiating papers in the action or proceeding through the means set forth in the CPLR.[90] A plaintiff's failure to comply with the requirements of these methods of service deprives the court of personal jurisdiction even if the defendant has received prompt actual notice of the action or proceeding.[91]

Providing notice to a defendant of a small claim or commercial claim is less complicated. Both Lower Court Acts § 1803, and § 1803-A of the CCA, UDCA, and UCCA make the *court clerk*, rather than the claimant,

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[87] Unlike defects in subject-matter jurisdiction, defects in personal jurisdiction are forfeited by defendants if not properly asserted. (*See Good Gateway, LLC v Thakkar*, 178 AD3d 616, 616 [1st Dept 2019] [collecting cases]; *Farkas v Schwarzenberger*, 2006 NY Slip Op 50296[U], at *1-2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2006].)

[88] *See* subparagraph I(D)(1)(a)(iv), *supra* at 22.

[89] *See e.g. Goins-Tisdale v GEICO*, 56 Misc 3d 1119, 1122-1125 (Rochester City Ct 2017); *Katims*, 2007 NY Slip Op 51516(U), at *1; *Friedman v Nitzberg*, 2005 NY Slip Op 51619(U), at *4-5 (Civ Ct, Kings County Oct. 7, 2005).

[90] *See Miller v 21st Century Fox Am., Inc.*, 180 AD3d 608 (1st Dept 2020); *see also e.g.* CPLR 306-b (requiring service in actions), 308 (methods of service on a natural person), and 403 (c) (service in special proceedings).

[91] *See Macchia v Russo*, 67 NY2d 592, 595 (1986).

responsible for serving defendants. This point is discussed in more detail below in subsection I(*I*)(2), *infra* at 48.

3. Transfer

In some circumstances, actions brought in the small/commercial claims part of one of the Lower Courts may, or must, be transferred to the regular part of that court, or to another court entirely (such as Supreme Court or Family Court). These transfers, which can sometimes raise procedural and practical problems, are governed by Lower Court Acts §§ 1805 and 1806, and by §§ 1805-A and 1806-A of the CCA, UDCA, and UCCA.

(a) Discretionary transfer by Lower Court

Discretionary transfer of claims to the Lower Courts' regular part is governed by Lower Court Acts § 1805 (b), and by § 1805-A (b) of the CCA, UDCA, and UCCA. These statutory provisions confer power on the Lower Courts to "transfer any small claim or claims," or any commercial claim or claims, "to any other part of the court upon such terms as the rules may provide, and proceed to hear the same according to the usual practice and procedure applicable to other parts of the court." Thus, a discretionary transfer of a small/commercial-claims action under to § 1805 or § 1805-A also strips the action of its small-claims character—thereby altering its governing procedural rules.

Additionally, a claimant may, post-transfer, seek leave under CPLR 3025 (b) to amend the claim's ad damnum clause to seek recovery over the small/commercial-claims jurisdictional limit.[92] Upon a transfer to the court's regular part, the claimant "shall have the same right to demand a trial by jury as if such action had originally been begun in such part."[93]

In determining whether to transfer an action, courts consider the complexity of the action and the legal and factual issues it presents, the

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[92] *See JEM Transp. Corp. v Blennau*, 37 Misc 3d 787, 790-791 (Nassau Dist Ct 2012), (citing 5th edition of this *Manual*).

[93] *See* Lower Court Acts § 1806; CCA, UDCA, UCCA § 1806-A.

likely time needed to adjudicate them properly, and the potential prejudice to an unrepresented claimant or defendant.[94]

The regulations implementing Lower Court Acts § 1805 also permit transferring small claims to the court's regular part if both sides are represented by counsel.[95]

In commercial claims in the District and City Courts, the governing regulations also permit transfer to the court's regular part on the ground that all parties are represented by counsel.[96] In commercial claims in the New York City Civil Court, on the other hand, the regulations *require* the court to transfer the claim to the appropriate county division of the Civil Court's regular part if all parties are represented by counsel. The claimant in that scenario must then pay any required additional filing fees, on pain of dismissal.[97] This additional basis for transfer, like those discussed above, appears to rest on the assumption that the presence of counsel on both sides inherently suggests that the action involves issues that are more significant or complex than ordinarily heard in Small Claims Court, thus warranting transfer.[98]

A party seeking discretionary transfer from District Court, City Court, or Justice Court to Supreme Court on any other grounds—for

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[94] *See e.g. Pawling Lake Prop. Owners Assn. v McGoorty*, 190 Misc 2d 701, 702-703 (App Term, 2d Dept, 9th & 10th Jud Dists 2001) (directing transfer of commercial claim to City Court's regular part because it involved "complex legal and factual issues," such as the "business judgment rule, validity of the revised or amended by-laws, forgery and perjury"); *Fein v Nuccio*, NYLJ, Dec. 14, 2000 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists), *quoted in Pawling Lake Prop. Owners Assn.*, 190 Misc 2d at 702 (affirming transfer of small claim to Civil Court's regular part because it presented issues involving "attorney-client privilege, legal ethics, and possible fee-splitting" that warranted discovery and would "take up too much of the time allotted for 'small claims' determinations" absent transfer); *Scheur v Pal Classics, Inc.*, 92 Misc 2d 1018, 1018-1019 (Suffolk Dist Ct 1978) (adhering to denial of defendant's application to transfer action so that defendant could implead a third-party defendant, because doing so would impose an unfair burden on pro se claimant).

[95] *See e.g.* 22 NYCRR 208.41 (f) (regulations governing Civil Court's Small Claims Part) (permitting transfer "[w]here all parties appear by attorneys," holding that upon transfer "the claimant shall pay any additional filing fees required by law" and providing that if "the claimant fails or refuses to pay such filing fees, the court shall dismiss the case").

[96] *See* 208.41 (f); 210.41 (f) (1); 210.41-a (f) (1); 212.41 (f) (1); 212.41-a (f) (1). A litigant who is an attorney but who appears pro se is not, for these purposes, treated as being represented by counsel. (*See Loren v Francis*, 163 Misc 2d 598, 599 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 1994].)

[97] *See* 208.41-a (g).

[98] For an earlier discussion of this issue, see Debra Ruth Wolin, Note, *How to Defeat the Jurisdiction (and Purpose) of the Small Claims Court for Only Fifteen Dollars*, 44 Brooklyn L Rev 431, 438 (1978).

example, that the claimant inadvertently brought the action in the wrong court, or that the court lacks jurisdiction to grant the claimant the relief sought—must do so by application in *Supreme Court*, not in the Lower Court.[99] If Supreme Court grants the application, the transfer will oust the action's small-claims character.[100]

(b) Mandatory transfer by Lower Court

In some instances, transfer of an action from the Small Claims Part to the court's regular part is not discretionary but mandatory.

The mandatory-transfer issue arises most frequently when defendant demands a trial by jury. Lower Court Acts § 1806, and § 1806-A of the CCA, UDCA, and UCCA, both provide that any party to the action "other than the claimant" may file a jury demand "prior to the day upon which he is notified to appear or answer." The jury demand must be supported by an "affidavit that there are issues of fact in the action requiring such a trial, specifying the same and stating that such trial is desired and intended in good faith."[101] Sections 1806 and 1806-A also require the demand and affidavit to be "accompanied with the jury fee required by law" and a $50 undertaking to cover any future costs. And these statutes provide that upon the filing of the demand and affidavit, and payment of fees, the clerk must promptly send the case file "to the part of the court to which the action shall have been transferred and assigned and such part may require pleadings in such action as though it had been begun by the service of a summons."

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[99] *See* CPLR 325 (b). A different rule, discussed below in the mandatory-transfers paragraph, applies when a party is seeking transfer of the action from *Civil Court* to Supreme Court on the ground that Civil Court lacks jurisdiction.

[100] *See* CPLR 326 (b).

[101] Lower Court Acts § 1806; CCA, UDCA, UCCA § 1806-A. Lower Courts have stricken jury demands brought under §§ 1806 and 1806-A that are not sworn or which fail to specify the issues of fact that defendant believes in good faith require a jury trial. (*See e.g. Village of Castleton on Hudson v Pillsworth*, 184 Misc 2d 284, 285 [Sand Lake Just Ct 2000] [no sworn affidavit accompanying demand]; *Cohen v Ricci*, 120 Misc 2d 712, 716 [Mount Vernon City Ct 1983] [no specification of issues requiring jury trial or attestation of good faith]; *cf. Lee v Rockefeller Grp., Inc.*, 153 Misc 2d 218, 219 [App Term, 1st Dept 1992] [holding that defendant's jury demand should have been granted, though its supporting affidavit was prepared by counsel rather than by the party, where counsel's affidavit "stat[ed] that the requested jury trial was 'intended in good faith' . . . specif[ied] the issues of fact to be tried" and "was as detailed as reasonably could be expected"].)

This statutory language is somewhat ambiguous about when and for which cases the filing of a jury demand entails a transfer of the action. But courts and commentators have uniformly interpreted it to require transferring small or commercial claims to the court's regular part upon the filing of the jury demand.[102]

Unlike a discretionary transfer under Lower Court Acts §§ 1805 or 1805-A, a mandatory transfer under §§ 1806 or 1806-A does not alter a small or commercial claim "into the equivalent of an action commenced by the service of a summons." Rather, it leaves the transferred action's "basic nature and character" intact.[103] Although no reported decision addresses the issue, this principle should also be understood as preserving a corporate party's right to appear through an appropriate nonattorney representative following a § 1806/1806-A jury-demand transfer.

In addition to jury-demand transfers, article VI, § 19 (f), of the New York Constitution requires Civil Court to transfer "up" to Supreme Court (or to Surrogate's or Family Court) any action over which the court lacks jurisdiction—at least if the action had not previously been transferred "down" *to* Civil Court from one of those courts.[104] This rule does not, however, require Civil Court to transfer an action merely because a defendant filed a *counterclaim* exceeding the court's jurisdictional monetary limit.[105] Defendants may not, in other words, file counterclaims seeking recovery over the limit as a tactical measure to avoid small-claims adjudication.

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[102] *See Torres v Falk*, 193 Misc 2d 428, 430-431 (Rochester City Ct 2002); *Westbury Wholesale Produce Co., Maine Maid Inn, L.L.C.*, NYLJ, Apr. 3, 2001, at 24, col 6 (Nassau Dist Ct); *Javeline v Long Island R.R.*, 106 Misc 2d 814, 816 (Civ Ct, Queens County 1981); *MacCollam v Arlington*, 94 Misc 2d 692, 693-694 (Albany City Ct 1978); *accord* Siegel & Connors, *New York Practice*, *supra* at note 5, at § 581 (explaining that if defendant satisfies the procedural requirements of Lower Court Acts § 1806, "the case is transferred to the regular part of the court where it gets a preference and is tried by jury").

[103] *MacCollam*, 94 Misc 2d at 694 (denying motion to compel service of bill of particulars and disclosure); *accord Javeline*, 106 Misc 2d at 816; *Torres*, 193 Misc 2d at 430-431.

[104] *See* NY Const art VI, § 19 (f); *see also Kemper*, 61 Misc 2d at 9 (explaining that § 19 is "a self-executing grant of constitutional power . . . not dependent upon any legislative enactment for implementation") (internal quotation marks omitted); *Bey v City of N.Y.*, 32 Misc 3d 946, 949-950 (Civ Ct, Kings County 2011) (transferring action from Civil Court to Supreme Court).

[105] *See Time Record Stor. Co., LLC v Elliot*, 2018 NY Slip Op 51561(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Nov. 2, 2018).

An article VI, § 19 (f), transfer is based on jurisdictional grounds. Presumably, therefore, Civil Court may exercise this transfer authority sua sponte, or on a defendant's motion to dismiss or transfer, rather than requiring defendant to move in the transferee court. Section 19 (f) does not specify what procedures apply after a mandatory transfer of this sort. Because this transfer is premised on Civil Court's lacking subject-matter jurisdiction, it would seem logical that the procedures would be those of the transferee court rather than the Civil Court's Small Claims Part.[106]

(c) Discretionary consolidation by Lower Court resulting in transfer

Sometimes a claim brought in a Lower Court's small/commercial claims part is proceeding in parallel with a related claim brought in the regular part of the Lower Court (or in Supreme Court)—for example, where the defendant in the small-claims action has brought a new action against the claimant for an amount exceeding the small-claims jurisdictional limit that would apply under Lower Court Acts § 1805 (c) had the action been brought as a counterclaim.

In that scenario, a Lower Court hearing the regular-part action may direct the two actions to be consolidated; or, if the action is in Supreme or County Court, that court may remove the small-claims action to itself and consolidate the two.[107] Upon consolidation, the court "may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."[108]

Courts have interpreted this language as affording them the discretion to condition consolidation on preserving the small-claims character of part or all of the post-consolidation action. Doing so is seen as potentially necessary to avoid unfairness to a small-claims litigant

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[106] *See Apollon Waterproofing & Restoration Corp. v Brandt*, 172 Misc 2d 888, 892 (Civ Ct, NY County 1997) (transferring proceeding pursuant to § 19 [f] and providing that claimant "shall comply with all applicable Supreme Court rules upon transfer"); *cf.* CPLR 326 (providing that upon a transfer of proceedings under CPLR 325, subsequent proceedings shall be heard in the transferee court "as if the action had been originally commenced there").

[107] *See* CPLR 602 (a)-(b).

[108] CPLR 602 (a).

unprepared for the more demanding (and expensive) procedures governing actions in the court's regular part.[109]

This approach, though, does not necessarily obviate the problems from this type of transfer/consolidation. Requiring *all* claims in the post-consolidation action to be adjudicated under simplified small-claims procedures[110] may cause problems if the regular-part claim is complex and better suited to determination under regular-part rules. Resolving only the small claim under small-claims rules, to the extent doing so is even feasible, will delay that claim while the regular-part claim is adjudicated.[111]

In practice, therefore, courts have been reluctant to consolidate into one action related small claims and regular claims.[112] This reluctance is strengthened by the fact that under Lower Court Acts § 1808 resolution of issues in the small-claims action will not have issue-preclusion effect in a later decided action in the court's regular part, thus diminishing the potential for prejudice due to inconsistent results in the two actions.

4. Removal

Actions may be removed from Small Claims Court to federal court under the federal removal statute, 28 USC § 1441, if a basis exists for federal jurisdiction.[113] This rule is a necessary byproduct of the superiority of federal law over state law under article VI of the U.S. Constitution. Merely because the removed action was originally being heard in a Small Claims

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[109] *See e.g. Victoria Kitchens v Leiner*, 138 Misc 2d 556, 559-561 (Civ Ct, Queens County 1988).

[110] *See id.* at 560.

[111] *See Kilinski v Melendez*, 182 Misc 2d 55, 57 (Sup Ct, Nassau County 1999).

[112] *See id.*; *accord Moise v Brown*, 2010 NY Slip Op 50243(U), at *2-3 (Sup Ct, Kings County Feb. 8, 2010); *Shaw v Point Lookout Toys, LLC*, 58 Misc 3d 789, 793-795 (Long Beach City Ct 2018) (denying defendant's application for a stay that would enable defendant to seek removal to Supreme Court of small-claims action).

[113] Grounds may include federal-question jurisdiction (*see e.g. Battle v Day Care Council*, 2012 WL 3055574, at *4 [SD NY July 26, 2012); labor-management-relations complete preemption (*see e.g. Harris v United Transp. Union, Local 1908*, 2008 WL 11357933, at *1-2 [WD NY Nov. 4, 2008); or federal-officer removal *(see e.g. Tomscha v Poole*, 2016 WL 7378974, at *1 [SD NY Dec. 20, 2016).

If federal jurisdiction is absent, or if the procedural requisites for removal have not been followed, federal court will remand to a given Lower Court's Small Claims Part. (*See e.g. Juliano v Citigroup*, 626 F Supp 2d 317 [ED NY 2009] [procedures not followed]; *Kramer v Avianca*, 2001 WL 747279 [SD NY July 3, 2001] [federal jurisdiction not established].)

Part of a state court does not entitle state judges to disregard a jurisdictionally and procedurally proper removal. In practice, this rule may result in injustice: Removal eliminates a small claim's simplicity and lack of expense, thereby making it much harder for claimants to prosecute their claims. But this unfairness is an unfortunate byproduct of governing substantive (federal) law, which the Lower Courts of this State are not at liberty to disregard.

E. Venue

Neither article 18 of the Lower Court Acts, nor article 18-A of the CCA, UDCA, and UCCA, discusses the issue of venue. The Appellate Term, Second Department, though, has rejected a defendant's challenge to venue on the ground that the Lower Court in which venue was laid had jurisdiction over the action under UCCA § 1801.[114] The Appellate Term has also held that a motion to change the venue of a small-claims action, once laid, is subject to CPLR 510's general requirements for motions for change of venue.[115]

The Civil Court clerk's office treats the general venue provisions of CCA § 301 as applicable to small/commercial-claims actions under CCA articles 18 and 18-A. The Civil Court small-claims clerk in each county will permit would-be claimants to commence actions only if the action will satisfy § 301.[116]

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[114] *See Collens v Sayegh*, 2019 NY Slip Op 51302(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Aug. 8, 2019); *see also Lambert v Ramirez*, 2012 NY Slip Op 50451(U), at *1 (Mount Vernon City Ct Mar. 6, 2012) (rejecting challenge to venue in small-claims action because action was brought in a court having jurisdiction to hear it).

[115] *See Tutuianu v Capuano*, 2009 NY Slip Op 52066(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Oct. 6, 2009).

[116] We are unaware of any reported decisions addressing the applicability of CCA § 301 to small/commercial-claims actions, or whether the District Courts' clerk's offices similarly apply article 3 of the UDCA to small/commercial claims. The UCCA and UJCA do not contain their own venue provisions.

F. Parties

1. Small Claims Versus Commercial Claims

Under Lower Court Acts § 1809 (1), small-claims actions may not be brought by (i) corporations (with limited exceptions[117]); (ii) assignees of small claims;[118] or (iii) insurers, whether in their own names or in the names of their insureds.[119] (Subrogation actions thus may not be brought as small claims.) CCA, UCCA, and UJCA § 1809 (1)—but not UDCA § 1809 (1)—also bar partnerships or associations from bringing small claims.

CCA, UDCA, and UCCA § 1809-A, as interpreted by the courts, permits corporations, partnerships, associations, and assignees of commercial claims to bring commercial-claims actions, as long as these entities have their principal office in New York State.[120] At least one trial court has held that LLCs may bring commercial claims, as well.[121]

The combination of these statutory provisions would seem to bar asserting a small claim that has been assigned to a corporation, partnership, or association—for example, the common category of no-fault-insurance claims asserted by injured claimants' treating medical providers.[122] That is, under the language of these statutes, no one may bring that claim in a Small Claims Part (because it has been assigned); and a corporation, partnership, or association may not bring the claim in the Commercial Claims Part (because it is a small claim).

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[117] Small-claims actions may be brought only by a corporation that is "a municipal corporation, public benefit corporation, school district or school district public library wholly or partially within the municipal corporate limit." (Lower Court Acts § 1809 [1].)

[118] The Appellate Term, Second Department, has held that this provision prohibits "not only the institution but also the prosecution of a small claims action by an assignee." (*Opetubo v Omowanile*, 2016 NY Slip Op 50745[U], at *1 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists May 5, 2016].)

[119] It is unclear why a distinction exists on this point between the UDCA and the other Lower Court Acts. Regardless, this distinction is recognized in the official court guide to small claims in New York City and Long Island, which notes that partnerships may bring either a small claim or a commercial claim in District Court. (*See* Your Guide to Small Claims & Commercial Small Claims at 1-2, available at https://nycourts.gov/courts/nyc/SSI/pdfs/smallclaims.pdf [last visited July 21, 2022].)

[120] *See Schwartzberg & Assoc. PLLC*, 2018 NY Slip Op 51494(U), at *1-2; *Stoessel*, 2010 NY Slip Op 51244(U), at *1 n 1.

[121] *See Richard G. Roseetti,* 2005 NY Slip Op 50377(U), at *2.

[122] *See Institute of Physical Medicine & Rehabilitation v Country-Wide Ins. Co.*, 193 Misc 2d 803, 804-805 (Civ Ct, Richmond County 2002) (discussing this issue).

Notwithstanding this textual problem, the Appellate Term, First Department, held in *East End Medical, P.C. v Oxford Health Insurance, Inc.*, that a medical-provider assignee of an individual no-fault claimant *may* bring a commercial claim to recover no-fault insurance benefits.[123] One may take issue with the *East End Medical* court's analysis.[124] But it remains binding precedent, at least in the First Department.[125]

2. When a Claimant May Bring a Claim on Another's Behalf

Individuals seeking to assert small claims may do so on their own behalf; on behalf of another as the guardian of a minor child or the guardian of an incapacitated person under Mental Hygiene Law article 81[126]; or on behalf of another as the court-appointed executor or estate administrator of a deceased person.[127]

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[123] *See East End Med., P.C. v Oxford Health Ins., Inc.*, 2006 NY Slip Op 51229(U), at *1 (App Term, 1st Dept June 29, 2006).

[124] As the dissenting justice in the case points out (*see id.* at *2), the *East End Medical* majority appears to take as given that a claim assigned by an individual to a corporation is a commercial claim. But that assumption is difficult to defend: What makes a claim "small" versus "commercial" under articles 18 and 18-A is the nature of the entity asserting the claim—individual person versus corporation, partnership, or association. (*See* § 1801-A [a] of the CCA, UDCA, and UCCA [defining "commercial claim" as a cause of action for money only within the court's jurisdictional limit, provided that "the claimant is a corporation, partnership or association].) Thus, if the claim was originally held by an individual, it is a small claim, regardless how the claim is later assigned. (*See A. Veder, M.D., P.C. v Countrywide Ins. Co.*, 28 Misc 3d 860, 864-865, 867 [Civ Ct, Bronx County 2010] [making this point]; *Dunrite Auto Body & Motors, Inc. v Liberty Mut Ins. Co.*, 160 Misc 2d 168, 171-172 [Suffolk Dist Ct 1993] [same].)

One might argue that the result in *East End Medical* makes practical sense and is consistent with the general function-over-form approach taken by the Lower Courts in the small/commercial-claims context. A court interpreting the statute from that functionalist perspective, though, should be explicit about why it is adhering to that approach notwithstanding the obvious formalist counterargument that *East End Medical*'s holding is contrary to the statutory text.

[125] The holding of *East End Medical* also raises the question whether an out-of-state corporation could assign its claim to a New York individual to pursue in the small-claims part of the court. Lower Court Acts § 1809, strictly speaking, bars only assignees of small claims from bringing small-claims actions, not individual assignees of *commercial* claims (as a claim originally held by a corporation would be). On *East End Medical*'s apparent view that the status of the assignee (individual versus corporate entity) defines whether a claim is small or commercial, on the other hand, the claim, once assigned from corporation to individual, should be treated as a small claim. In that scenario, the action would presumably be barred by § 1809 as being brought by the assignee of a small claim.

[126] S*ee* CPLR 1201.

[127] *See Dieye v Royal Blue Servs., Inc.*, 104 AD3d 724, 725 (2d Dept 2014).

Courts hearing small claims have also been relatively willing to permit individual claimants to assert claims on behalf of another person without first having dotted all their procedural i's—at least when the would-be representative has demonstrated an absence of prejudice to defendant.[128]

3. Who May Appear in Court for Parties

The Lower Court Acts apply their own particular rules governing who may appear in court for claimants or defendants in small- and commercial-claims actions.

Individuals: As is the usual rule, an individual person who is a party to a small-claims action or a defendant in a commercial-claims action may appear pro se or through an attorney representative.

Lower Court Acts § 1815 provides that the judge also may grant leave to an individual to appear through a non-attorney representative if (i) that representative is "related by consanguinity or affinity" to the individual; and (ii) the court "finds that due to the age, mental or physical capacity or other disability of such [individual] it is in the interests of justice to permit such representation"; and (iii) the non-attorney representative does not accept a fee or other compensation.[129] That a would-be representative holds a power

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[128] *See Buonomo v Stalker*, 40 AD2d 733, 733 (3d Dept 1972) (permitting parent to assert claims in her own name for injuries suffered by her minor child); *Jacobs v Newton*, 1 Misc 3d 171, 173-174 (Civ Ct, Kings County 2003), *disagreed with on other grounds Santoro v Poughkeepsie Crossings, LLC*, 180 AD3d 12, 21 (2d Dept 2019) (retroactively deeming daughter to be asserting claims on her mother's behalf as her mother's guardian); *Bogart v Imports of Wantagh*, 142 Misc 2d 105, 106-107 (Long Beach City Ct 1988) (permitting wife to assert claims on late husband's behalf without being named an estate representative); *cf. Cascone v Brennan*, 134 Misc 2d 417, 418-419 (Civ Ct, Bronx County 1987) (permitting claimant to assert claims against both parent and child notwithstanding failure to serve child as required by CPLR 309, when child appeared at trial and was actively defended by counsel).

[129] *See Santiago v Rosenthal*, 2002 NY Slip Op 40406(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists June 26, 2002) (holding that defendant had defaulted at trial because the person who appeared on defendant's behalf "was neither an attorney nor a person authorized to appear under" CCA § 1815).

The CCA, unlike the other Lower Court Acts, contains *two* sections 1815, both enacted in 1990. (*See Egon J. Salmon, Inc. v Tamarin*, 14 Misc 3d 338, 339 n 1 [Civ Ct, Richmond County 2006] [noting this oddity].) It is unclear how this duplication came to occur—or how it has persisted for so long.

of attorney for the individual is not alone sufficient under § 1815 to enable them to appear on the individual's behalf.[130]

Section 1815 does not define affinity; nor does any reported decision consider this question. Given the simplified character of small-claims actions and the importance of ensuring that all parties have a full opportunity to be heard, courts should construe § 1815 liberally to permit non-attorney representation of a physically or mentally impaired party, absent a particular reason not to do so. Indeed, Professor Siegel's prior Practice Commentaries on CCA § 1815 (included in the 1991 through 2019 editions of McKinney's) advocated for a "generous" definition of affinity that would encompass ties other than those of marriage or blood and "embrace simple friendship."[131]

Corporations: A corporation defending a small claim, bringing a commercial claim, or defending a commercial claim may appear through an attorney *or* through "any authorized officer, director or employee of the corporation, provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial."[132] Sections 1809 (2) and 1809-A (d)

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[130] *See Harvey v Proto Prop. Servs.*, 2019 NY Slip Op 50946(U), at *2-3 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists June 7, 2019); *Richstone v Bell Atl.*, 2001 NY Slip Op 40313[U], at *1-3 (Civ Ct, NY County July 5, 2001).

[131] For a humorous illustration of this principle, see Gerald Lebovits, *Small Claims Court* at 14-15 (Dec. 15, 2021) (slides for presentation through New York State Judicial Institute, given for new Civil Court judges).

[132] *See* Lower Court Acts § 1809 (2); CCA, UDCA, UCCA § 1809-A (d). This provision was added to the Lower Court Acts after the Legislature amended CPLR 321 in 1976 to require corporations to appear through counsel. (*See* Josephine Y. King, *Small Claims Practice in the United States*, 52 St. John's L Rev 42, 54 n 72 [1977].)

Section 1809 (2) does not, however, indicate whether a corporation *bringing* a small-claims action under one of the limited exceptions in § 1809 (1) may also appear through a non-attorney representative. And § 1809-A (d) refers only to "corporation[s]," without mentioning partnerships and associations. A question thus arises whether §§ 1809 and 1809-A permit corporations bringing small claims, and partnerships and associations generally, to appear through non-attorney representatives. One might argue that they may not do so absent any textual authorization for non-attorney representation—particularly given Lower Court Acts § 2102's incorporation by reference of the appearance requirements of CPLR 321. But New York courts frequently apply a more functional than formal approach to statutory provisions governing assertion of claims by business entities. And it is hard to see as a policy matter why corporations bringing small claims, and partnerships and associations generally, should be treated differently from the same entities *defending* claims with respect to who may represent them in court.

No case squarely addresses the issue. At most, in *Gago v 3 Hassell Place, LLC* (2020 NY Slip Op 50203[U], at *3 [App Term, 2d Dept, 9th & 10th Jud Dists Feb. 6, 2020),

provide that in this circumstance, the "court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation."

Thus, in *Carter v Mike's Auto, Inc.*,[133] the court held defendant corporation in default for failing to provide documentation that would support defendant's assertion at trial that the individual appearing for it was its vice president. Conversely, in *Munks v Miracle Collision*,[134] the court found that an employee's apparent authority to bind a corporate employer, and the employee's signing a consent to arbitration form "for the corporation," estopped the corporation from arguing that the employee was authorized only to adjourn, and not also to defend, the action.

If a corporation attempts to appear through an individual who is not within the "narrow[] . . . class of persons" defined by Lower Court Acts § 1809 (2), it is reversible error for the court to proceed with the trial of the action.[135] The court must instead exercise its discretion "either to adjourn the trial or to hold defendant in default."[136]

4. Special Considerations Presented by Unrepresented Litigants

If only one party is represented by an attorney, the adjudicator (whether judge or arbitrator) must ensure that all parties will receive a fair and impartial hearing. This requires a careful balancing act. As the trial court explained in *Webster v Farmer*,[137] the adjudicator should assist unrepresented litigants if "reasonably necessary to prevent obvious injustice," but "it is not the duty or function of the court to act as an attorney for the pro se litigant in order to 'even up the score.'"[138]

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the Appellate Term held that the trial court had permissibly allowed defendant LLC to appear through an authorized officer—but the Appellate Term did so in the context of affirming a judgment for *claimant*.

[133] 2010 NY Slip Op 50692(U), at *1 (Poughkeepsie City Ct Feb. 26, 2010).

[134] NYLJ, Sept. 15, 1997, at 29, col 5 (Civ Ct, Queens County).

[135] *See Hynard v Ravine Garden Condo. Assoc.*, 2013 NY Slip Op 50525(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Apr. 4, 2013).

[136] *Id.*

[137] 135 Misc 2d 12 (Oswego City Ct 1987).

[138] *Id.* at 20 (reopening trial so that pro se claimant-tenant could submit evidence of value of personal property destroyed due to defendant-landlord's breach of warranty of habitability); *accord County of Suffolk v Stanzoni Realty Corp.*, 2019 NY Slip Op 51466(U),

As discussed in more detail below,[139] a small/commercial claimant bears a minimal pleading burden when commencing an action. Therefore, in the unusual circumstance in which an adjudicator entertains a defendant's motion to dismiss a claim brought by a pro se claimant, the adjudicator should determine for itself whether an "'appropriate theory of substantive law . . . support[s] the small claim,'" rather than leaving the pro se litigant to discern and articulate a claim upon which relief can be granted.[140]

Some decisions of the Appellate Term, Second Department, take a more constricted view of the court's obligations toward self-represented parties in small-claims actions.[141] These decisions rely for authority on the decision of the Appellate Division, Second Department, in *Roundtree v Singh*.[142] But *Roundtree's* holding was based in part on the fact that the action there was *not* a small claim. *Roundtree* expressly distinguished *Webster v Farmer* on that ground.[143] The Lower Courts should not extend this line of Appellate Term precedent. Nor, outside the Second Department,

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at *3 n 2 (Suffolk Dist Ct Sept. 13, 2019) (rejecting claimant's "objection to the Court's queries of the [pro se] defendant" because the procedural informality of small-claims actions required the court "to undertake a certain amount of 'issue framing,' which is common in a small claims proceeding with *pro se* parties"); *see also Moore v Fed Ex*, 2005 NY Slip Op 50006(U), at *1 (App Term, 1st Dept Jan. 7, 2005) (vacating damages award and remanding for new trial to serve "the ends of substantial justice" by affording claimant the opportunity to submit evidence supporting her claimed damages) (internal quotation marks omitted).

[139] *See* Commencing an Action, subsection I(*I*)(2), *infra* at 48.

[140] *Seltzer v New York Racing Assn.*, 134 Misc 2d 1038, 1039-1040 (Civ Ct, Kings County 1987), quoting *Faby v Air France*, 113 Misc 2d 840, 841 (Civ Ct, Queens County 1982).

[141] *See Sporten v Samuel*, 2011 NY Slip Op 51123(U) at *1 (App Term, 2d Dept, 9th & 10th Jud Dists June 14, 2011) (holding that "to the extent that plaintiff" in a small-claims action "may not have understood legal concepts and terms, by proceeding pro se, he assumed the risks attendant upon proceeding without the assistance of an attorney"); *Hazzard v Volvoville*, 2007 NY Slip Op 50684(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Mar. 28, 2007) (rejecting small-claims claimant's argument "that the lower court did not advise him of his need to present evidence of his damages," because "it is well settled that a plaintiff who appears pro se does so at his own peril").

[142] 143 AD2d 995, 996 (2d Dept 1988).

[143] *See id.*; *see also Shamsian v Cohanim*, 153 Misc 2d 344, 346 (Civ Ct, Queens County 1992) (same).

should they adhere to it.[144] This line of precedent denies access to justice for the unrepresented in courts meant to serve the unrepresented.

5. Joinder of Parties

CPLR 1001 and 1002, respectively governing necessary and permissive joinder of parties, apply to small and commercial claims. Under CPLR 1001, "persons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action," or who "might be inequitably affected by a judgment in the action *shall* be made plaintiffs or defendants."[145] CPLR 1002 provides that persons who assert any right to relief, or against whom is asserted any right to relief, *may* be joined in one action as plaintiffs or defendants if the right to relief "arise[s] out of the same transaction [or] occurrence" and if "any common question of law or fact would arise."[146]

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[144] Lower Courts outside a judicial department need not give diagonal stare decisis effect to Appellate Term decisions from that department—unlike decisions of the Appellate *Division* (which have broader binding effect). (*See People v Pestana*, 195 Misc 2d 833, 836-839 [Crim Ct, NY County 2003] [distinguishing between Appellate Division and Appellate Term for stare decisis purposes].)

Within the Second Department, though, there technically exist *two* Appellate Terms: one for the 2d, 11th, and 13th Judicial Districts (*i.e.*, Brooklyn, Queens, and Staten Island), and one for the 9th and 10th Judicial Districts (*i.e.*, the rest of the Department). We are unaware of any appellate authority addressing whether decisions from one Appellate Term are binding on Lower Courts within the other Appellate Term; and trial courts have split over the matter. (*Compare Harmir Realty Co. v Zagarella*, 2005 NY Slip Op 52212[U], at *2 [Vill. of Hastings on Hudson Just Ct Sept. 14, 2004] [not binding], *with People v Morales*, 35 Misc 3d 558, 562 [Crim Ct, Kings County 2012] [binding].) As a practical matter, coherence and stability of precedent are best served when Lower Courts in the Second Department treat decisions from both Appellate Terms as binding, whether or not they are formally required to do so.

[145] CPLR 1001 (a) (emphasis added). *See e.g. Payne v Genato*, 2010 NY Slip Op 52086(U), at *4-5 (Rye City Ct Dec. 2, 2010) (in small-claims action for return of a security deposit, holding that claimant's co-tenant "ha[d] an interest in the security deposit" and therefore was a necessary party, such that the claim would be dismissed if the co-tenant failed before trial to "assign to plaintiff or relinquish her rights in the security deposit").

[146] CPLR 1002 (a)-(b); *see e.g. May v Lowell Holding Corp.*, 123 Misc 2d 906, 908-909 (Civ Ct, NY County 1984) (in small-claims action for return of a security deposit, holding that joinder of co-tenant was permissive rather than necessary because "[c]laimant alone signed the 'Apartment Lease Application' and made the deposit" at issue).

6. Substitution and Error

In some instances, a claimant does not know a defendant's true name, as opposed to its trade name. In that circumstance, Lower Court Acts § 1814 (a) permits claimants to proceed against defendants under defendants' trade name (as defined broadly in Lower Court Acts § 1813 [a]). Section 1814 (b) provides that if defendant's true name becomes known *before* the hearing on the merits, claimant may notify the clerk, who shall then amend the caption accordingly. And § 1814 (c) provides that *at* the merits hearing, the judge or arbitrator presiding over the hearing shall determine defendant's true name, with the caption then to be amended accordingly.

Indeed, courts have held that a claimant's faulty designation of a defendant may be corrected nunc pro tunc "even after rendition of a judgment . . . so as to assist a prevailing plaintiff in enforcing the judgment."[147] The "test for determining whether a postjudgment name amendment is warranted is 'whether there is anything at all about the way the defendant has referred to itself in conducting its business that could reasonably have led the claimant'" to have designated defendant in that manner in claimant's initiating papers.[148]

G. Statute of Limitations

Statutes of limitations apply to small-claims actions because they are a form of substantive law (which applies unchanged to small claims), rather than a form of procedure (which does not).[149] For the same reason, courts must also honor a contract's imposition of a shorter limitation period than that set by statute.[150] Although a statute-of-limitations bar is an affirmative defense, the adjudicator, in sufficiently clear cases, should consider whether

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[147] *Goldstein v Uncle Sam's N.Y. LLC*, 41 Misc 3d 81, 82 (App Term, 1st Dept 2013).

[148] *Litvak v Comfort Auto Grp. NY, LLC*, 2019 NY Slip Op 51103(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists June 28, 2019).

[149] *See Cerio v Charles Plumbing & Heating, Inc.*, 87 AD2d 972, 972 (4th Dept 1982) (noting "important public policy of giving repose to human affairs"); *accord Rosenthal v Hudson Val. Fed. Credit Union*, 2019 NY Slip Op 50734(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists May 9, 2019) (in small-claims action, affirming dismissal of claimant's claims as time-barred).

[150] *See e.g. Suri v Cunard Line Ltd.*, NYLJ, Mar. 29, 1991, at 27, col 5 (Civ Ct, NY County) (dismissing claim, based on foreign object in hamburger, commenced after expiration of one-year contractual-limitations period).

to raise timeliness sua sponte if the defendant has not done so, lest time-barred claims proceed merely because an unrepresented defendant is unlearned in the law.

An action is deemed interposed for limitations purposes when the claimant files the claim, not when the defendant receives notice of the claim.[151]

A defendant may be equitably estopped from raising a limitations defense if the defendant affirmatively induced claimant "by fraud, misrepresentations or deception to refrain from filing a timely action";[152] if defendant caused claimant to delay bringing a timely action by concealing facts that defendant had a fiduciary duty to disclose;[153] or if "the agreement, representations or conduct" of defendant otherwise caused claimant "to delay bringing a known cause of action."[154]

The statutes of limitations for most actions are found in CPLR Article 2. Some of the more commonly applied limitations periods are as follows:

One year: most intentional torts, such as assault and battery, false imprisonment, malicious prosecution, and defamation; actions against a sheriff for "omission of an official duty"; and actions to enforce a statutory penalty or forfeiture.[155]

One year and 90 days: personal-injury and property-damage actions against a municipal corporation.[156] A claimant seeking to bring this type of action must *also* have served a notice of claim on the municipal corporation within *90 days* of the occurrence.[157]

Two years: wrongful-death actions against municipal corporations (measured from time of death). The notice of claim in these wrongful-death actions still must be served within 90 days.[158]

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[151] *See* CPLR 203 (c); *Ryder v Tannenbaum*, 130 Misc 2d 42, 45-46, (Civ Ct, Kings County 1985), *affd* 137 Misc 2d 326 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 1987).

[152] *Simcuski v Saeli*, 44 NY2d 442, 449 (1978).

[153] *Kaufman v Cohen*, 307 AD2d 113, 122 (1st Dept 2003).

[154] *Towers Food Serv., Inc. v New York City Health & Hosps. Corp.*, 153 AD3d 1163, 1164 (1st Dept 2017).

[155] *See* CPLR 215 (3), (1), and (4), respectively.

[156] *See* General Municipal Law (GML) § 50-*i*.

[157] *See id.* § 50-e.

[158] *See id.* § 50-*i* (1).

The notice-of-claim requirement in actions against municipal corporations is a condition precedent to suit,[159] and therefore is a substantive element of the claim.[160] The Appellate Terms of both the First and Second Departments have repeatedly held that this requirement "may not be dispensed with merely because plaintiff chose to pursue his cause of action" under the simplified procedural rules governing small claims.[161]And equitable estoppel barring a municipal defendant from raising this issue is available "only under exceptional circumstances."[162]

General Municipal Law (GML) § 50-e (5) provides that as long as the year-and-90-day limitations period for the action itself has not run, a would-be claimant may seek leave to file a late notice of claim. GML § 50-e (7) requires, though, that "[a]ll applications under this section shall be made to the supreme court or to the county court." The Appellate Term, Second Department, therefore held in *Tannenbaum v Oyster Bay* that given the language of GML § 50-e (7), District Courts "lack[] authority to grant such relief."[163] Some trial courts in the Second Department have since held, without engaging with the Appellate Term's decision in *Tannenbaum*, that full compliance with § 50-e (7) should be excused in the small-claims

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[159] *See id.*

[160] *See e.g. Mojica v New York City Transit Auth.*, 117 AD2d 722, 724 (2d Dept 1986).

[161] *Ragosto v Triborough Bridge & Tunnel Auth.*, 173 Misc 2d 560, 561 (App Term, 1st Dept 1997) (abrogating prior contrary Civil Court decisions); *accord Frazier v City of New York*, 2016 NY Slip Op 51768(U), at *1 (App Term, 1st Dept Dec. 14, 2016); *Jagroop v Ramdhanny*, 50 Misc 3d 115, 117 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2016); *Levy v City of New York*, 2004 NY Slip Op 50026(U), at *1-2 (App Term 1st Dept Jan. 15, 2004); *Poulmentis v Town of Southampton*, 2003 NY Slip Op 51556(U), at *1 (App Term 2d Dept, 9th & 10th Jud Dists Nov. 20, 2003); *cf. Costa v Town of Babylon*, 6 Misc 3d 7, 9 (App Term, 2d Dept, 9th & 10th Jud Dists 2004) (holding that same rule applies with respect to Town Law's prior-written-notice condition precedent to suit, and reversing District Court's denial of motion to dismiss).

[162] *Khela v City of New York*, 91 AD3d 912, 914 (2d Dept 2012) (internal quotation marks omitted).

[163] 2004 NY Slip Op 50410(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Feb. 25, 2004). Although *Tannenbaum* deals only with the district courts, its reasoning applies equally to other Lower Courts.

context.[164] *Tannenbaum's* holding is open to criticism[165]; and it is questionable Lower Courts should extend this holding, or, outside the Second Department, adhere to it. But *Tannenbaum* remains binding precedent on the Lower Courts within the Second Department.[166]

Two years and six months: medical, dental, or podiatric malpractice.[167] In foreign-object malpractice cases, this period is extended to one year from actual or constructive notice of a foreign object in claimant's body. These malpractice claims are also subject to tolling for continuous treatment.

Three years: negligence, conversion, and legal malpractice.[168]

Four years: residential rent overcharge; and breach of contract for the sale of goods.[169]

Six years: breach of contract; fraud; and actions for which no limitations period is otherwise prescribed.[170] With respect to fraud claims, CPLR 203 (g) provides that if measuring two years from actual or constructive notice of the fraud would result in a longer limitations period, that longer period applies.

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[164] *See Sommerfeld v Office of the Comptroller*, 2009 NY Slip Op 52521(U), at *2-3 (Civ Ct, Queens County Dec. 14, 2009); *Shane v City of New York*, 2008 NY Slip Op 52270(U), at *2-3 (Nov. 6, 2008); *accord Lurie v New York City Off. of Comptroller*, 154 Misc 2d 950, 953 (Civ Ct, NY County 1992).

[165] As the decisions excusing compliance with GML § 50-e (7) correctly point out, a distinction exists between the notice-of-claim requirement (substantive) and the late-notice-application requirement (procedural). Lower Court Acts § 1804's broad language providing that courts hearing small-claims actions "shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence" would thus appear to provide the authority to excuse full compliance with § 50-e (7) that *Tannenbaum* held to be absent. (*See* 2004 NY Slip Op 50410[U], at *1.) And as a practical matter, it seems needlessly cumbersome to require litigants who have sought to avail themselves of the simplified small-claims process in the Lower Courts to go back to County Court or Supreme Court merely to seek leave to file a late *notice* regarding their action, when the action itself would be heard in the Lower Courts should leave be granted.

[166] Or, at the very least, on Lower Courts within the 9th and 10th Judicial Districts of the Second Department. *See supra* at note 144.

[167] *See* CPLR 214-a.

[168] *See* CPLR 214 (4), (5); CPLR 214 (3); and CPLR 214 (6), respectively.

[169] *See* CPLR 213-a; and UCC 2-725 (1), respectively.

[170] CPLR 213 (2); CPLR 213 (8); and CPLR 213 (1), respectively.

H. Res Judicata/Preclusion

Defendants in small-claims actions may assert preclusion defenses. But the governing statutes substantially limit those defenses relative to actions in the courts' regular parts.[171]

These preclusion doctrines can be complex to apply; their full exploration is beyond the scope of this *Manual*. In brief, though, under the doctrine of claim preclusion, "a valid final judgment bars future actions between the same parties on the same cause of action"; and issue preclusion "prevents a party from relitigating in a subsequent action . . . an issue clearly raised in a prior action . . . and decided against that party," whether or not the "causes of action are the same."[172]

Questions of claim and issue preclusion in the small/commercial-claims context are governed by Lower Court Acts § 1808, and § 1808-A of the CCA, UDCA, and UCCA. These statutes provide that (i) "[a] judgment obtained under this article shall not be deemed an adjudication of any fact at issue or found therein in any other action or court"; and (ii) "a subsequent judgment obtained in another action or court involving the same facts, issues and parties shall be reduced by the amount of a judgment awarded under this article."

The first of these provisions is relatively clear: Small-claims adjudications do not have issue-preclusive effect in later actions. The second provision has proved more ambiguous about the extent to which it does—or does not—abrogate the doctrine of claim preclusion in this context.

The Court of Appeals sought in 2021 to clarify that ambiguity in *Simmons v Trans Express Inc.*, on certification from the U.S. Court of Appeals for the Second Circuit.[173] In *Simmons*, the Court held 4-2 that, taking into account the context and legislative history of the current version of §§ 1808 and 1808-A, these provisions do *not* abrogate New York's traditional claim-preclusion principles in this context.[174] That said, the opinion for the Court in *Simmons* also took pains to cabin the breadth of its

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[171] To avoid ambiguity and confusion, this section of the *Manual* uses "claim preclusion" and "issue preclusion" rather than "res judicata" and "collateral estoppel." (*See Kret v Brookdale Hosp. Med. Ctr.*, 93 AD2d 449, 453-456 [2d Dept 1983] [adopting and defining the use of issue/claim preclusion in place of res judicata and collateral estoppel].)

[172] *Simmons v Trans Express Inc.*, 37 NY3d 107, 111, 112 (2021) (internal quotations marks omitted).

[173] *See id.* at 110.

[174] *See* 37 NY3d at 113-115.

holding. In discussing claim preclusion, for example, the Court noted that although New York's transactional preclusion approach "casts a facially broad preclusive net," the Court has "taken a pragmatic and flexible attitude toward claim preclusion" to avoid injustice.[175] It emphasized that "in properly seeking to deny litigants two days in court, we must be careful not to deprive them of one."[176]

The majority also cautioned that its opinion held only that a "small claims judgment *may* preclude a subsequent claim arising out of the same transaction or series of transactions as the prior action" under traditional claim-preclusion principles—not that a small-claims judgment would *necessarily* preclude a subsequent claim, as the dissent feared.[177] The Court therefore declined to reach the ultimate preclusion issue in the underlying action. It left "that query to the federal courts, to be determined through application of our well-established, practical, and flexible transactional approach to claim preclusion."[178]

One important implication of applying traditional claim-preclusion principles into the small-claims context is that a claimant's choice initially to bring an action in Small Claims Court will frequently constitute an effective but unwitting waiver of monetary recovery available in Supreme Court but exceeding the jurisdictional limit of the given Lower Court.[179]

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[175] *Id.* at 111.

[176] *Id.* at 112.

[177] *Id.* at 114 n 3 (emphasis added). The Court similarly emphasized that it had "no occasion on this appeal to pass upon the interrelationship between claim preclusion and this State's permissive-counterclaim rule." (*Id.* at 115 n 3.) That interrelationship is discussed in more detail in subsection I(*I*)(3), *infra* at 51-52.

[178] *Id.* at 115. In a subsequent decision in *Simmons*, the Second Circuit held that given the Court of Appeals's certification opinion, plaintiff Simmons's small-claims judgment has claim-preclusive effect barring her later federal action. (*See* 16 F4th 357, 361-362 [2d Cir 2021].)

[179] *See e.g. Chapman v Faustin*, 150 AD3d 647, 647 (1st Dept 2017) ("[J]udgment against defendant . . . for failure to provide proper accounting services bars the instant action, even though, were plaintiff to have brought and proven his claims in Supreme Court in the first instance, he could have sought a larger award.").

I. Small Claims Practice (or, the Lifecycle of a Small Claims Action)

1. Generally

As emphasized throughout this *Manual*, the procedure in small/commercial-claims actions is much simpler and more streamlined than in cases heard in the Lower Courts' regular parts —not only in their commencement, but also in motion practice, discovery, and trial. The ultimate aim is to ensure that the small-claims process remains inexpensive, simple, and easy to understand for unsophisticated litigants, while still "do[ing] substantial justice between the parties according to the rules of substantive law."[180]

2. Commencing an Action

(a) Small claims

Under Lower Court Acts § 1803, a person intending to bring a small-claims action need not complete or serve a summons and complaint, as in the Lower Courts' regular parts. Instead, claimants must do two things: (i) pay the applicable filing fee ($15 for small claims seeking $1,000 or less and $20 for claims seeking more than $1,000, plus the cost of mailing the claim to defendant; and (ii) provide a clerk in the appropriate Small Claims Court clerk's office with basic information about their claims.[181]

Lower Court Acts § 1803 (a) provides that a would-be claimant must go to a small-claims clerk's office to give the clerk the parties' addresses and a simple, straightforward statement of the nature and amount of claim. Depending on the jurisdiction, the clerk might take that information and reduce it to a concise written form (as discussed in § 1803 [a]), or the clerk

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[180] Lower Court Acts § 1804.

[181] A would-be claimant who cannot afford this filing fee may obtain relief from the filing-fee requirement by completing a one-page affidavit form and submitting it to the small-claims clerk's office for a judge to review and sign. The form is available in the clerk's office. It may be found online at https://www.nycourts.gov/courts/nyc/smallclaims/forms/PoorPersonsRelief.pdf (last visited July 21, 2022). A copy also appears in section T of this *Manual's* Appendix of Civil Court Forms, *infra* at 221.

might ask claimant to complete that form.[182] Given the "informal nature of the layman facilitated small claims process," a claimant need not "articulate all requisite elements of causes of action."[183] Rather, the claimant may rely on the court "to ascertain from the proof what legal issues have been joined for disposition."[184]

The clerk must, at the time of filing, set a time and place for the hearing on the claim (*i.e.*, trial), "which shall be as soon as practicable"; and the clerk must give claimant written notice of the hearing time and location.[185] The clerk must also then advise claimant "to produce at the hearing the supporting witnesses, account books, receipts or other documents required to establish the claim."[186] And the clerk must give claimant an OCA-approved guide to small-claims litigation.[187]

Once claimant has given the clerk a brief statement of the claim, the governing statutes make the clerk responsible for serving notice of the claim on defendant. The clerk-generated notice of the claim must include the time and place of the hearing on the claim.[188]

Lower Court Acts § 1803 (a) provides for a uniform service process for small claims in all four Lower Courts. If defendant resides within the court's geographic jurisdiction—within New York City for Civil Court, within the applicable district of the court for District Court, or within the

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[182] In the Civil Court, for example, the clerk's office asks claimants to complete a simple initiating form. That form may be found at https://nycourts.gov/COURTS/nyc/civil/forms/CIV-SC-50.pdf (last visited July 21, 2022).

More broadly, A page compiling a number of relevant small-claims forms can be found at https://www.nycourts.gov/courts/nyc/smallclaims/forms.shtml (last visited July 21, 2022).

[183] *Hurley*, 2008 NY Slip Op 52633(U), at *2; *accord Huebner v Fitzsimmons*, 2017 NY Slip Op 50045(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Jan. 6, 2017) (reversing dismissal of claim for failure to state a cause of action because, applying the relaxed pleading standards governing small claims and "[a]ffording the plaintiff the benefit of every possible inference[,] . . . it appears that the plaintiff may have intended to state a cause of action" for a tort that would support her damages claim); *Walker v Mergler*, 2001 NY Slip Op 40613(U), at *2 (App Term, 1st Dept Nov. 26, 2001) (affirming judgment for pro se claimant based on appellate court's conclusion that the evidence established a breach of contract, though claimant had framed her claim as one for dental malpractice).

[184] Hurley, 2008 NY Slip Op 52633(U), at *2.

[185] *E.g.* 22 NYCRR 208.41 (c) (small-claims actions in Civil Court).

[186] *Id.*

[187] *See* Lower Court Acts § 1803 (b). The guide is also available online. (*See supra* at note 119.)

[188] *E.g.* 22 NYCRR 208.41 (d).

applicable county for City Court and the Justice Courts—and defendant's residence is known to claimant, the clerk shall "send[] . . . notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against" at defendant's residence.

Section 1803 (a) also provides that if defendant does not reside within the jurisdiction or if defendant's residence is unknown to claimant, the clerk shall send this mailing to defendant's "office or place of regular employment" within New York City, within the applicable district, or within the applicable county. The notice sent by the clerk "shall include a clear description of the procedure for filing a counterclaim" (which a defendant may do under Lower Court Acts § 1803 [c]). "If, after the expiration of twenty-one days," the first-class mailing sent by the clerk "has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim."[189]

With respect to small-claims actions in Civil Court, if both certified and first-class mailings *are* returned as undeliverable, the Small Claims Part clerk's office will contact claimant by mail to provide instructions on how to effect personal service. If claimant is unable to make personal service on defendant by the scheduled hearing date, the case will be rescheduled to give the claimant more time to serve the notice of claim personally. Absent leave of court, the maximum available adjournment of the hearing is 120 days from filing.[190]

(b) Commercial claims

For commercial claims not involving consumer transactions, the commencement process under the CCA, UDCA, and UCCA is largely the same as the process for small claims brought under those statutes, although the filing fee is $25 (plus the cost of mailings), rather than $15 or $20.[191] Commercial-claims claimants must also provide a verified certification that

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[189] *See Dwyer v Hartheimer*, NYLJ, Mar. 13, 2007, at 17, col 1 (South Nyack Just Ct) (denying motion to vacate default judgment due to lack of CPLR-compliant service, when clerk mailed a copy of the claim to defendant's address and mailing was not returned as undeliverable).

[190] *See* CPLR 306-b.

[191] *See* CCA, UDCA, UCCA § 1803-A (a); *see also e.g.* 22 NYCRR 208.41-a (commercial-claims actions in Civil Court).

"no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month."[192]

For commercial claims arising out of consumer transactions, a would-be claimant must provide the five-commercial-claims certification and an additional verified certification that claimant mailed a demand letter to defendant before commencing the claim. Section 1803-A (b) of the CCA, UDCA, and UCCA provides that this demand letter be on a form "prescribed and furnished by the state office of court administration" and requires the form to include detailed information, specified in the statute, about the consumer transaction, the outstanding debt, and the creditor's intent to bring a commercial-claims action to collect.[193] If the demand-letter certification "is not properly completed by the claimant, the court shall not allow the action to proceed" until it is corrected.[194]

Once the claim is deemed commenced, the clerk mails it the same way as other commercial claims. Section 1803-A (b) provides that the presumption of notice with respect to consumer-transaction commercial claims arises if the mailing has not been returned as undeliverable after 30 days (instead of after 21 days).[195]

3. Counterclaims

Lower Court Acts § 1803 (a), and § 1803-A (a) of the CCA, UDCA, and UCCA, both provide that the notice of claim sent by the clerk's office to defendant must "include a clear description of the procedure for filing a counterclaim." Under that procedure, defendant is required to file with the clerk a statement containing the counterclaim within five days of receiving

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[192] CCA, UDCA, UCCA § 1803-A (a). Failure to provide the five-commercial-claims certification at commencement is a jurisdictional defect. (*See id.*)

[193] A copy of the form is available at https://www.nycourts.gov/courts/nyc/civil/pdfs/UCS124_DmdLtr.pdf (last visited July 21, 2022).

[194] *See* CCA, UDCA, UCCA § 1803-A (b).

[195] In District Court, the clerk sends commercial claims "to the party complained against at his residence, if he resides within the *municipality* in which the court is located, and his residence is known to the claimant," and otherwise to defendant's "office or place of regular employment." (UDCA § 1803-A [a] [emphasis added].) This differs slightly from District Court process with respect to small claims. In that process, the clerk sends small claims to defendant's residence if it is known to claimant and is "within a district of the court in the *county*." (UDCA § 1803 [a] [emphasis added].) It is unclear how this distinction originated or why it continues.

the initial notice of claim.[196] Claimant may then reply to the counterclaim but is not required to do so.

Under §§ 1803 (c) and 1803-A (d), defendant does not forfeit a potential counterclaim by missing the five-day filing deadline. These statutes provide, though, that if defendant's counterclaim has been filed out of time, claimant "may, but shall not be required to, request and obtain adjournment of the hearing date" to afford claimant time to gather evidence in response to the counterclaim.

A counterclaim "need not arise out of or relate to the claim alleged in the complaint."[197] But counterclaims in small- and commercial-claims actions are subject to the same jurisdictional monetary limits as the main claim.[198] A defendant's choice to assert a counterclaim in the small/commercial-claims action thus has important implications, given that doing so constitutes a waiver of any recovery that exceeds the monetary limit.[199] And the nature and complexity of the counterclaim may affect a court's thinking on whether to transfer the action to the court's regular part under Lower Court Acts § 1805, or under § 1805-A of the CCA, UDCA, and UCCA.

Although counterclaims are permissive,[200] a defendant may not "remain silent in one action, then bring a second suit on the basis of a pre-existing claim for relief that would impair the rights or interests established in the first action."[201] In that scenario, claim preclusion would bar the second action. Given the limited recordkeeping in small-claims actions, courts and arbitrators should be alert to the possibility that an unscrupulous defendant is bringing a second suit in these circumstances against the original claimant, notwithstanding this claim-preclusion bar.

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[196] *See* Lower Court Acts § 1803 (c); CCA, UDCA, UCCA § 1803-A (d). Defendant must also pay a filing fee of $5, plus the cost of mailing a notice of counterclaim to claimant. (*See id.*).

[197] *Dall v Solomon*, NYLJ, Sept. 26, 1997, at 33, col 5 (App Term, 2d Dept).

[198] *See* Lower Court Acts § 1805 (c); CCA, UDCA, UCCA § 1805-A (c).

[199] *See* subparagraph I(D)(1)(a)(iii), *supra* at 15.

[200] *See Simmons*, 37 NY3d at 115 n 3 (noting "this State's permissive counterclaim rule").

[201] *Classic Autos. v Oxford Resources Corp.*, 204 AD2d 209, 209 (1st Dept 1994), citing *Henry Modell & Co. v Minister, Elders & Deacons of Ref. Prot. Dutch Church of City of N.Y.*, 68 NY2d 456, 461 (1986); *Rackowski v Araya*, 152 AD3d 834, 835-836 (3d Dept 2017).

As discussed above in this *Manual's* Parties section,[202] Lower Court Acts § 1809 bars a corporation from bringing a small claim in the first instance. The Appellate Term, Second Department, has nonetheless held that a corporate defendant may assert a *counterclaim* in a small-claims action—at least if the counterclaim is within the court's monetary jurisdiction, "related to the main claim," and "not complex."[203]

4. Referral of Action to Arbitration on Consent of Parties

In courts in which small/commercial-claims arbitration has been established, the clerk or the judge will inform the parties, when they appear for the scheduled hearings on their claims, of their option to have their claims determined by a small-claims arbitrator, rather than by a judge.[204] If the parties agree to arbitrate, they must execute a consent form providing, among other things, "that the decision of the arbitrator is final and that no appeal shall lie from the award."[205]

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[202] *See* subsection I(F)(1), *supra* at 35.

[203] *Separ v Island Home Improvement*, 2004 NY Slip Op 50222(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Mar. 31, 2004), citing *Marino v N.A.S. Plumbing & Heating Cntrs.*, 175 Misc 2d 519 (App Term, 2d Dept, 9th & 10th Jud Dists 1997). These precedents would seem to be yet another example of the New York courts' general functional turn in handling commercial claims. That is, CPLR 3019 (d) provides that causes of action in counterclaims are to "be treated, as far as practicable, as if [they] were contained in a complaint." The Appellate Term presumably concluded in *Separ* and *Marino* that the gains in economy from hearing claim and counterclaim together in appropriate cases warranted different treatment for claims brought as small-claims actions by corporations (impermissible) and counterclaims brought by corporations in small-claims actions (permissible).

[204] *See e.g.* 22 NYCRR 208.41 (n) (1) (arbitration in small-claims actions brought in Civil Court); 22 NYCRR 208.41-a (n) (1) (arbitration in commercial-claims actions brought in Civil Court).

[205] *Id.* §§ 208.41 (n) (2), 208.41-a (n) (2). *Cf. DeLeon v. Katz*, 124 Misc 2d 1064, 1065 (App Term, 1st Dept 1984) (vacating arbitral award and remanding for further proceedings because neither party signed the arbitral consent form and defendant contended that he had not been given notice that he was waiving his right to a trial by the court); *accord Widelec v Silberstein*, 187 Misc 2d 853, 855-856 (Civ Ct, Queens County 2001) (in multi-defendant small-claims action, vacating arbitral award entered on default against two of the defendants, because those defendants undisputedly had not consented to arbitration, and had provided a reasonable excuse and a meritorious defense for their failure to appear for trial). In unusual circumstances in which the parties are represented by counsel and the evidence of consent is sufficiently clear and undisputed, the parties may be found to have consented even if they did not sign the consent form. (*See McCalman v 745 Owners Corp.* (2008 NY Slip Op 51392[U], at *1 [Civ Ct, Kings County July 15, 2008].)

Important differences exist between small-claims arbitration and CPLR article 75 arbitration.

The authority for small-claims arbitration does not rest in the CPLR, or for that matter in a Lower Court's establishing statute, but instead in the court's implementing regulations governing small/commercial-claims litigation.[206] The parties need not take affirmative steps to bring on—or to compel—an arbitration proceeding, as in CPLR 7501 and 7502. As discussed above, the basis for arbitration is not a preexisting agreement between the parties, but a post-commencement consent of both parties to arbitration as an alternative to adjudication by a judge.

Small-claims arbitration also does not require motion practice to confirm the arbitrator's award, as in CPLR 7510. In Civil Court, for example, "[u]nless both parties file a request in writing not to enter judgment, the clerk shall, within two days after the filing of the award, enter judgment in accordance therewith, provided the award has been filed within 30 days from the date of filing the consent" to arbitrate.[207]

Nonetheless, the Appellate Terms of the First and Second Departments have consistently concluded that given the CCA's incorporation-by-reference of applicable CPLR provisions,[208] a party to a small-claims arbitration in Civil Court may move under CPLR 7511 to vacate the arbitrator's award and the judgment entered thereon.[209] The party seeking vacatur of the award and judgment must "establish[], by clear and convincing evidence, one of the statutory grounds enumerated in CPLR 7511(b)."[210]

In the context of arbitration proceedings pursuant to contract, non-Small Claims courts have suggested that the limited bases for vacatur of an

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[206] *See generally* 22 NYCRR 208.41, 208.41-a (provisions of Civil Court Uniform Rules implementing small/commercial-claims arbitration).

[207] *Id.* at 208.41 (n) (5), 208.41-a (n) (5).)

[208] *See* CCA § 2102.

[209] *See Silver v Tribeca,* 2010 NY Slip Op 50124(U), at *1 (App Term, 1st Dept Feb. 2, 2010); *Postiglione v Paumere*, 2003 NY Slip Op 51376(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Oct. 2, 2003); *Rymer v Leider*, 122 Misc 2d 873, 875-876 (Civ Ct, Queens County 1983); *see also Molly v Froyton*, 124 Misc 2d 865, 865 (App Term, 2d Dept, 9th & 10th Jud Dists 1984) (holding that the proper way to challenge arbitrator's award in small-claims action is to move to vacate the award); *but see Jarvis v Regdos*, 147 Misc 1088, 1090-1092 (Erie County Ct 1990) (unpersuasively concluding, in small-claims action decided by Buffalo arbitrator under 22 NYCRR 210.41 [m], that CPLR 7511 review of the arbitrator's award is not available).

[210] *May v Scotto-D'Abusco*, 2011 NY Slip Op 50987(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists May 24, 2011).

arbitral award under CPLR 7511 (b) flow from the fact that non-Small Claims arbitrators are not bound by principles of substantive law, but only from their duty to reach a just result.[211] With respect to small-claims arbitration, on the other hand, the limitations on grounds for vacating an arbitrator's award are better understood as enforcing the parties' initial agreement, upon consenting to small-claims arbitration, that "no appeal will lie from the arbitrator's award."[212]

5. What Can Happen in Small Claims Court When Action Remains in Court Rather than Referred to Arbitration

(a) Motions

Small/commercial claims are subject to relaxed pleading standards and are heard in relatively informal proceedings that unsophisticated litigants can understand. Pretrial motion practice, on the other hand, "of necessity[] carries with it the technicalities of 'regular' cases" and the "legal niceties of procedure," thereby "thwart[ing] the proper function of small claims courts."[213] Courts have therefore repeatedly held that pretrial motion practice in small-claims actions is discouraged—and that such motions should generally be denied as improper.[214]

It may occasionally be appropriate to entertain a pretrial motion seeking dismissal—for example, where the case raises a significant recurring legal issue; or where defendant has raised a clear, straightforward,

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[211] *See Swartz v Swartz*, 49 AD2d 254, 256-257 (4th Dept 1975), quoting *Teachers of Huntington*, 33 NY2d at 235.

[212] *Viscarra v Durlik*, 2007 NY Slip Op 50359(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Feb. 16, 2007), citing 22 NYCRR 208.41 (n) (2) (requiring parties' executed consent to small-claims arbitration to provide "that the decision of the arbitrator is final and that no appeal shall lie from the award"); *cf. Chang v Chiariello*, 114 Misc 2d 186, 187 (Civ Ct, Queens County 1982) (emphasizing importance of "finality and certainty . . . attach[ing] to Small Claims proceedings").

[213] *Weiner v Tel Aviv Car & Limousine Serv.*, 141 Misc 2d 339, 341 (Civ Ct, NY County 1988).

[214] *See id.* at 340-342; *accord e.g. Rackowski v Araya*, 152 AD3d 834, 836 (3d Dept 2017) (in small-claims action, holding that County Court erred in considering the merits of defendant's motion to dismiss); *Courtney v Beth Abraham Health Servs.*, 2014 NY Slip Op 51405(U), at *1 (App Term 1st Dept Sept. 22, 2014) (affirming denial of summary-judgment motion); *Williams v Friedman Mgt. Corp.*, 2006 NY Slip Op 50579(U), at *1 (App Term, 1st Dept Apr. 10, 2006) (reversing grant of summary-judgment motion); *Friedman v Seward Park Housing Corp.*, 167 Misc 2d 57, 58 (App Term, 1st Dept 1995) (reversing grant of motion to dismiss).

dispositive legal argument and resolving that argument will serve, rather than impede, substantial justice.[215] But the circumstances under which a small-claims judge may properly consider the merits of a pretrial motion are, and should remain, limited and narrow.[216]

(b) Discovery

Section 1804 of the Lower Court Acts and § 1804-A of the CCA, UDCA, and UCCA provide that "disclosure shall be unavailable . . . except upon order of the court on showing of proper circumstances." Courts emphasize that "[d]iscovery in and of itself would create a situation where the matter could be delayed," undermining the "expeditious, as well as simplified and informal" character of small-claims actions.[217] As a result, although "discovery in small claims courts may be permitted upon special circumstances, it 'requires more than a showing that the information sought to be disclosed is relevant or helpful information.'"[218] For that matter, as discussed above in the discretionary-transfers section,[219] the likelihood that properly resolving a small or commercial claim will entail pretrial discovery is a factor pointing toward transferring the action to the court's regular part under Lower Court Acts § 1805 (b).[220]

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[215] *See e.g. Batshever v Okin*, 13 Misc 3d 814, 816 (Civ Ct, Kings County 2006) (considering a motion to dismiss that "goes to the very gravamen of plaintiff's cause of action," when the court was satisfied that plaintiff would not be "prejudiced or placed at a substantial disadvantage concerning the instant motion"); *Proscan Radiology of Buffalo v Progressive Cas. Ins. Co.*, 2006 NY Slip Op 51242(U), at *2 (Buffalo City Ct June 27, 2006) (considering motion raising significant legal issue); *Hardin v Northport-East Northport Union Free Sch. Dist.*, 2004 NY Slip Op 50636(U), at *1 (App Term 2d Dept, 9th & 10th Jud Dists June 22, 2004) (affirming dismissal of action for failure to comply with notice-of-claim requirement).

[216] If a claim has been referred to an arbitrator and the parties have consented to arbitrate, the arbitrator may not then decide a motion prior to hearing the claim. (*See* Lebovits, *Prompt Adjudication*, *supra* at note 5, at 14.) The arbitrator should instead tell the would-be movant that the arguments sought to be raised on the motion will be considered by the arbitrator as part of the trial on the claim.

[217] *Pillsworth*, 184 Misc 2d at 286.

[218] *Yee v Town of Orangetown*, 76 AD3d 104, 110 (2d Dept 2010), quoting *MacCollam*, 94 Misc 2d at 693-694; *see also City Line Auto Mall, Inc. v American Honda Fin.*, 2005 NY Slip Op 52072(U) (Civ Ct, Queens County Dec. 20, 2005) (holding that special circumstances warranted discovery).

[219] *See* paragraph I(D)(3)(a), *supra* at 28.

[220] *See Pawling Lake Property Owners Assoc.*, 190 Misc 2d at 702-703.

(c) Adjournments

If a party seeks an adjournment of the scheduled trial date, only the trial judge (or clerk)—not an arbitrator or referee—may decide that application to adjourn.[221] The decision whether to grant or deny an adjournment request "is addressed to the sound discretion of the trial court upon a balanced consideration of all relevant factors."[222]

In exercising its discretion, the court must balance (i) the need to ensure that Small Claims Court remain a "simple, formal and inexpensive procedure for the prompt determination" of small and commercial claims, with (ii) the court's obligation "to do substantial justice between the parties."[223] Thus, adjournment applications that appear aimed only at delay, or that lack justification, may appropriately be denied.[224] At the same time, appellate courts have held that "it is an improvident exercise of discretion to deny such a request where the evidence is material," the application "is not made for purposes of delay," and the "need for an adjournment does not result from the failure to exercise due diligence."[225] It may also be appropriate, depending on the circumstances, to grant an adjournment to allow a party (usually a defendant) to move in Supreme

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[221] Arbitrators and referees may, however, advise litigants who appear but fail to bring essential evidence with them to return to the trial judge to request an adjournment to enable them to appear with evidence in hand.

[222] *Barnett v Mathis*, 2012 NY Slip Op 51726(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Aug. 31, 2012).

[223] *Compare* Lower Court Acts § 1802; CCA, UDCA, UCCA § 1802-A, *with* Lower Court Acts § 1804; CCA, UDCA, UCCA § 1804-A.

[224] *See e.g. Ross v Agronin*, 2019 NY Slip Op 51972(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Dec. 6, 2019) (holding that the trial court "did not improvidently exercise its discretion in denying defendant's request for an adjournment" to bring evidence supporting her case, given repeated prior adjournments and defendant's failure to explain why she had not brought that evidence with her); *NSS Fin. Servs. LLC v Asdon*, 2016 NY Slip Op 50761(U), at *1 (App Term, 1st Dept May 13, 2016) ("[F]inding no abuse of discretion in the denial of defendant's eve-of-trial application for a further adjournment of this matter previously marked 'final.'"); *Barnett v Mathis*, 2012 NY Slip Op 51726(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Aug. 31, 2012) (holding that the trial court properly "declin[ed] to grant plaintiff an adjournment, as plaintiff had written notice of the counterclaim and should have been prepared to present his proof at trial")).

[225] *Slaughter v Pekich*, 2020 NY Slip Op 50748(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists June 18, 2020); *Constantino v. Perma-Ceram of Westchester*, 2014 NY Slip Op 5804(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists May 7, 2014) (reversing judgment below based on the trial court's refusal to grant plaintiff an adjournment to retrieve a second estimate of the cost to repair his vehicle, "which estimate, he erroneously believed, had been included in the court's file on a prior court date").

Court or County Court to have the small-claims action removed to that court and consolidated with another pending action.[226]

To prevent future abuse, when the court grants an adjournment request it should note that adjournment on the case-information sheet in the casefile and in NYBench and UCMS (Universal Case Management System), case-management programs used by the courts.

(d) Jury Trials

Under Lower Court Acts § 1806, and § 1806-A of the CCA, UDCA, and UCCA, a small/commercial claimant waives the right to a jury trial by bringing the action in the court's Small/Commercial Claims Part. As discussed above in the mandatory-transfers section,[227] if a small-claims defendant demands a trial by jury, the action must be transferred to the court's regular part.

6. Consolidation

Consolidating two small-claims actions is permitted in appropriate circumstances under CPLR 602. Consolidating a small-claims action with a regular action, though also permitted, raises tricky procedural and practical issues, as discussed above in the discretionary-transfer/consolidation section.[228]

7. Multiparty Litigation

Claimants may sue multiple defendants. Multiple defendants may cross-claim against each other. Defendants may bring third-party actions against third-party defendants. If a claimant sues a defendant, and the defendant sues a third-party defendant, any judgment against third-party defendant must be in the name of defendant, not claimant. A third-party judgment may not be in an amount greater than claimant's judgment unless defendant also had a direct claim against third-party defendant.

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[226] This type of transfer is discussed further in the Discretionary Transfer/Consolidation section at paragraph I(D)(3)(c), *supra* at 32.

[227] *See* paragraph I(D)(3)(b), *supra* at 30.

[228] *See* paragraph I(D)(3)(c), *supra* at 30.

8. Defaults and Inquests

If claimant fails to appear, or if both parties fail to appear, the court should declare a default and dismiss the case. In these instances, claimant may bring the case again, because a dismissal on default is not a ruling on the merits for claim-preclusion purposes.[229] If claimant appears but defendant does not, or counterclaimant appears and counterclaim defendant fails to appear, the court should declare a default and order an inquest into damages.

To obtain a default judgment at an inquest, claimant must demonstrate service of process, the default, liability, and damages.[230] (Service of process is presumed if the first-class mailing of the claim to defendant was not returned to the clerk's office as undeliverable within 21 days (or, in commercial claims arising from consumer transactions, 30 days).[231] Defendant's non-appearance will starkly demonstrate the default.

In actions brought in Supreme Court or in a Lower Court's regular part, the plaintiff may establish liability and damages through a party affidavit or through a verified complaint (equivalent for these purposes to an affidavit).[232]

The claimant in a small/commercial-claims action, on the other hand, need not submit a sworn statement to commence the action. Thus, upon a small-claims defendant's default, claimant or claimant's witnesses must make out a prima facie case of both the elements of liability and damages—whether by oral testimony under oath or by sworn written statements.[233] Similarly, if claimant defaults, defendant must make out its counterclaim upon "sworn testimony."[234]

A defaulting party waives the right to contest liability but not the right to contest damages.[235] At an inquest, the defaulting party may offer

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[229] In that scenario, the claimant would be bringing a new claim, not merely trying to vacate the prior default, so no showing of reasonable excuse/meritorious defense would be required.

[230] *See generally* CPLR 3215 (f).

[231] *See* Lower Court Acts § 1803 (a); CCA, UDCA, UCCA § 1803-A (a), (b).

[232] *See* CPLR 3215 (f); *cf. Goodyear v Weinstein*, 224 AD2d 387, 387 (2d Dept 1996) (affirming vacatur of default judgment unsupported by either party affidavit or verified complaint).

[233] *See* 22 NYCRR 208.32 (b).

[234] *Bucky v DePhillips*, NYLJ, June 13, 1991, at 34, col 4 (App Term, 2d Dept).

[235] *See Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730 (1984).

evidence in mitigation of damages if it involves "circumstances intrinsic to the transactions at issue" in the claim.[236] Evidence of setoffs, or of claims "arising or existing separate and distinct from the transactions out of which the plaintiff's cause of action arises," is inadmissible.[237]

In the event of a default, the court may under CPLR 3215 (b) and CPLR 4311 refer liability and damages issues to a Small Claims Part referee to hear and report.[238] The referee takes sworn testimony from claimant (and any other witnesses). In Civil Court (and perhaps other courts), inquests are also digitally recorded. Following the inquest, the referee prepares a brief report on a decision form provided by the court. The referee may recommend that the judge enter judgment for claimant in a particular amount, or that the judge should enter judgment for defendant outright, if the referee concludes that claimant's testimony and other evidence at the inquest did not provide proof of claimant's cause of action. Referees must provide findings of fact and conclusions of law briefly explaining their recommendation.[239]

After receiving the referee's recommendation, the judge presiding must decide whether to approve or reject that recommendation and then enter a corresponding order on the case-decision form. In making that determination, the inquest recording and referee's findings and conclusions provide important assurance to the judge of the integrity of the referee's conduct and determination. If, upon receiving the referee's inquest report and any inquest recording, the judge concludes that the referee's findings and recommendation are not substantially supported by the record, the judge should decline to approve the recommendation.[240] In that circumstance, the judge may either re-conduct the inquest herself, time

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[236] *Amusement Bus. Underwriters v American Intl. Group*, 66 NY2d 878, 880 (1985) (internal quotation marks omitted).

[237] *Id.*

[238] In jurisdictions with small-claims arbitration, small-claims arbitrators frequently serve as referees conducting inquests upon defendants' failures to appear, in addition to conducting trials themselves.

[239] *See* CPLR 4320 (b); *Kaya v Floyd*, 2013 NY Slip Op 51664(U), at *1 (App Term, 1st Dept Oct. 11, 2013) (reversing denial of motion to vacate default judgment entered on a referee's report following inquest, and remanding for new inquest, for lack of referee's findings of fact or conclusions of law under CPLR 4320).

[240] *See Citimortgage, Inc. v Kidd*, 148 AD3d 767, 768-769 (2d Dept 2017) (explaining that because the "referee's findings and recommendations are advisory only and have no binding effect on the court, which remains the ultimate arbiter of the dispute," the court should not rely upon or confirm an inadequately supported recommendation).

permitting, or refer the matter for another inquest before a different referee. Judges should avoid subpoenaing arbitrators for hearings on motions to vacate. Doing so is not only unnecessary, but also may chill arbitrators from serving.

Following entry of judgment on the referee's inquest report (whether a money judgment for claimant or judgment for defendant dismissing the claim), either side may move to vacate. Defendant may seek to vacate the default itself or to challenge the amount awarded on its default as excessive[241]; claimant may seek to challenge the dismissal of the claim following inquest or to challenge the amount awarded on defendant's default.

If the judge concludes that a motion to vacate raises potentially meritorious arguments, the best and simplest course is for the judge to grant the motion and conduct a new inquest herself, rather than subpoenaing the referee to inquire about the reasons for the referee's decisions at the initial inquest. Judges who believe that a new inquest is warranted, but lack time to conduct the inquest themselves, should refer the matter for inquest to another referee.[242]

If the judge concludes that the motion to vacate should be denied, a party aggrieved by that denial may appeal.[243] On appeal, the referee's report accompanying the motion judge's denial of the motion to vacate will provide the appellate court with the referee's findings of fact and conclusions of law required by CPLR 4320 (b).

The Appellate Term, First Department, has held that its receiving the referee's report (and inquest record) are also required because that information is necessary to ensure meaningful appellate review.[244] But if the motion judge has accepted the referee's report and then decided an opposed motion to vacate, the papers on that motion would presumably constitute a

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[241] Motions by defendants to vacate their defaults are considered further below in subsection I(P)(1), *infra* at 80.

[242] *See Pasamanick v 104 Camera World, Inc.*, 116 Misc 2d 972, 974 (Civ Ct, NY County 1982) (vacating judgment after inquest that dismissed the claim and directing clerk to recalendar action for new inquest).

[243] The process for appeals is discussed in more detail below in subsection I(P)(2), *infra* at 81.

[244] *See Shillingford v Saxe*, 2013 NY Slip Op 50266[U], at *1 (App Term, 1st Dept Feb. 21, 2013) (reversing the denial of a motion to vacate and ordering a new inquest because, absent a transcript of the inquest and any findings of fact and conclusions of law by the referee, the "sorry state of the record precludes any effective appellate review of the matter").

meaningful record of the grounds underlying the referee's recommendation and the motion judge's acceptance of that recommendation. It is thus not entirely clear as a practical matter what the referee's report and inquest record would add to the evidentiary picture, at least in the small claims context.

9. Sanctions

The Lower Courts may not use 22 NYCRR 130-1.1 (a) to impose monetary sanctions on small-claims litigants or lawyers for frivolous and/or vexatious litigation: That provision's express terms render it inapplicable to proceedings in any Lower Court's Small Claims Part.[245]

That said, under § 1810 of the Lower Court Acts, and § 1810-A of the CCA, UDCA, and UCCA, the Small Claims Court clerk may bar would-be claimants from commencing a small-claims action without leave of a judge, should the clerk "find that the procedures of the small claims part are sought to be utilized by a claimant for purposes of oppression or harassment, as where a claimant has previously resorted to such procedures on the same claim and has been unsuccessful after the hearing thereon." Sections 1810 and 1810-A provide that judges from whom leave to bring a claim is sought may, in turn, deny leave if they "find that the claim has already been adjudicated, or that the claim is sought to be brought on solely for purposes of oppression or harassment and not under color of right."

Although the language of these provisions refers to the clerk's acting in the first instance, judges hearing small-claims actions have on occasion relied on them either to dismiss an oppressive or harassing claim or to limit a small-claims litigant's ability to bring further claims.[246] In several

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[245] *See also City Line Auto Mall*, 2005 NY Slip Op 52072(U), at *4 (in commercial-claims action, denying request for § 130-1.1 sanctions as unavailable).

[246] *See Bal v Flaherty*, 2004 NY Slip Op 51895(U), at * 5 (Civ Ct, NY County July 16, 2004) (granting defendant's motion under § 1810 to require claimant "to make an application to the Special Term Judge prior to being permitted to bring an action in the Small Claims Part"), *affd on op below* 2005 NY Slip Op 51885(U) (App Term, 1st Dept Nov. 21, 2005); *Jerome v Famby*, NYLJ, June 3, 1998, at 30, col 3, at col 5 (Yonkers City Ct) (barring claimant, for one year, from instituting further small-claims actions without review of the proposed action by the judge presiding); *see also Kitchen v Sothebys*, 2008 NY Slip Op 50264(U), at *14 (Civ Ct, NY County Feb. 19, 2008) (denying defendant's motion under § 1810 to bar claimant from filing further claims against defendant "[a]bsent any indication that claimant has filed with the court any claim against defendant other than the instant claim").

instances, this step has been taken on defendant's application. In others, judges have acted on their own initiative.[247]

With respect to acting on applications by defendants to bar filings without leave of court, no reason exists why Small Claims judges should have less authority to grant an application to prevent harassment-by-litigation than do Small Claims Part clerks acting sua sponte. Nor do we see any objection to a judge's acting on the court's own initiative to direct the Small Claims Clerk to evaluate future claims by the litigant, for purposes of determining whether the Clerk should impose restrictions on the litigant under § 1810.

On the other hand, judges should think twice before imposing those restrictions themselves, sua sponte: "[H]inder[ing] an individual's access to the court system is not something to be undertaken lightly."[248] That said, it remains the "right and the duty" of the judiciary "to supervise the course of litigation that is before the court" to ensure "that justice is administered properly and that the processes of the law are not abused."[249] In limited but important circumstances, this task may warrant imposing a sua sponte bar on an abusive litigant from bringing future claims without leave of court.[250]

J. Evidence

1. Applicability of Evidentiary Rules

Where small-claims arbitration programs exist, such as in Civil Court, arbitrators must apply the identical (simplified) evidentiary rules and the identical standards of proof as do judges hearing small claims. In so doing, the adjudicator must "do substantial justice between the parties according to the rules of substantive law."[251]

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[247] *See e.g. Kashdan-Wallerstein v Malone*, 115 Misc 2d 623, 624-626 (Civ Ct, NY County 1982) (barring claimant, for one year, from instituting any further actions without the permission of the judge presiding in the Small Claims Part and directing that thereafter the clerk review claimant's actions).

[248] *Id.* at 625-626.

[249] *Id.* at 625.

[250] Imposing sua sponte an outright bar on bringing future claims without leave of court is best undertaken by the appropriate supervising or administrative judge on recommendation of the judge presiding in the Small Claims Part, rather than directly by the judge presiding.

[251] Lower Court Acts § 1804; CCA, UDCA, and UCCA § 1804-A.

2. Evidentiary Framework

The court or arbitrator hearing a small/commercial-claims action may "conduct the hearing in such manner as it deems best suited to discover the facts and to determine the justice of the case."[252]

All witnesses must testify under oath or affirmation.[253] Written statements from witnesses or other third parties intended to substitute for testimony may be considered, as long as they, too, are sworn.[254] But the adjudicator is otherwise not "bound by statutory provisions or rules of practice, procedure, pleading or evidence, except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or person with a mental illness."[255] Adjudicators must be mindful that "[a] judicial award, even one issued in the context of a small claims action, must rest upon competent evidence, and not mere inference or surmise."[256]

If an unrepresented litigant fails to introduce any evidence of damages, the adjudicator may "make reasonable efforts to facilitate the ability of unrepresented litigants to have their matters fairly heard."[257] The adjudicator should give unrepresented litigants the alternative of presenting their case through answering questions posed by the adjudicator, or by testifying in narrative form. The adjudicator should also ask unrepresented litigants to explain the details, relevance, and

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[252] *E.g.* 22 NYCRR 208.41 (j) (regulations governing small-claims litigation in Civil Court). (The same regulatory provisions exist in the Uniform Rules governing litigation in the other Lower Courts.)

[253] *See e.g.* 22 NYCRR 208.41 (j).

[254] *See Cullimore v Buchanan*, 2007 NY Slip Op 50396(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Mar. 5, 2007) (reversing trial-court judgment for defendant that rested in part on "unsworn statements of third persons . . . submitted by defendant's witness"); *accord Yildrim v Turkish Airlines*, 2015 NY Slip Op 50468(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists, Apr. 7, 2015) ("Even in small claims court . . . unsworn comments or arguments are of no evidentiary value").

[255] Lower Court Acts § 1804; CCA, UDCA, and UCCA § 1804-A. (*See e.g. Carew v B.W.I.A.*, 2008 NY Slip Op 51123[U], at *1 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists, May 28, 2008] [reversing trial-court judgment for defendant rendered after trial court ruled inadmissible "various documents, including receipts" that plaintiff sought to introduce "to substantiate his claim for damages].)

[256] *Hindi v Wajngurt-Levy*, 2020 NY Slip Op 50939(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Aug. 14, 2020), quoting *Rollock v Gerald Modell Inc.*, 169 Misc 2d 663, 665 (App Term, 1st Dept 1996).

[257] 22 NYCRR 100.3 (B) (12).

significance of photographs, estimates, receipts, bills, contracts, or other evidence the litigants may have brought with them, and ask the litigants to offer these materials into evidence so that they are part of the record.[258] If a party offers physical evidence, the adjudicator must show it to all other parties, and make sure at the end of the trial that the party that offered the evidence takes it home.

3. Burden and Standard of Proof

Claimant bears the burden of proof on the claim (and a counterclaimant on the counterclaim), both as to liability and damages.[259] The standard of proof, as in cases brought in the courts' regular parts, will depend on the nature of the claim being brought. A claimant must ordinarily prove a claim by a preponderance of the evidence.[260] A fraud claim, on the other hand, will require proof by clear and convincing evidence.[261]

4. Cross-Examination

Although procedural rules are relaxed in small-claims actions, "the rules of substantive law must be followed and a person's constitutional right to due process of law includes the basic right to cross-examine witnesses."[262] In some cases, particularly with pro se litigants, it may be necessary for the adjudicator to guide and focus cross-examination to ensure that it is

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[258] *See Dyce v Singer*, 40 Misc 3d 12, 13 (App Term, 1st Dept 2013) (reversing judgment in small-claims action and ordering new trial because photographs submitted by defendant, "while viewed by the court and specifically referenced in its written decision, were not marked as exhibits or introduced into evidence," such that they were not in the record on appeal, precluding effective appellate review").

[259] *See Clark v Brownell*, 2018 NY Slip Op 51247(U), at *2 (Glens Falls City Ct Aug. 29, 2018); *accord Grant v J. Towing and Recycling, Inc.*, 2012 NY Slip Op 50169(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Jan. 24, 2012); *Stolte v Melohn Props.*, 2010 NY Slip Op 51080(U), at *1 (App Term, 1st Dept June 21, 2010).

[260] S*ee e.g. Clark*, 2018 NY Slip Op 51247(U), at *2 (breach-of-contract claim).

[261] *See e.g. Brady v Posse*, 2007 NY Slip Op 50276(U), at *4 (Civ Ct, Richmond County Feb. 16, 2007); *Solon v Meuer*, 141 Misc 2d 993, 994 (Civ Ct, NY County 1987).

[262] *Mujica v Jerome-Human*, 2019 NY Slip Op 51978(U), at *2 (App Term, 2d Dept, 2d 11th & 13th Jud Dists Dec. 6, 2019) (internal quotation marks omitted); *accord Murov v Celentano*, 3 Misc 3d 1, 3 (App Term, 2d Dept, 9th & 10th Jud Dists 2003) (noting that "cross-examination of adverse witnesses is a matter of right in any trial of a disputed issue of fact").

productive, non-harassing, and aimed at eliciting relevant and helpful information.

5. Credibility

All testimony by parties or witnesses shall be given under oath or affirmation. Courts hearing small or commercial claims are entitled to make credibility determinations regarding the testimony of the parties and the evidence presented based on observation of the witnesses and their demeanor. The typical deference that appellate courts afford trial courts in this context "[a]pplies with [even] greater force to judgments rendered in the Small Claims Part of the court."[263]

6. Res Ipsa Loquitur

A claimant asserting a negligence claim in a small/commercial-claims action may rely on the traditional doctrine of res ipsa loquitur.[264] This doctrine permits an inference of negligence on defendant's part to be drawn in some circumstances solely from the fact that an accident occurred. This inference of negligence is permissible only if claimant first establishes that (i) defendant owed a legal duty to claimant; (ii) the type of injury-causing event at issue does not ordinarily occur absent negligence; (iii) the injury-causing instrumentality (whether device, vehicle, or otherwise) was within defendant's exclusive control; and (iv) claimant's injury did not result from any voluntary action on claimant's part.[265] A claimant may establish through everyday experience or expert testimony that the injury-causing event would not ordinarily occur without negligence.[266]

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[263] *Schrettner v Saraguro*, 2019 NY Slip Op 51347(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Aug. 15, 2019), citing *Williams v Roper*, 269 AD2d 125, 126 (1st Dept 2000).

[264] *See e.g. Wenger v Incorporated Vil. of Rockville Ctr.*, 29 Misc 3d 1086, 1089 (Nassau Dist Ct 2010); *Bailey v Suffolk County Police Dept., Legal Dept.*, 2010 NY Slip Op 51369(U), at *4-5 (Suffolk Dist Ct June 17, 2010); *Wipperfurth v Smith & Mills*, 2008 NY Slip Op 51294(U), at *3 (Civ Ct, NY County June 2, 2008).

[265] *See Correa v Matsias*, 153 AD3d 1312, 1313 (2d Dept 2017); *Zinner v Advance Parking Servs.*, 55 Misc 3d 68, 69-70 (App Term, 2d Dept, 9th & 10th Jud Dists 2017).

[266] *See McCarthy v Northern Westchester Hosp.*, 139 AD3d 825, 827 (2d Dep 2016).

7. Expert Opinion

Expert opinion is generally necessary to establish what reasonable professional standards consist of, such as in claims for legal or medical malpractice.[267] Expert testimony may also be required in cases where causation is not apparent to a non-expert observer.[268] Relatedly, a layperson's testimony alone will not support an award of pain and suffering damages unless corroborated by medical records.[269] A small-claims adjudicator, as finder of fact, is entitled to accept or reject either side's expert opinion evidence in whole or in part.[270]

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[267] *See e.g. Law Offices of Lydia C. Hills, P.C. v Holguin*, 2021 NY Slip Op 50032(U), at *2 (App Term, 2d Dept, 2d 11th & 13th Jud Dists Jan. 15, 2021) (legal malpractice); *Shalamova v Pinksy, D.D.S.*, 2017 NY Slip Op 50823(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists June 16, 2017) (dental malpractice); *Streeter v Ackerman, M.D.*, 2003 NY Slip Op 51199(U), at *1 (App Term, 1st Dept Aug. 8, 2003) (medical malpractice); *see also e.g. Cafferata v Richmond Home Inspection, Inc.*, 2013 NY Slip Op 50209(U), at *3 (Civ Ct, Richmond County Jan. 28, 2013) (negligence in performing home inspection).

[268] *See e.g. Leahy v Barchi Realty Grp.*, 2021 NY Slip Op 50235(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Mar. 18, 2021) (cause of the fall of a tree limb that was not visibly decayed); *Gibbone v Consolidated Edison*, 2016 NY Slip Op 50395(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Mar. 18, 2016) (cause of damage to sewer pipe); *Niles v Nature's Way Pest Control*, 2019 NY Slip Op 51848(U), at *6 (Glens Falls City Ct Nov. 19, 2019) (cause of roof damage alleged to be result of insect infestation); *cf. Love v Rockwell's Intl. Enters., LLC*, 83 AD3d 914, 916 (2d Dept 2011) (rejecting defendant nightclub's argument that expert medical evidence was required to establish that plaintiff's broken jaw resulted from a club bouncer's shoving his face into a brick wall); *Dixson v GNC Live Well*, 2005 NY Slip Op 51753(U), at *2-3 (Civ Ct, NY County Oct. 20, 2005) (holding that claimant could establish that a supposed $50 bill was counterfeit without expert testimony where it was readily apparent to "the naked eye that the image of a fifty dollar bill was superimposed or copied onto a legitimate five dollar bill to create the taped fifty dollar bill").

[269] *See Dowling v Dowling*, 138 AD2d 345, 345 (2d Dept 1988); *Figueroa v 1981 Realty Corp.*, 2020 NY Slip Op 51592(U), at *4 (Civ Ct, Bronx County Dec. 24, 2020).

[270] *See Mejia v JMM Audubon, Inc.*, 1 AD3d 261, 262 (1st Dept 2003); *see also Berdy v Tilcon N.Y., Inc.*, 2008 NY Slip Op 50041(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Jan. 2, 2008) (holding that trial court was entitled to credit claimant's eyewitness testimony over contrary testimony of defendant's expert witness).

8. Restrictions

(a) Privilege

Lower Court Acts § 1804, and § 1804-A of the CCA, UDCA, and UCCA, both provide that the Lower Courts are bound in small/commercial-claims actions by "statutory provisions relating to privileged communications." These provisions cover the most frequently asserted privileges, such as attorney-client (found at CPLR 4503), attorney-work-product (found at CPLR 3101 [c]), physician-patient (found at CPLR 4504), and spousal-communication (found at CPLR 4502). A small-claims litigant may not rely on a *common-law* evidentiary privilege, such as the public-interest privilege, to shield documents or communications.[271]

(b) Hearsay

In small-claims actions, given Lower Court Acts § 1804's general relaxation of evidentiary requirements, "hearsay is admissible subject to the weight given to it."[272] Nonetheless, "[n]o judgment, even in a small claims action, can rest entirely on hearsay evidence."[273]

(c) Best evidence rule

Lower Court Acts § 1804 similarly relaxes the best evidence rule, which would otherwise require a litigant seeking to prove the contents of a disputed writing to produce the original writing or a satisfactory excuse for its absence.[274] The adjudicator should nonetheless carefully consider the

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[271] *See Matter of Comptroller of the City of N.Y. v City of New York*, 197 AD3d 424, 427 (1st Dept 2021) (discussing this privilege).

[272] *Miller v Kaminer*, 62 Misc 3d 397, 400 (Civ Ct, Kings County 2018) (internal quotation marks omitted).

[273] *Zelnik v Bidermann Indus., USA*, 242 AD2d 227, 228 (1st Dept 1997); *see also Hickey v T & E Serv. Sta.*, 2006 NY Slip Op 51183(U), at *1-2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists June 7, 2006) (reversing judgment for claimant because claimant's evidence of loss of business income consisted solely of "a document . . . admitted into evidence without any foundation offered for its admission pursuant to an exception to the hearsay rule").

[274] *See Schozer v William Penn Life Ins. Co. of NY*, 84 NY2d 639, 643 (1994); *Bermudez v Hanan*, 2013 NY Slip Op 51610(U), at *10 (Civ Ct, Kings County Sept. 13, 2013) (explaining that court "allowed both parties to introduce into evidence all of their

authenticity and completeness of evidence submitted by the parties in the form of copies of documents or printouts of electronic records, communications, photographs, and the like.[275]

(d) Dead Person's Statute

Lower Court Acts § 1804 maintains in force CPLR 4519, the Dead Person's Statute. Under this provision, a person who (i) has an interest in the subject of the litigation may not (ii) give testimony at trial "as a witness in his own behalf or interest" against (iii) "the executor, administrator, or survivor of a deceased person" or the "committee of a person with a mental illness."[276]

(e) Parol evidence rule

Notwithstanding its name, the parol evidence rule is a principle of substantive law, not a rule of evidence. It therefore fully applies in small claims actions.[277] The rule "excludes evidence of any prior oral or written agreement or of any contemporaneous oral agreement," when that evidence is being offered "to contradict, vary, add to, or subtract from the terms of the writing."[278] Thus, if an oral agreement is related to the transaction at issue, such that "the parties would have been expected to have made it part of the written agreement," the court may not consider it.[279]

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documents," some of which "would have been excluded under traditional evidentiary rules," because "the rules of evidence are more relaxed in the Small Claims Court").

[275] *See e.g. Gafney v Sitorus*, 2019 NY Slip Op 50175(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Feb. 8, 2019) (affirming small-claims judgment based on oral testimony and copies of documentary evidence); *Clark v Yankovoy*, 2021 NY Slip Op 50535(U), at *4-6 (Middletown City Ct June 7, 2021) (considering oral testimony supplemented by copies of contracts and printouts of text messages between parties).

[276] Under current law, "committee of a person with a mental illness" should be understood as an incapacitated person's guardian of the person or property appointed in Supreme Court under article 81 of the Mental Hygiene Law. (*See* L 1992, ch 698, § 4 [addressing transition to MHL article 81 guardianship system.)

[277] *See Locke v Nathanson*, 2007 NY Slip Op 51500(U), at * 1 (App Term, 2d Dept, 9th & 10th Jud Dists July 23, 2007).

[278] *Id.* (internal quotation marks omitted).

[279] *Yoo v Piano Post Inc.*, 6 Misc 3d 59, 60 (App Term, 2d Dept, 9th & 10th Jud Dists 2004).

(f) Personal property damage

To obtain damages for injury to personal property, a claimant must provide competent evidence of the value of the property to the owner "immediately before the loss."[280] This evidence may include testimony about the original cost of the property, its age, its condition at the time of the injury-causing event, and its replacement value—but not claimant's "sentimental or emotional loss" due to the property's damage or destruction.[281] Defendant may contest a claimant's showing on damages by providing evidence "that a lesser amount than that claimed by plaintiff will sufficiently compensate for the loss."[282]

(g) Service/repairs

With respect to proof of damages arising from or relating to the value of services or repairs, the governing statute itself supplies the basic rule. Under Lower Court Acts § 1804, and § 1804-A of the CCA, UDCA, and UCCA, "[a]n itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, are admissible in evidence and are prima facie evidence of the reasonable value and necessity of such services and repairs."[283] Courts have held that one estimate will suffice to prove damages if (i) other credible evidence supports the estimate[284]; or (ii)

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[280] *Rose v Lagadakia Realty Corp.*, 2011 NY Slip Op 50785(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Apr. 26, 2011).

[281] *Slepoy v Kliger*, 2009 NY Slip Op 52603(U), at *3 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Dec. 15, 2009); *accord Bertin v Bertin*, 2007 NY Slip Op 50392(U), at *1-2 (App Term, 2d Dept, 9th & 10th Jud Dists Mar. 3, 2007); *Correa v Midtown Moving*, 2004 NY Slip Op 50798(U), at *1 (App Term, 1st Dept July 1, 2004).

[282] *Barron v Dube*, 48 AD3d 1059, 1059 (4th Dept 2008); *accord Lambert v Farinella,* 24 Misc 3d 63, 64 (App Term, 2d Dept, 9th & 10th Jud Dists 2009).

[283] *Cf.* CPLR 4533-a (providing that in certain enumerated circumstances "[a]n itemized bill or invoice, receipted or marked paid, for services or repairs" costing $2,000 or less is "admissible in evidence and is prima facie evidence of the reasonable value and necessity of such services or repairs").

Rather than relying on estimates, a claimant may introduce expert testimony to establish the reasonable value and necessity of repairs incurred due to defendant's conduct. (*See Hindi*, 2020 NY Slip Op 50939[U], at *1.)

[284] *See Goldstein v K&K Marble Importers, Inc.*, 2003 NY Slip Op 50762(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Feb. 13, 2003); *Clark v Brownell*, 2018 NY Slip Op 51247(U), at *6 (Glens Falls City Ct Aug. 29, 2018); *Alvarado v Smart Laser*, 2009 NY Slip Op 51063(U), at *2 (Nassau Dist Ct May 7, 2009); *DerOhannesian v Bergman*, 134

the estimate was provided by defendant's insurer, and therefore constitutes a vicarious party admission.[285]

K. Damages

1. Generally

Damages generally fall into two basic categories: compensatory, awarded to compensate claimant for a loss or injury; and punitive (or exemplary), awarded to punish defendant and deter wrongful conduct.

2. Compensatory

The "fundamental purpose of compensatory damages is to have the wrongdoer make the victim whole"—*i.e.*, to award "compensation[] commensurate with the loss or injury sustained from the wrongful act," and thereby "restore the injured party to the extent possible, to the position that would have been occupied had the wrong not occurred."[286]

At the same time, absent gross negligence or other weighty public-policy considerations, "courts must honor contractual provisions that limit liability or damages because those provisions represent the parties' agreement on the allocation of the risk of economic loss in certain eventualities."[287] This rule applies not only to sophisticated business transactions, but also to the contracts in small/commercial claims cases.[288]

Misc 2d 540, 541-542 (Albany City Ct 1987); *cf. Len v Home Depot*, 61 Misc 3d 835, 841 (Cohoes City Ct 2018) (holding that Lower Court Acts § 1804's "two-estimate rule is the exclusive method to prove damages via *estimates*," but does not foreclose proof of damages through means that do not rely on estimates, such as expert testimony) (emphasis added).

[285] *See Ge v Polanco*, 2011 NY Slip Op 50515(U), at *1 (App Term, 1st Dept Apr. 5, 2011); *Felipe v Das*, 2009 NY Slip Op 50444(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Mar. 16, 2009), citing *DiCamillo v City of New York*, 245 AD2d 332, 333 (2d Dept 1997); *Miller v Sanchez*, 6 Misc 3d 479, 482-483 (Civ Ct, Kings County 2004).

[286] *E.J. Brooks Co. v Cambridge Security Seals*, 31 NY3d 441, 448 (2018) (internal quotation marks omitted).

[287] *Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 31 NY3d 569, 581 (2018) (internal quotation marks omitted); *accord Sommer v Federal Signal Corp.*, 79 NY2d 540, 553-554 (1992) (discussing exceptions to general rule that limitation-of-liability contractual provisions are enforceable).

[288] *See e.g. Canto v Ameri Spec Home Inspection Serv.*, 2005 NY Slip Op 51037(U) (App Term, 2d Dept, 9th & 10th Jud Dists June 28, 2005) (reducing trial-court damages award in light of contractual limitation on liability for negligent performance of contracted-

In some contexts, such as claims for trespass, courts may, or even must, award "nominal" damages if claimant has established defendant's liability but not proven an injury supporting an award of compensatory damages.[289]

(a) Foreseeability

Damages that are "the natural and probable consequence" of the wrong are compensable.[290]

Courts hearing small or commercial claims may sometimes also award damages that "do not so directly flow from" the wrong, whether denoted consequential, indirect, or extraordinary damages.[291] A claimant seeking damages of this type must establish that they were foreseeable and

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for inspection); *Rachman v Li Coatings, Inc.*, 2012 NY Slip Op 51637(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Aug. 7, 2012) (reducing trial-court damages award in light of contractual bar on consequential damages); *see also Index Stock Photography, Inc. v United Parcel Serv. Corp.*, 164 Misc 2d 712, 714 (Sup Ct, NY County 1995) (applying contractual limitation-of-liability provision in UPS shipping agreement); *Beardslee v FedEx*, 2015 NY Slip Op 51548(U), at *2-3 (Ithaca City Ct July 7, 2015) (applying federal statutory limitation on "[c]laims by a shipper for damages to goods in interstate commerce") (internal quotation marks omitted).

[289] *See e.g. Marino v Lorch*, 2 Misc 3d 56, 57 (App Term, 2d Dept, 9th & 10th Jud Dists 2003) (awarding nominal damages of $1, where claimant had established that defendant committed a trespass by trimming tree branches on claimant's side of the property line, but had not proven resulting damages); *see also Valle v Haimowitz*, 2014 NY Slip Op 51304(U), at *1-2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2014) (reversing trial court's dismissal of claim for lack of proof of damages because "even where no actual injury is established, nominal damages are presumed from a trespass"); *Robles v Bartlett Building Corp.*, NYLJ, June 25, 2003, at 5, col 2 (Civ Ct, Richmond County) (awarding nominal damages of $30 for improper removal by defendant of 30 trees on plaintiff's property when plaintiff failed to prove actual damages), *mod on other grounds* 2004 NY Slip Op 50672(U) (App Term, 2d Dept, 2d, 11th & 13th Dists June 23, 2004).

[290] *MUFG Union Bank, N.A. v Axos Bank*, 196 AD3d 442, 443 (1st Dept 2021), quoting *Biotronik A.G. v Conor Medsystems Ireland, Ltd.*, 22 NY3d 799, 805 (2014).

[291] *Latham Land I, LLC v TGI Friday's Inc.*, 96 AD3d 1327, 1331 (3d Dept 2012).

within the parties' contemplation.[292] In other circumstances, consequential damages are unavailable as a matter of law.[293]

(b) Notice

Courts should not award damages in an amount greater than the ad damnum clause in the claim or counterclaim.[294] Absent prejudice to the opposing party, though, amendments to ad damnum clauses are freely granted.[295] If amendment is granted, the court should offer the opposing party the option of an adjournment to allow time to prepare for trial with the increased ad damnum. Only the court—not an arbitrator—may grant leave to amend an ad damnum clause without the consent of both parties or adjourn the trial.

An issue related to damages and the ad damnum clause can arise when a claimant seeks only a given sum in compensatory damages, but is also statutorily entitled to a multiple of that sum in exemplary damages. Courts faced with this scenario have been willing to grant judgment for the higher amount if it appears that defendants were sufficiently aware that they might be subjected to multiple damages.[296]

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[292] *See e.g. Pro Touch Constr. Servs., LLC v Stillwell Ready Mix, LLC*, 2015 NY Slip Op 51802(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Dec. 8, 2015) (affirming award of consequential damages in Uniform Commercial Code claim for breaches of implied warranty of fitness and implied warranty of merchantability); *Eugene v Sea Central, Inc.*, 2001 NY Slip Op 40693(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Dec. 26, 2001) (affirming award of consequential damages on breach-of-contract claim); *see also Smith v Morgan Webster Manor, LLC*, 2020 NY Slip Op 50961(U), at *4-5 (Town of Webster Just Ct Aug. 19, 2020) (declining to award consequential damages for breach of contract as not within the parties' contemplation).

[293] *See e.g. Joseph v Apartment Mgt. Assoc., LLC*, 2011 NY Slip Op 50303(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Feb. 25, 2011) (in small-claims action by tenant for property damage due to bedbugs, reversing trial-court damages award and dismissing action because consequential damages are unavailable in claims for landlord's breach of warranty of habitability); *see also Chrisanntha, Inc. v deBaptiste*, 188 AD3d 1622, 1623 (4th Dept 2020) (noting that consequential damages are not available to owner-occupied seller of residential real estate when purchaser breaches the contract).

[294] *See Pressley v New Country Motors*, 2010 NY Slip Op 52076(U), at *1 (App Term, 1st Dept Dec. 1, 2010) (reducing trial-court damages award to amount of ad damnum clause in claimant's complaint).

[295] *See Echezona v Arverne Assocs.*, 2012 NY Slip Op 51925(U), at *2 (App Term 2d Dept, 2d, 11th & 13th Jud Dists Oct. 5, 2012).

[296] *See e.g. St. Clair v Sansal*, 73 Misc 3d 492, 495-496 (Civ Ct, NY County 2021) (awarding statutory double damages under the Freelance Isn't Free Act although claimant's ad damnum clause had sought only single damages); *Johnson v Block*, 65 Misc 2d 634, 635

It might be appropriate in particular cases for a judge to grant a higher amount in damages than sought in the ad damnum clause. But judges should proceed cautiously to ensure that they are satisfied that defendants are on proper notice of the possibility of a multiple-damages award and have a meaningful opportunity to oppose that award. Doing so, and avoiding potential unfairness, may entail expressly notifying defendant of the applicable statutory damages provision—or requiring claimant to seek an amendment of the ad damnum clause in the claim—and granting a corresponding adjournment. (The need to ensure proper notice in this scenario is particularly pressing when the party against whom multiple damages are sought is pro se.)

3. Punitive

The Lower Courts may award punitive damages in small/commercial-claims actions if the generally applicable requirements for—and restrictions on—punitive-damages awards have been satisfied.[297] Small-claims arbitrators on the other hand, may not award punitives, at least when acting in their arbitral capacity.[298] An arbitrator acting in the capacity of a referee at an inquest, though, may recommend punitive damages, which the judge may then accept or reject like any other recommendation.

4. Collateral-Source Rule

Small-claims damages awards sounding in tort may be subject to reduction under the collateral-source rule of CPLR 4545. This rule provides that in actions for personal injury or property damage, recovery for loss of

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(App Term, 1st Dept 1971) (affirming, over dissent, award of treble damages for rent overcharge when claimant's ad damnum clause had sought only single damages).

[297] *See Robles*, 2004 NY Slip Op 50672[U], at *1 (awarding the then-maximum jurisdictional amount of $3,000 in damages for defendant's "intentional act of trespass and deliberate damage to plaintiff's property" by removing 30 trees that were clearly on plaintiff's side of the property line); *Hoffman v Ryan*, 101 Misc 2d 845, 850-51 (Civ Ct, NY County 1979). One important restriction on the availability of punitive damages is that they may not be awarded against municipal defendants. (*See Sharapata v Town of Islip*, 56 NY2d 332, 333 [1982].)

[298] *See Garrity v Lyle Stuart, Inc.*, 40 NY2d 354, 356 (1976) ("An arbitrator has no power to award punitive damages, even if agreed upon by the parties."). Although *Garrity* did not involve small-claims arbitration, many principles underlying its holding carry over to the small-claims context. (*See id.* at 356-358.)

earnings or other economic loss shall be diminished by insurance proceeds less the amount of insurance premiums for two years prior to the injury and less the "projected future cost" of maintaining the insurance.[299]

L. Interest, Costs, and Disbursements

1. Interest

CPLR 5001 and CPLR 5002 provide for prejudgment interest; CPLR 5003 provides for postjudgment interest. CPLR 5004 provides that the rate of interest awarded under these rules is nine percent per year—simple interest, not compound.

CPLR 5001 requires the award of prejudgment interest in breach-of-contract and property-deprivation, damage, and destruction cases; and does not permit awarding prejudgment interest in personal-injury damages actions.[300] Interest awarded under this rule runs from the date the cause of action accrued or the date claimant suffered damage, whichever is later; if damages occurred over time, interest may be computed "from a single reasonable intermediate date."[301] Under CPLR 5001 (c), the adjudicator must specify in the decision the date from which interest is to accrue.[302]

CPLR 5002 directs the award of interest "in any action," including personal-injury suits. Interest awarded under this rule runs from the date a verdict or decision is rendered to the date of entry of final judgment. CPLR 5003 provides for post-judgment interest on all money judgments.

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[299] *See* CPLR 4545 (c); *Burane v Poppy's Auto Wreckers*, 2006 NY Slip Op 52240(U) (App Term, 2d Dept, 9th & 10th Jud Dists Nov. 2, 2006) (in small-claims action for damage to automobile, reducing trial-court damages award to account for amount received by claimant in insurance proceeds).

[300] Actions of an equitable nature, in which awarding interest is in the court's discretion rather than either required or impermissible (*see* CPLR 5001 [a]), may not be maintained in Small Claims Court.

[301] *See* CPLR 5001 (b).

[302] *See* section I(O), *infra* at 79.

2. Costs

"Costs" in the Lower Courts are a statutorily fixed sum that may be awarded to the prevailing party in an action under Lower Court Acts § 1901.[303]

However, CCA, UDCA, and UCCA § 1901 (c), which fixes the amount of costs to be awarded in actions in those courts, provides that it "shall not apply to costs in a . . . small claims action."[304] Nor does any other provision of Lower Court Acts articles 18, 18-A or 19 (or the regulations governing small-claims actions) provide for the taxation of costs in small-claims actions.[305] The Appellate Term, First Department, has held, therefore, that costs are not generally available in small-claims actions in Civil Court.[306] Instead, prevailing parties are limited to disbursements, which are taxable under Lower Court Acts § 1908, not § 1901.

That said, § 1901 (c) of the CCA, UDCA, and UCCA does not expressly except *commercial*-claims actions from the cost-award language of paragraphs (a) and (b)—though paragraph (c) was enacted in its current form in 1988, the year after the enactment of CCA, UDCA, and UCCA article 18-A. We are unaware of any decision in any court that addresses this issue. As a practical matter, if a small-claims litigant is not entitled to recover

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[303] Section 1901 fixes that sum at different amounts depending on the amount of the judgment and the procedural stage at which the action was resolved.

[304] For reasons that are obscure, UJCA § 1901 does not include this limiting paragraph.

[305] The sole possible exception is the clause of Lower Court Acts § 1806, and § 1806-A of the CCA, UDCA, and UCCA, permitting an award of costs to a prevailing claimant in an action that started in the court's Small Claims Part and was then transferred to the court's regular part upon defendant's demanding a jury trial.

To be sure, as discussed above (*see* clause I(D)(1)(a)(iii)(2), *supra* at 17), the monetary limit for small-claims actions is set at a given dollar figure "exclusive of interest *and costs*." (Lower Court Acts § 1801 [emphasis added].) But § 1801 does not itself authorize the taxation of costs. And that section's reference to costs may be explained by Lower Court Acts § 1908's authorization of disbursements in any event.

[306] *See Patel v 303 Fifth Ave. Inc.*, 184 Misc 2d 308, 309 (App Term, 1st Dept 2000), citing *Meister v Engine Trans. Corp.,* 138 Misc 2d 880 (Civ Corp, NY County 1988); *accord Adams v City of New York*, 34 Misc 3d 786, 787-788 (Civ Ct, Richmond County 2011). Although no reported decision addresses the availability in the District or City Courts of costs in small-claims actions, the reasoning of the Appellate Term, First Department, in *Patel* would apply equally to those actions. Because UJCA § 1901 does not foreclose costs in small-claims actions, the Appellate Term, Second Department, has held that small-claims costs *are* available in the Justice Courts. (*See Bellaran v Pirog*, 2002 NY Slip Op 40319[U], at *1 [App Term, 2d Dept, 9th & 10th Jud Dists May 17, 2002].)

costs, it is difficult to see why a commercial-claims litigant—especially a commercial *claimant* —should be entitled to costs.

3. Disbursements

Under Lower Court Acts § 1908, disbursements are intended to cover specified fees and charges that the prevailing party incurred in litigating the action. Authorized disbursements include, for example, claimant's filing fee, witness fees, prospective fees paid to a sheriff to execute on a judgment, and disbursements available under CPLR 8301 (such as prospective charges for entering and docketing a judgment).[307]

M. Referrals to Attorney General/Licensing Authorities

Lower Court Acts § 1804 provides that if a small claim arises out of the conduct of defendant's business, "the judge or arbitrator shall determine the appropriate state or local licensing or certifying authority and any business or professional association of which the defendant is a member." Under Lower Court Acts § 1805 (e), and § 1805-A (e) of the CCA, UDCA, and UCCA, if defendant appears to be engaged in persistent fraud in carrying on a licensed or certified business, the judge shall advise the appropriate authority or "advise . . . claimant to do same." Similarly, if defendant appears to be engaged in persistent fraud or illegality in carrying on a business, the judge shall advise the Attorney General of that conduct or shall "advise . . . claimant to do same."[308]

Under Lower Court Acts § 1813 (b), and § 1813-A (b) of the CCA, UDCA, and UCCA, if a licensed business deliberately or recklessly fails, within 35 days of notice of entry, to pay an unstayed and unappealed judgment arising out of its business, the licensing authority shall consider revoking, suspending, conditioning, or not renewing the license.

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[307] *See* Lower Court Acts § 1908 (a), (b), (e), (f); CPLR 8301 (a) (7).

[308] *See* Lower Court Acts § 1805 (d); CCA, UDCA, UCCA § § 1805-A (e). This provision is intended to aid the Attorney General's Office in the exercise of its authority under Executive Law § 63 (12) to bring enforcement actions against repeated fraudulent or illegal conduct.

N. Conditional Judgments

As discussed above in the permissible-forms-of-relief section,[309] the Lower Courts lack authority to grant equitable relief. In some instances, however, the fairest result between the parties might require an exchange of property for money—for example, granting claimant a refund from defendant for the price of an unsatisfactory product, on condition that claimant return the product to defendant.[310]

In these circumstances, § 1805 (a) of the Lower Court Acts, and § 1805-A (a) of the CCA, UDCA, and UCCA, confer authority on adjudicators to do "substantial justice between the parties" by "condition[ing] the entry of judgment upon such terms as the court shall deem proper." Appellate courts have regularly approved the exercise of this authority in the small-claims context—and have even modified trial-court orders on appeal to add conditions on trial-court money judgments.[311]

That said, courts should issue these judgments carefully and gingerly. Courts should be alert to the risk that rather than finally resolving a dispute, a conditional judgment may instead merely give rise to collateral disputes about whether the judgment has been complied with.[312]

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[309] *See* subparagraph I(D)(1)(a)(ii), *supra* at 12-13.

[310] *See e.g. Bridgemohansingh v Jomashop*, 2020 NY Slip Op 51293(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Oct. 30, 2020) (modifying trial-court judgment for claimant for the purchase price of a watch to require claimant first to return the watch to defendant).

[311] *See e.g. Bridgemohansingh*, 2020 NY Slip Op 51293(U), at *2; *Tadic v Sarad Mktg., Inc.*, 2015 NY Slip Op 50231(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Feb. 24, 2015) (dismissing appeal from order granting claimant purchase price of defective automotive engine and transmission, conditioned on claimant's making engine available for pickup by defendant); *Portnov v Rainbow Seven Color, Inc.*, 2013 NY Slip Op 51393(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Aug. 8, 2013) (modifying judgment for claimant that refunded purchase price of vacuum cleaner bought in voidable door-to-door transaction to require claimant also to return vacuum cleaner to defendant contemporaneously with payment of judgment); *Jones v Daniels*, 43 Misc 3d 40, 41 (App Term, 1st Dept 2014) (awarding claimant cost of engagement ring purchased for defendant unless defendant returned ring to claimant within 30 days of service of notice of entry); *see also Mongelli v Cabral*, 166 Misc 2d 240, 244-245 (Yonkers City Ct 1995) (awarding claimants $3000 unless, within 10 days of receiving judgment, defendants returned "Peaches," a five-year-old Molluccan Cockatoo, "in good health, along with her cage, her bowls and her toys").

[312] *See e.g. Curtis v Chase Collision*, 2017 NY Slip Op 50600(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Apr. 27, 2017) (granting motion to vacate monetary award entered upon defendant's apparent failure to satisfy conditional agreement reached by parties at small-claims mediation); *Ware v Grossman*, 177 Misc 2d 320, 322 (Nassau Dist

O. Describing the Judgments to be Entered

The judge must indicate the disposition of all claims, counterclaims, cross-claims, or third-party claims. These dispositions must be set forth in the judge's decision itself, on the notice-of-judgment form to be sent to the parties, and in NYBench and UCMS or any successor case-management program.[313] If there are multiple defendants, the judge must indicate against which defendant(s) judgment is being awarded.

If the judge sustains a claim, the decision, notice-of-judgment form, and UCMS entry must indicate whether the judge is awarding no interest (in personal-injury actions), or the date from which interest will run (in breach-of-contract actions or claims for the damage, deprivation, or destruction of property.[314] (The clerk will fill in the amount of interest to be awarded under CPLR 5001, and disbursements under Lower Court Act § 1908 (such as filing or witness fees.)

If sustaining both a claim and counterclaim, the judge should clearly distinguish between the two awards, using the following as a model: "Judgment for claimant: $1000. Judgment for counterclaimant: $700. Claimant is granted judgment for $300." If the judge sustains a claim, a third-party claim, and a direct claim by the defendant against the third-party defendant, as might occur in a motor-vehicle-accident case, the court could adhere to the following model: "Judgment on claim: $1000. Judgment on third-party claim: $800. Judgment on defendant's direct claim against third-party defendant: $600."

If a conditional judgment is being rendered, the decision, notice-of-judgment form, and case entries in NYBench and UCMS must indicate the date by which any party must satisfy a condition; the amount of the judgment to be entered if the condition is (or, in some cases, is not)

Ct 1998) (directing hearing to determine whether defendant complied with condition in stipulation).

[313] Practice within Civil Court varies about whether the notice-of-judgment form is provided to the Appellate Term on appeal. Civil Court judges should take care to explain their decision on the decision form, not on the notice-of-judgment form, lest the Appellate Term remand, or reverse outright, for lack of a decision to review. (*See Bowie v Washington*, 2013 NY Slip Op 50281[U], at *1 [App Term, 1st Dept Feb. 26, 2013].)

[314] *See* CPLR 5001 (a). Prejudgment interest in a breach-of-contract action runs "from the earliest ascertainable date the cause of action existed," *i.e.*, the date when the breach occurred under the particular circumstances of the parties' contract. (*Advanced Retail Mktg. v News Am. Mktg. FSI*, 303 AD2d 231, 231 [1st Dept 2003].)

satisfied; and the party or parties against whom judgment should be entered.

P. Post-Judgment Practice

1. Vacatur of Judgment

Where the court has entered a default judgment, CPLR 5511 bars the defaulted party (the defendant or an absent claimant on a counterclaim) from appealing directly from that judgment. To obtain review of a default judgment, the defaulted party first moves in the trial court to vacate its default.[315] If the court denies the motion to vacate, the defaulted party may appeal from the order denying the motion.[316]

A defaulted party seeking to vacate the default judgment may move under CPLR 317, which requires a showing that the movant "did not personally receive notice of the summons in time to defend and has a potentially meritorious defense."[317] Alternatively, the party may move under CPLR 5015 (a) (1), which requires the movant to demonstrate a reasonable excuse for the default and a potentially meritorious claim or defense.[318]

In the small/commercial claims context, a party moving to vacate under CPLR 5015 must also "disclose its true name; any and all names in which it is conducting business; and any and all names in which it was conducting business at the time of the transaction or occurrence on which such judgment is based." All subsequent "proceedings and papers shall be amended to conform to such disclosure."[319]

The judge or referee should tell claimant at an inquest that defendant has a right, often exercised, to ask the court to vacate the default. On the

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[315] A defendant seeking to vacate a default can obtain a Notice of Motion (Form CIV-GP-124) and an Affidavit in Support (Form CIV-GP-17) from the clerk or on the Civil Court website. (*See supra* at note 182.)

[316] *See Judd v Baccillieri*, 2013 NY Slip Op 52096(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Dec. 12, 2013).

[317] *Andrade v Companion Animal Network, Inc.*, 2019 NY Slip Op 51283(U), at *1-2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Aug. 2, 2019) (internal quotation marks omitted).

[318] *See e.g. Holland v Pete B. Service, Inc.*, 2020 NY Slip Op 51421(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists Nov. 19, 2020).

[319] Lower Court Acts § 1814 (d); CCA, UDCA, UCCA § 1814-A (d).

return date of motions to vacate default judgments, New York City judges often grant the motion, whatever "reasonable excuse" and "meritorious defense" defendant proffers—including, it is said, "my train was late and I don't owe the money"[320]—and order immediate trials. The judge or clerk should therefore warn claimants and defendants to be prepared to try the case on the return date of a motion to vacate.[321]

If the trial court issues an order denying a small-claims defendant's motion to vacate a default judgment, defendant may appeal from that order.[322] If the trial court issues an order *granting* the motion to vacate, the small-claims claimant may not appeal. An order granting defendant's motion to vacate has the effect merely of requiring the parties to proceed to trial. The courts have concluded that this result does not constitute a ground for appeal under Lower Court Acts § 1807.[323]

2. Appeals from Judgment

(a) From judicial decisions

Unlike a default judgment entered following an inquest, a judgment entered on a decision by the court after a hearing in which both parties participated may be appealed directly, without the aggrieved party's needing to move to vacate first.

The process of taking an appeal is governed by CPLR article 55 (governing appeals generally), article 17 of the Lower Court Acts (governing

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[320] *Small Claims Manual: A Guide to Small Claims Litigation in the New York State Courts* 80 (5th ed Mar. 2001) (Arthur F. Engoron, principal author).

[321] If a motion to vacate a default judgment appears to have been prompted by the defendant's learning of collection efforts by the sheriff or a city marshal, the judge should consider whether to grant interim relief staying further collection of the judgment pending a hearing on the motion to vacate. (Collection of judgments is discussed further in subsection I(P)(3), *infra* at 86.)

[322] An appeal from the order denying vacatur brings up for review both the order itself and the referee's report on which the underlying default judgment was entered. (*See* CPLR 5501 [a]; Lower Court Acts §§ 1702 [a] [2], 1703 [a]; *cf*. *Sholes v Meagher*, 100 NY2d 333, 335-336 [2003] [discussing appeals from the denials of motions to vacate].)

[323] *See Best v Auto Sound Security & Accessories*, 2020 NY Slip Op 51609(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Nov. 27, 2020) (dismissing appeal from denial of motion to vacate a prior trial-court order that had vacated default judgment against defendant); *Kim v Sobelman*, 2012 NY Slip Op 50162(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Jan. 24, 2012) (dismissing appeal from grant of motion to vacate default judgment).

appeals in the Lower Courts generally), Lower Court Acts § 1807 (governing appeals in small-claims actions), and § 1807-A of the CCA, UDCA, and UCCA (governing appeals in commercial-claims actions).

Lower Court Acts § 1703 provides that an appeal from final judgment in a small or commercial claim must be taken within 30 days of the earliest of (i) service by the court on the appellant of a copy of the judgment appealed from; (ii) service by another party in the action on the appellant of a copy of the judgment; or (iii) service by the appellant of the judgment on another party in the action.[324] Section 1703 also provides that if service of the judgment is made by mail, the appeal deadline is extended by five days.

Appeals from Civil Court judgments are taken either to the Appellate Term, First Department (from the parts of Civil Court sitting in Manhattan and the Bronx), or to the Appellate Term, Second Department (from the parts of Civil Court sitting in Brooklyn, Queens, and Staten Island).[325] Appeals from District Court judgments are taken to the Appellate Term, Second Department.[326] Appeals from judgments of City and Justice Courts located within the Appellate Division, Second Department, are taken to the Appellate Term, Second Department; appeals from judgments of City and Justice Courts located within the Appellate Division, Third and Fourth Departments, are taken to the applicable County Court.[327]

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[324] In addition, Lower Court Acts § 1702 provides for interlocutory appeals. In the small/commercial-claims context, though, this provision will generally be superseded as a practical matter by the requirement of Lower Court Acts § 1807, and § 1807-A of the CCA, UDCA, and UCCA, that an appeal is available only to challenge denials of substantial justice. (*See e.g. Sporten v Davis*, 2011 NY Slip Op 51122[U], at *1 [App Term, 2d Dept, 9th & 10th Jud Dists June 24, 2011] [holding that an order denying defendant's motion to dismiss is not appealable because its effect is only to require defendant to proceed to trial, which is not a denial of substantial justice]; *accord Rosen v Lowe*, 2019 NY Slip Op 51760, at *1 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists Oct. 25, 2019] [same, on appeal from denial of summary-judgment motion].) Indeed, courts have emphasized in this context that "substantial justice . . . will best be rendered by a prompt trial, where defendant may assert his substantive arguments for dismissal." (*Borisovski v Lamarre*, 2020 NY Slip Op 50080[U], at *1 [App Term, 1st Dept Jan. 27, 2020] [reversing grant of motion to dismiss].)

[325] *See* CCA § 1701 (providing for appeals either to the Appellate Division or to an Appellate Term if one has been established); 22 NYCRR 640.1 (providing for appeals from Civil Court to the Appellate Term, First Department); 22 NYCRR 730.1 (b) (1) (providing for appeals from Civil Court to the Appellate Term, Second Department).

[326] *See* UDCA § 1701 (providing for appeals either to County Court or to an Appellate Term if one has been established); 22 NYCRR 730.1 (d) (3) (*i*) (providing for appeals from the District Courts to the Appellate Term, Second Department).

[327] *See* UCCA, UJCA § 1701 (providing for appeals either to County Court or to an Appellate Term if one has been established); 22 NYCRR 730.1 (d) (1), (d) (3) (*ii*) (providing

Lower Court Acts § 1807, and § 1807-A (a) of the CCA, UDCA, and UCCA, each limit appellate review in the small/commercial-claims context to determining whether "substantial justice has . . . been done between the parties according to the rules and principles of substantive law." This review is intended to be deferential: A small-claims judgment "may not be overturned simply because the determination appealed from involves an arguable point on which an appellate court may differ; the deviation from substantive law must be readily apparent and the court's determination clearly erroneous."[328]

Additionally, the typical deference afforded a trial court on issues of credibility, based on the court's "opportunity to observe and evaluate the testimony and demeanor of the witnesses[,] . . . . [a]pplies with greater force to judgments rendered in the Small Claims Part of the court."[329]

Reversals of trial-court judgments in small-claims actions do occur regularly, on legal, evidentiary, or other grounds.[330] But it is harder to obtain reversal of judgments rendered in the Small Claims Parts of the Lower Courts than in those courts' regular parts.[331]

Under CPLR 5703, orders of the Appellate Terms or of County Court are taken to the Appellate Division. CPLR 5703 (a) provides that appeals from the Appellate Terms may be taken only by leave of the Appellate Term, or by leave of the Appellate Division if the Appellate Term has denied leave; and that appeals from orders of County Court to the Appellate Division may

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for appeals to the Appellate Term, Second Department, from the City and Justice Courts located within the Ninth and Tenth Judicial Districts in the Appellate Division, Second Department).

[328] *Tranquility Salon & Day Spa, Inc. v Caira*, 141 AD3d 711, 711 (2d Dept 2016), quoting *Forte v Bielecki*, 118 AD2d 620, 621 (2d Dept 1986).

[329] *Schrettner*, 2019 NY Slip Op 51347(U), at *1, citing *Williams*, 269 AD2d at 126.

[330] One such ground, which reviewing courts have recently been at pains to emphasize, is the absence from the trial court's decision of written findings of fact and conclusions of law. These findings and conclusions are required by CPLR 4213 (b) and are necessary to permit meaningful appellate review. (*See Oduroh v Sawadogo*, 2020 NY Slip Op 50028[U], at *1 [App Term, 1st Dept Jan. 15, 2020]; *Tropea v Bestway Contr.*, 2020 NY Slip Op 50181[U], at *1 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists Jan. 31, 2020]; *accord Landis v Fusion*, 2009 NY Slip Op 50033[U], at *1 [App Term, 2d Dept, 9th & 10th Jud Dists Jan. 8., 2009]; *Dodd-Baidoss v Milio Mgt., LLC*, 2007 NY Slip Op 52297[U], at *1 [App Term, 2d Dept, 9th & 10th Jud Dists Nov. 21, 2007].)

[331] As Professor Siegel proposed in a prior version of the Practice Commentaries to CCA § 1807, one might analogize the standard of review of small-claims judgments under § 1807 to the arbitrary-and-capricious and substantial-evidence standards for review of administrative action under CPLR 7803 and 7804. (*See* David D. Siegel, McKinney's Cons Law of NY, Practice Commentaries to New York City Civil Court Act § 1807 [2015 ed].)

be taken as of right. In practice, given the low dollar amounts involved, leave motions or appeals to the Appellate Division in small/commercial-claims actions are rare.

A small-claims litigant that loses 3-2 at the Appellate Division on a question of law may not appeal as of right to the Court of Appeals.[332] Nor may a small-claims litigant ask the Court of Appeals to grant *leave* to appeal from an unfavorable decision of the Appellate Division; in a case originating in one of the Lower Courts, only the Appellate Division itself may grant leave to appeal to the Court of Appeals.[333]

(b) From arbitral decisions

By submitting a claim to arbitration, parties waive their right to appeal directly from the arbitrator's decision.[334] Instead, a party may only move to vacate the judgment entered on the arbitrator's decision, and then appeal a denial of the motion to vacate.[335] The grounds for vacatur are limited to those set out in CPLR 7511 (b): (i) corruption, fraud, or misconduct in procuring the award; (ii) partiality of the arbitrator;[336] (iii) an arbitral award that exceeded the arbitrator's power or was a sufficiently imperfect exercise of authority that it did not qualify as a final and definite

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[332] *See* CPLR 5601 (a) (restricting two-judge-dissent appeals to final orders of the Appellate Division in actions "originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency").

[333] *See* CPLR 5602 (a) (1), (b) (2).

[334] *See* 22 NYCRR 208.41 (n) (2). CCA § 1707 does permit direct appeal to the Court of Appeals from a judgment entered on an arbitrator's award in one unusual scenario: If "the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States." (Gerald Lebovits, *Special Procedures Apply to Enforcing Judgments in Small Claims Courts*, NY St Bar J, Jan. 1999, at 28, 30 & n 39 [noting this possibility], citing *Rymer v Leider*, 122 Misc 2d at 874-875.) This article is available at https://works.bepress.com/gerald_lebovits/55/ (last visited July 21, 2022).

[335] *See Postiglione*, 2003 NY Slip Op 51376(U), at *1; *Rymer*, 122 Misc 2d at 875-876; *see also Froyton,* 124 Misc 2d at 865 (holding that proper means to challenge arbitrator's award in small-claims action is to move to vacate the award). Only the judge—*not* clerks or the arbitrators themselves—may vacate or recall arbitral decisions.

[336] Evident bias in the conduct of the proceeding itself would come within this ground. Professor Siegel has also suggested the example of an arbitrator with a blood relationship to the winning party. (*See* Siegel & Connors, *New York Practice*, *supra* at note 5, at § 584; *see also* Judiciary Law § 14 [grounds for mandatory recusal].) A party moving to set aside an arbitrator's decision on this ground (and presumably any other ground) has the burden of proof. (*See Munks*, NYLJ, Sept. 15, 1997, at 29, at col 6.)

award;[337] or (iv) a failure to follow the procedures of CPLR article 75.[338] An argument that an arbitrator's decision "was based upon a mistake of law" will not warrant vacatur of that decision.[339]

Small-claims arbitrations, because they are not themselves conducted under CPLR article 75, will necessarily differ in many particulars from the procedures of article 75. That kind of deviation should not alone constitute a failure-to-follow-procedures ground for vacating an arbitral award under CPLR 7511 (b) (1) (iv). But an arbitration's failure to satisfy basic requisites of procedural due process provided under article 75, such as CPLR 7506 (c)'s requirement that the parties have an opportunity "to be heard, to present evidence and to cross-examine witnesses," should lead to vacatur.[340]

The party seeking vacatur of the award and judgment must "establish[], by clear and convincing evidence, one of the statutory grounds enumerated in CPLR 7511(b)."[341] The court may be able to assess whether an arbitral ruling is ultra vires by examining the decision alone. If the court

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[337] *See Powers v Smith*, 2015 NY Slip Op 50483(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Mar. 26, 2015) (vacating judgment entered on arbitral award for lack of subject-matter jurisdiction due to failure to satisfy jurisdictional geography requirements); *Staten Island Academy v Pasquale*, NYLJ, Apr. 9, 2001, at 23, col 4 (Civ Ct, Richmond County) (vacating arbitral decision that, in effect, granted defendant's motion to dismiss the action as barred by res judicata); *Scott v Dale Carpet Cleaning*, 120 Misc 2d 118, 119 (Civ Ct, NY County 1985) (vacating arbitral award requiring cleaning company to repeat cleaning of claimant's couch, because that relief is an equitable remedy that arbitrator lacks jurisdiction to grant).

[338] One might group the trial court's decision in *Gilmore v Jackson* under this heading. (*See* 120 Misc 2d 690, 690 [Mount Vernon City Ct 1982] [vacating arbitrator's decision because "[t]here is considerable doubt as to whether the defendant," who had "only a fifth-grade education[,] . . . understood what she was doing" when she executed her consent to arbitrate]; *cf.* CPLR 7501 [requiring agreement to arbitrate). Alternatively, one might understand *Gilmore* as applying a residual "miscarriage of justice"-type ground for vacating an arbitral decision. The latter basis for vacatur, although likely necessary to hold in reserve for unusual cases not covered by CPLR 7511, should be applied cautiously.

[339] *See Brownstein v County of Westchester, Dept. of Parks, Recreation & Conservation*, 51 AD2d 792, 792 (2d Dept 1976) (refusing to vacate decision against municipality on which claimant had not served notice of claim). The Appellate Division declined in *Brownstein* to revisit the arbitrator's decision despite the trial court's assurances to defendant that it would be able to challenge that decision on appeal. (*See id.* at 792.)

[340] *See Matter of Travelers Prop. Cas. Co. v Place Transp.,* 270 AD2d 352, 352-353 (2d Dept 2000); *Matter of World Trade Diamond Corp. (Siegmann)*, 158 AD2d 300, 301 (1st Dept 1990).

[341] *May v Scotto-D'Abusco*, 2011 NY Slip Op 50987(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists May 24, 2011).

concludes that the party seeking vacatur has raised a meaningful question about the conduct of the arbitration, or about whether the arbitrator otherwise demonstrated bias, a simple course is for the court to vacate the arbitrator's decision and then try the case itself—rather than, for example, holding hearings and requiring the arbitrator to testify.[342]

3. Enforcing Judgments

Once claimants have obtained judgments, they still face the challenge of enforcing them and getting their money.[343]

After decision but before judgment is signed and entered, judges themselves can, in appropriate circumstances, take steps to aid claimants in future collection efforts. These steps are discussed in paragraph I(O)(3)(a) below.

Once the judge has signed the notice of judgment and given it to the clerk's office, the clerk enters judgment and mails the notice of judgment to the parties. Upon receiving the notice of judgment, the judgment creditor may begin attempting to collect on the judgment immediately. Judgments are collectable for 20 years from the date the judgment creditor first was entitled to enforce them.[344]

Judgment creditors have several possible avenues for collection:

(a) Creditors may seek to use the judgment itself as leverage over the debtor, whether through securing a lien on the debtor's real property; notifying applicable business/professional licensing authorities of any failure by the debtor to pay on the judgment; or, in the case of judgments

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[342] *See Humphrey v New York Motorcycle*, 2006 NY Slip Op 50470, at *1-2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Mar. 27, 2006) (holding, over a dissent, that a post-hearing ex parte conversation between a small-claims arbitrator and the defendant established an appearance of impropriety warranting vacatur of the arbitrator's award for plaintiff, reversing trial court's denial of motion to vacate, and remanding for further proceedings).

[343] For a discussion of collecting small-claims judgments and other issues relating to small-claims judgments once entered, see Lebovits, *Special Procedures Apply to Enforcing Judgments in Small Claims Courts*, *supra* at note 334; Gerald Lebovits & Arthur F. Engoron, *How to Help Judgment Creditors Collect: The Effective Use of Civil Court Act Article 18*, NYLJ, Jan. 27, 1998, at 28, col 3, available at https://works.bepress.com/gerald_lebovits/91/ (last visited July 21, 2022).

[344] *See* CPLR 211 (b). If the debtor acknowledges or makes partial payment on the judgment, the 20-year limitations period restarts from the last acknowledgment or payment. (*See id.*) A detailed discussion of that aspect of CPLR 211 (b) appears in *First New York Bank for Business v Alexander* (106 AD3d 138, 141-142 [1st Dept 2013]).

arising from motor-vehicle collisions, seeking to have the debtor's driver's license suspended for failure to pay. This method is discussed in paragraph I(O)(3)(b) below.

(b) Creditors may seek to discover and restrain the debtor's tangible and intangible personal property, and then enlist the aid of the county sheriff or private marshals in seizing or garnishing that property. This method is discussed in paragraph I(O)(3)(c) below.

(c) In cases in which creditors have a basis to believe that the debtor has repeatedly failed to pay small-claims judgments, the Lower Court Acts themselves afford creditors a freestanding failure-to-pay cause of action in which creditors can recover treble damages and attorney fees. This method is discussed in paragraph I(O)(3)(d) below.

The New York State court system gives claimants guidance for collecting on small-claims judgments, including many of these enforcement mechanisms: the official guide to small-claims litigation, given to litigants at the beginning of the action, discusses collection at pages 18-22 and 27-30;[345] and information on the notice of judgment form itself addresses collection methods and potential consequences of a defendant's failure to pay the judgment. Should claimants ask the court for information about how to collect the judgment they expect, the court should refer them to these materials.

(a) Pre-entry judicial assistance to prevailing claimants

Judges (and arbitrators) may, before judgment is entered, take steps to make it easier for prevailing small-claims claimants to enforce their judgments once entered.

As discussed above, at trial the adjudicator deciding the case (whether judge or arbitrator) "shall determine the defendant's true name," and the judge or the clerk shall amend all papers in the case accordingly.[346] This provision increases the chance that a judgment obtained by a prevailing claimant will be issued or docketed under the defendant's legal name, facilitating later collection efforts. Should judgment nonetheless be rendered against defendant under a trade name, defendant remains liable on the judgment.[347]

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[345] *See supra* at note 119.

[346] Lower Court Acts § 1814 (c); *see* subsection (I)(F)(6), *supra* at 42.

[347] *See* Lower Court Acts § 1813 (a); CCA, UDCA, UCCA § 1813-A (a).

Additionally, after decision but before entry of judgment, the judge or arbitrator may, "[p]ursuant to [CPLR 5229], order the examination of or disclosure by, defendant and restrain him to the same extent as if a restraining notice had been served upon him after judgment was entered."[348] That is, if the evidence at trial leads the adjudicator to believe a "danger exists that [a] defendant[] may dispose or divert assets to avoid a potential judgment," the adjudicator may direct the defendant to answer questions under oath about the nature and whereabouts of the defendant's assets.[349] The adjudicator may then issue a *prejudgment* order restraining those assets pending entry and enforcement of judgment.[350]

CPLR 5229, on which §§ 1805 (a) and 1805-A (a) are premised, provides that a prejudgment examination/restraint order may be granted only on the prevailing party's application. But §§ 1805 and 1805-A do not themselves impose that requirement. And given the general informality of small-claims adjudication, particularly with pro se litigants, it may sometimes be appropriate for the judge to raise this issue sua sponte, rather than requiring a prevailing claimant to make the application.[351] That said, sua sponte exercise of the considerable power of directing prejudgment examination/restraint should be undertaken cautiously.

(b) Use of entry of judgment as enforcement leverage

A creditor may use the judgment to obtain a lien on the debtor's real property. To do this, the creditor must first convert the small-claims judgment into a Supreme Court judgment by obtaining a transcript of judgment from the small-claims clerk under Lower Court Acts § 1502 and filing that transcript with the applicable county's county clerk. The county clerk will then docket the judgment as a Supreme Court judgment entered in that county.[352]

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[348] *See* Lower Court Acts § 1805 (a); CCA, UDCA, UCCA § 1805-A (a); CPLR 5229. An arbitrator who believes that examination or restraint of a defendant is called for should refer the matter to the judge presiding.

[349] *Gallegos v Elite Model Mgt. Corp.*, 1 Misc 3d 200, 203 (Sup Ct, NY County 2003).

[350] *See id.* Restraining notices are discussed further in paragraph I(P)(3)(c), *infra* at 91.

[351] It similarly might be more useful for the judge to examine defendant directly, rather than directing defendant to answer claimant's questions.

[352] *See* CPLR 5018 (a).

Once docketed as a Supreme Court judgment in a given county, the judgment operates as a lien on real property owned by the judgment debtor in that county.[353] The creditor also can obtain liens on real property owned by the judgment debtor in other counties by filing the transcript of judgment with the county clerks of those counties, thereby obtaining the judgment's docketing as a Supreme Court judgment in those counties under CPLR 5018 (a). The lien will then show up on a title report if the debtor tries to mortgage or sell the property—creating a strong incentive for the debtor to pay the judgment.[354]

Under Lower Court Acts § 1813 (b), and § 1813-A (b) of the CCA, UDCA, and UCCA, a claimant has another potential form of leverage upon obtaining a judgment "against a business which is licensed by a state or local licensing authority" that "relates to activities for which a license is required." These statutes provide that if the judgment has been left unpaid for 35 days after receipt of the notice of judgment (and neither stayed nor appealed), and the failure to pay appears to be deliberate, the applicable state or local licensing authority may consider that failure as a ground to suspend, revoke, or refuse to renew the business license.[355]

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[353] *See* CPLR 5203 (a). Having the small-claims judgment docketed as a Supreme Court judgment also means that the creditor can execute the judgment on property of the debtor located anywhere in New York, rather than being restricted by the venue provisions of CCA, UDCA, UCCA, and UJCA § 1504. (*See* CPLR 5230 [b].) Executions are discussed further in paragraph I(P)(3)(c), *infra* at 92-93.

[354] Although the judgment will remain collectable for at least 20 years under CPLR 211, it will operate as a real-property lien only for *10* years after the judgment was originally entered by the Small Claims Court. (*See* CPLR 5203 [a].) Once nine years have elapsed from when the county clerk docketed the judgment as a Supreme Court judgment, the creditor may bring an action for a "renewal judgment" to obtain a new 20-year judgment and to renew the lien for a second 10-year period. (*See* CPLR 5014; *see also Emerald Investors Ltd. v Toms*, 133 AD3d 558, 558 [1st Dept 2015] [discussing CPLR 5014 actions for renewal judgments].) To afford the maximum time available to obtain the renewal judgment and renewed lien, the creditor should get the judgment docketed in Supreme Court as quickly as possible after entry.

Additionally, if the court grants renewal more than 10 years after the judgment's original entry, the renewed lien takes effect only upon the grant of renewal—*not* retroactively to the expiration of the original lien. (*See Gletzer v Harris*, 12 NY3d 468, 473-477 [2009].) The creditor must take care to avoid the occurrence of a "lien gap"—a period between expiration and renewal in which the creditor's lien is not in effect.

[355] In the particular context of judgments against attorneys, the First Department has held in decisions like *Matter of Cofino* that an attorney's failure to satisfy small-claims judgments supports the Appellate Division's confirming a disciplinary suspension (with payment of the judgments a condition of reinstatement). (*See* 211 AD2d 298, 300-302, 309 [1st Dept 1995]; *see also e.g. Beizer v Ioannou*, 2012 NY Slip Op 50258[U], at *2 [Civ Ct,

If a claimant has obtained a judgment that (i) is against an individual; (ii) arises "out of the ownership, maintenance, use or operation of any motor vehicle"; (iii) is for bodily injury, or is for property damage exceeding $1,000; and (iv) is unstayed and goes unsatisfied for 15 days after the expiration of the time to appeal has run (or the judgment has been affirmed on appeal), the Department of Motor Vehicles (DMV) will suspend the license of the judgment debtor upon receiving proof of the judgment.[356] To provide proof of the judgment to DMV, the judgment creditor or the creditor's attorney must ask the small-claims clerk to forward to DMV a copy of the transcript of judgment in the case.[357]

(c) Execution of the judgment on property of the debtor

A judgment creditor can also collect on the judgment more directly by executing on the debtor's real property and tangible and intangible personal property. To do so, the creditor may seek assistance in enforcing the judgment from the sheriff for the county (or, in New York City, the sheriff for the city). In New York City, the creditor may call not only on the sheriff, but also on city marshals, officials appointed by the mayor who exercise the same authority as the sheriff regarding seizure of property to enforce judgments.[358] The vast majority of New York City creditors use marshals. To aid in enforcement, marshals generally require creditors to fill out forms describing a judgment debtor's assets, employment, and so on.

One way for the creditor to locate a debtor's assets and sources of income for purposes of execution is obtaining leave to conduct a prejudgment examination of the debtor under Lower Court Acts § 1805, discussed above.[359] After entry of judgment, creditors also may serve information subpoenas for judgment-enforcement purposes. These subpoenas can require the debtor, or third parties such as landlords, utility companies, credit-card issuers, and banks, to answer questions about the debtor's assets and income.[360] Under Lower Court Acts § 1812 (d), and

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NY County Feb. 8, 2012] [providing notice under 1812 [c] to Second Department Grievance Committee of attorney-defendant's repeated failure to pay small-claims judgments].)

[356] *See* Vehicle and Traffic Law § 332.

[357] *See id.* § 336.

[358] *See* CCA §§ 1601, 1609.

[359] *See* paragraph (I)(P)(3)(a), *supra* at 87.

[360] *See* CPLR 5224 (a) (3).

§ 1812-A of the CCA, UDCA, and UCCA, the Small Claims Court clerk's office must, on the creditor's request, issue information subpoenas "at nominal cost" and provide the creditor "with assistance on their preparation and use."[361]

A creditor has two options to serve information subpoenas: registered or certified mail, return-receipt requested under CPLR 5224 (a) (3); or "in the same manner as a summons"[362]—most commonly, the means set forth in CPLR 308. "Refusal or willful neglect" to obey an information subpoena and "false swearing upon an examination or in answering written questions" are punishable as a contempt of court.[363]

An information subpoena may contain a restraining notice issued under CPLR 5222. These notices are aimed at preventing debtors from dissipating their assets, either directly or through third parties. Notwithstanding their name, restraining notices operate effectively as injunctions: They bar a debtor, or a third party that holds assets of the debtor, from "mak[ing] or suffer[ing] any sale, assignment, transfer or interference with any property in which he or she has an interest," pending satisfaction (or vacatur) of the judgment or further court order.[364] The failure of a third party (such as a bank) to comply with a restraining notice

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[361] As of July 2022, the clerk's office charges $3 per subpoena.

[362] CPLR 2303 (a).

[363] CPLR 5251. A creditor must demonstrate that it properly served the information subpoena upon the debtor (or another party); that the debtor received the subpoena; and that upon receipt of the subpoena, the debtor refused to respond, to hinder the creditor's rights and remedies. (*See Oppenheimer v Oscar Shoes*, 111 AD2d 28, 29 [1st Dept 1985]; *Metropolitan Life Ins. Co. v Young*, 157 Misc 2d 452, 453-455 [Civ Ct, NY County 1993].) Lower Court Acts § 1812 (d) confers the same power on Lower Courts judges as held by Supreme Court justices "to punish a contempt of court committed with respect to an information subpoena." Arbitrators do not have power to punish contempt.

[364] CPLR 5222 (b), (g). This restraint is subject to important exemptions set out in CPLR 5222 (h) and (*i*), and a special process devised by CPLR 5222-a to ensure that judgment debtors can raise those exemptions timely. A debtor may bring a special proceeding under CPLR 5239 and 5240 to challenge a bank's failure to respect CPLR 5222 exemptions. (*See Jackson v Bank of Am., N.A.*, 149 AD3d 815, 817-818 [2d Dept 2017]; *U.S. Equities Corp. v Rivera*, 2018 NY Slip Op 50996[U], at *2 [App Term, 2d Dept, 9th & 10th Jud Dists June 21, 2018].) But CPLR 5222-a does not give rise to a damages claim in a separate plenary action for restraining exempt funds without following the process required by CPLR 5222-a. (*See Cruz v TD Bank, N.A.*, 22 NY3d 61 [2013].) That said, if a judgment creditor does undertake the CPLR 5222-a process, the judgment debtor may bring a damages action against the creditor for raising an assertedly bad-faith objection to the debtor's CPLR 5222-a (c) exemption claim. In that type of action, the debtor may recover actual damages, a penalty of up to $1,000, reasonable attorney fees, and costs. (*See* CPLR 5222-a [g].)

constitutes contempt of court.[365] The creditor may bring a CPLR article 52 special proceeding or a separate plenary action to recover any damages suffered due to a restrained party's noncompliance with the notice.[366]

Although restraining notices prevent the debtor from depleting assets, issuance of a restraining notice does not itself give the issuing creditor priority over other creditors in collecting restrained personal property.[367] Priority with respect to personal property is instead set by CPLR 5202 and CPLR 5234, based on the order in which creditors deliver income and property executions to enforcement officers such as sheriffs and marshals.[368] These documents direct the sheriff (or, in New York City, a marshal) "to satisfy the judgment . . . out of the real and personal property of the judgment debtor . . . and the debts due to him or her."[369] CPLR 5230 (b) provides that the Small Claims Court clerk or the creditor's attorney can issue executions to the sheriff or marshal.

All executions must set forth details about the judgment, the creditor, and the debtor.[370] Income executions must also specify the person or entity from which the debtor is receiving (or will receive) money, the amount and frequency of those payments, and how much will be garnished from those payments pursuant to the execution.[371]

(i) Income executions

CPLR 5231 (d) provides that the sheriff, upon receipt of an income execution, shall serve the execution initially on the judgment debtor, directing the debtor to pay to the sheriff on the creditor's behalf the amounts required under the execution. If the debtor does not pay pursuant to the

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[365] *See* CPLR 5222 (a); *Cruz*, 22 NY3d at 77-78 (2013), citing *Aspen Indus. v Marine Midland Bank*, 52 NY2d 575, 580 (1981).

[366] *See Cruz*, 22 NY3d at 78 & n 5; *Jackson v TD Bank*, 2010 NY Slip Op 51431[U], at *2 (Civ Ct, Kings County Aug. 9, 2010) (denying motion to dismiss a small-claims action alleging that defendant bank violated a restraining notice served by plaintiff creditor).

[367] *See Fischer v. Chabbott*, 178 AD3d 923, 925-926 (2d Dept 2019).

[368] Priority with respect to *real* property located in a given county is based on the order in which judgments against the owner of the property are docketed with the county clerk of that county. (*See* CPLR 5203 [a].)

[369] CPLR 5230 (b). CPLR 5236 governs the sale of real property by the sheriff to satisfy a judgment.

[370] *See* CPLR 5230 (a) (specifying the information that an execution must include).

[371] *See* CPLR 5231 (a). CPLR 5231 (b) places important limits on when and to what extent a debtor's income may be garnished pursuant to an income execution.

execution, CPLR 5231 (e) provides that the sheriff shall serve a copy of the income execution upon the person or entity paying the debtor, typically the debtor's employer.[372] If the execution is served on the debtor's employer, and the debtor thereafter resigns or is fired from employment, the execution becomes ineffective going forward and must be returned to the sheriff.[373]

(ii) Property executions

Under CPLR 5201, the judgment creditor may enforce the judgment against a broad range of the debtor's non-exempt property, including debts owed to the debtor[374] and any property of the debtor that can be assigned or transferred.[375] Exemptions for various categories of personal property are listed in CPLR 5205.[376] Exemptions for real property appear in CPLR 5206.[377]

With respect to "personal property not capable of delivery," the sheriff or marshal levies on the property pursuant to the execution by serving a copy of the execution upon the person with custody of the levied-on property.[378] With respect to "personal property capable of delivery," the sheriff/marshal levies on the property by seizure—*i.e.*, by taking the property into the custody of the sheriff or marshal.[379]

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[372] If that payor fails to pay the required amounts over to the sheriff, the judgment creditor may "commence a proceeding against him for accrued installments" required to be paid over under the execution. (CPLR 5231 [f].)

[373] *See* CPLR 5231 (f).

[374] *See* CPLR 5201 (a).

[375] *See* CPLR 5201 (b). This category of property includes both tangible property and a broad range of intangible property. CPLR 5201 (c) sets out the appropriate recipients of property executions for several common forms of intangible property.

[376] A creditor also is barred from seizing a custodial bank account of which the debtor is the custodian. (*See Friedman v Mayerhoff*, 156 Misc 2d 295, 298-300 [Civ Ct, Kings County 1992].)

[377] As of July 2022, CPLR 5206 (a) exempts between $75,000 and $150,000 of the debtor's equity in the debtor's primary residence. This exemption does *not* bar a forced sheriff's sale of the residence to satisfy the judgment under CPLR 5236. (*See* CPLR 5206 [e].) Rather, it means that only those proceeds of the sheriff's sale that exceed the amount exempted under CPLR 5206 (e) will go to the creditor. Separately, CPLR 5206 (f) exempts altogether real property used as a private family cemetery, up to a quarter of an acre.

[378] CPLR 5232 (a).

[379] CPLR 5232 (b). This provision also requires that after seizing property, the sheriff or marshal must "forthwith" serve a copy of the execution supporting the seizure on the person from whose possession the property was taken.

Priority among executions issued by creditors to the same enforcement officer is by order of issuance.[380] Priority among different enforcement officers attempting to enforce different judgments is determined by which enforcement officer levies on the property first.[381]

If a judgment debtor believes that a creditor levying on the debtor's property has failed to comply with the requirements of CPLR article 52, the debtor may bring a special proceeding under CPLR 5239 to challenge the validity of the execution, or may seek a protective order under CPLR 5240. The debtor may not bring a separate damages action to recover any damages it claims to have suffered as a result of the creditor's noncompliance with article 52.[382]

(d) Statutory cause of action against the judgment debtor for failure to pay

Lower Court Acts § 1812 creates a cause of action for a judgment debtor's willful and repeated failure to satisfy small-claims judgments.[383]

The statute imposes several preconditions on this cause of action. A would-be § 1812 claimant must have obtained against defendant entry of a small-claims judgment that has gone unpaid. The defendant must have at least two prior unsatisfied small-claims judgments arising from the defendant's "trade or business" or "repeated course of dealing or conduct."[384] The would-be claimant must have provided notice to the

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[380] *See* CPLR 5234 (b).

[381] *See id*. As a result, whether a given item of property is or is not "capable of delivery" is an important—and sometimes murky—inquiry: If the property *is* capable of delivery, a levy by service rather than by seizure is ineffective, and thus cannot establish priority. (*See* Siegel & Connors, *New York Practice*, *supra* at note 5, at § 497 [discussing this issue].)

[382] *See Plymouth Venture Partners II, L.P. v GTR Source, LLC*, 37 NY3d 591, 594, 599-603 (2021).

[383] For a detailed analysis of this provision and the interpretive questions it raises, see *Griffin v Crutchfield & Assocs. PLLC*, 2009 NY Slip Op 50934(U) (Civ Ct, Richmond County Mar. 31, 2009).

[384] The two prior unsatisfied judgments need not have been obtained by the same creditor who now seeks to bring an action under § 1812. To make it possible to determine whether such unsatisfied judgments exist, Lower Court Acts § 1811 (d) requires small-claims clerks to index judgments alphabetically and chronologically under the judgment debtor's name. In New York City, for example, the Civil Court's small-claims clerk's office

judgment debtor (either by certified mail, return-receipt requested, or by the same means as service of a summons)—not only of the judgment that claimant has obtained, but also that the debtor now has three unsatisfied judgments such that a continued failure to pay may be the basis for a § 1812 action. And the debtor must have then failed to satisfy the most recent judgment within 30 days after receipt of the § 1812 notice.[385]

If these preconditions are satisfied, § 1812 (b) provides that the judgment creditor may sue for treble the amount of the creditor's unsatisfied judgment, plus reasonable attorney fees (if any), costs, and disbursements.[386] A § 1812 (b) claim must be asserted in a new action, rather than as a postjudgment motion in the original action.[387] A judgment debtor may raise as an affirmative defense to a § 1812 (b) claim that the debtor did not have the resources to satisfy the most recent judgment within the 30-day deadline.

Section 1812 does not contain an exception from the jurisdictional monetary limits governing small-claims actions. As a result, given this provision's treble-damages remedy, judgment creditors can bring a § 1812 action in Small Claims Court only on that increment of their judgment which, when combined with attorney fees, is one-third or less of the applicable jurisdictional limit.[388] Thus, as of July 2022, judgment creditors may sue under § 1812 to recover only a judgment-plus-fees total of $3,333 or less in the New York City Civil Court; $1,666 in the District and City Courts; or $1,000 or less in the Justice Courts.[389]

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maintains a binder of unsatisfied judgments that litigants may consult if they believe they might be able to bring a § 1812 action.

[385] *See* Lower Court Acts § 1812 (a) (2)-(3).

[386] When the judgments at issue arise from defendant's business, a court awarding relief to a successful creditor suing under § 1812 shall inform any applicable licensing or certifying authority, and also the Attorney General for purposes of the Attorney General's antifraud enforcement authority under Executive Law § 63 (12). (*See id.* § 1812 [c].)

[387] *See Mills v Oliver*, 74 Misc 3d 1135, 1139 (Clinton Just Ct 2022).

[388] As discussed above in clause I(D)(1)(a)(iii)(2), *supra* at 17, interest and costs are excluded from the applicable jurisdictional limit—but multiple damages (such as § 1812's award of treble damages) are not.

[389] When judgments (and fees) exceed these amounts, judgment creditors can always bring their actions in the regular parts of the Lower Courts, or indeed in Supreme Court. But the presence of this jurisdictional obstacle to seeking a remedy in Small Claims Court for the evasion of small-claims judgments is unnecessary and counterproductive as a matter of statutory drafting.

CHAPTER II

RECURRING ISSUES IN SMALL CLAIMS COURT

This chapter describes relevant statutes, precedents, and principles in areas of the law regularly litigated in small-claims actions. As discussed above in Section I(A) of this *Manual*, the Lower Court Acts provide that small-claims actions shall be heard "in such manner as to do substantial justice between the parties according to the rules of substantive law."[390] Any appeal must be premised on the theory that "substantial justice has not on been done between the parties according to the rules and principles of substantive law."[391] Small-claims arbitrators, like the judges, must apply "substantive law." Although the procedural framework governing small-claims actions is more informal and accessible than in the Lower Courts' regular parts, the litigants in these actions are equally entitled to justice according to law.

A. Airlines

1. Baggage

Federal statutes and regulations govern claims for baggage lost, damaged, or delayed on domestic flights.[392] Airlines may limit their liability for these claims.[393] For flight segments using aircraft that can carry more than 60 passengers, the minimum limit is currently $3,800 per passenger (periodically adjusted for inflation).[394] Adjudicators should carefully examine any flight-related documents provided by claimants in support of lost- or damaged-baggage claims.

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[390] Lower Court Acts § 1804; CCA, UDCA, UCCA § 1804-A. *See supra* at 4.

[391] Lower Court Acts § 1807; CCA, UDCA, UCCA § 1807-A.

[392] Federal law similarly governs claims against common carriers for damaged or lost goods shipped through interstate commerce by rail or air. (*See Beardslee*, 2015 NY Slip Op 51548[U], at *2-3; *Elich-Krumplet v United Parcel Serv., Inc.*, 2006 NY Slip Op 51674[U], at *1-3 [Civ Ct, NY County Sept. 1, 2006].)

[393] *See* 49 USC § 41713; 14 CFR part 254.

[394] *See* 14 CFR 254.3, 254.4, and 254.6.

The international Montreal Convention governs an airline's liabilities for international flights. It preempts all state-law claims falling within its scope.[395] The Convention makes an airline liable for damage to baggage that it caused.[396] The airline is also liable for damages due to delayed arrival of passengers, baggage, or cargo, unless the airline can prove that it took all measures that could reasonably be required to avoid the damage or that it was impossible for it to take those measures.[397] For claims relating to lost baggage, claimant must present competent proof of damages, such as the cost of the items, their age, and their condition when the luggage was lost.[398]

The airline's damages for these claims are limited to an allotted "Special Drawing Rights," a valuation formula the International Monetary Fund uses to calculate values in each nation's currency.[399] Article 24 of the Convention requires the International Civil Aviation Organization to review these limits every five years to compensate for inflation that has occurred since the treaty took effect in 2004. The limits were last increased in 2019.

2. Bumping

An airline may be liable for state-law claims in contract—but not for claims of deceptive consumer practices—if it "bumps" passengers by overbooking their flight and then rescheduling them onto a different flight without their consent. To make out a bumping-damages claim, a passenger must provide proof of (i) a ticket purchase; (ii) an airline's denial of boarding to the passenger without the passenger's consent, within the meaning of 14 CFR pt 250 (governing bumping); (iii) the passenger's non-acceptance of the airline's offer of compensation; and (iv) damages.[400]

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[395] *See Nunez v American Airlines*, 2007 NY Slip Op 50116(U) (App Term, 1st Dept Jan. 26, 2007), citing *Paradis v Ghana Airways Ltd.*, 348 F Supp 2d 106, 111 (SD NY 2004), *affd* 194 F Appx 5 (2d Cir 2006); *Malek v Societe Air France*, 13 Misc 3d 723, 724-725 (Civ Ct, NY County 2006).

[396] Convention Article 17 (2).

[397] *See* Convention Article 19; *Perlman v Brussels Airlines*, 2014 NY Slip Op 51459(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists Oct. 1, 2014).

[398] *See Ezeigwe v N. Am. Airlines*, 2009 N.Y. Slip Op 50205(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Feb. 6, 2009).

[399] *See* Convention Article 22; *Malek,* 13 Misc 3d at 727.

[400] *See Stone v Continental Airlines*, 10 Misc 3d 811, 815 (Civ Ct, New York Cty, 2005).

Damages for bumping may include a passenger's inconvenience, delay, and uncertainty; the cost of alternative travel arrangements; and the cost of prepaid travel arrangements diminished in value by the delay.[401]

3. Travel Agents

Travel agents are treated as agents of an airline when they act as authorized sellers of plane tickets on that airline. An airline can thus be held liable in damages for a travel agent's error related to selling a ticket.[402]

B. Attorney-Fee Disputes Between Lawyer and Client

New York's Chief Administrative Judge has issued regulations providing for resolution of attorney-fee disputes by arbitration in many types of civil cases.[403] For cases coming within the scope of these regulations, arbitration is mandatory when requested by the client.[404]

An attorney bringing an action to recover legal fees must, as a condition precedent, allege in the complaint that either (i) the client received proper notice of their right to arbitrate the dispute *and* did not file a timely request for arbitration; or (ii) the fee dispute is not subject to Part 137 arbitration.[405] If the attorney fails to satisfy this pleading requirement, the action should be dismissed without prejudice; the pleading failure cannot be remedied by asserting compliance with Part 137 in an opposition to a motion to dismiss.[406]

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[401] *See generally id.* at 816-818.

[402] *See Rottman v El Al Israel Airlines*, 18 Misc 3d 885, 887-888 (Civ Ct, NY County 2008).)

[403] *See* 22 NYCRR 137.1.

[404] *See id.* § 137.2 (a). Indeed, an attorney's failure or refusal to participate in fee arbitration requested by the client is, absent good cause, a basis for disciplinary action. (*See id.* § 137.11; *Filemyr v Hall*, 186 AD3d 117, 120 [1st Dept 2020].)

[405] *See id.* § 137.6; *Abramson Law Group, PLLC v Bell*, 2010 NY Slip Op 51405(U), at *1 (App Term, 1st Dept June 17, 2010). This requirement is a matter of the substantive law governing attorney-fee disputes, and thus applies in small-claims cases notwithstanding their more informal procedures. Although we are not aware of decisions specifically addressing this issue, a prudent attorney-claimant will include the required allegation of proper notice in the initial statement of claim.

[406] *See Kerner & Kerner v Dunham*, 46 AD3d 372, 372 (1st Dept 2007); *accord Bell*, 2010 NY Slip Op 51045(U), at *1 (collecting cases).

Part 137 does not require arbitration of fee disputes about less than $1,000 or more than $50,000 in fees (although the parties may consent to arbitrating those disputes).[407] It does not apply to disputes implicating "substantial legal questions, including professional malpractice or misconduct."[408] Nor does it apply to "disputes where no attorney's services have been rendered for more than two years."[409] If an attorney does not give the client notice within that two-year limitations period of the client's right to arbitrate, any subsequent fee-collection action will be subject to dismissal.[410]

C. Bailments

1. Bailment Principles

To demonstrate the existence of a bailment, a claimant must demonstrate that the putative bailee had lawful possession of the item at issue and "the duty to account for th[at] thing as the property of another."[411] A bailment, if one exists, "gives rise to the duty of exercising ordinary care in keeping and safeguarding property, whether the bailee is a bailee for hire, such as a warehouseman, or is acting gratuitously."[412] A bailee's failure to return bailed property when demanded creates a rebuttable presumption of negligence.[413]

If the bailed property is lost or damaged due to the bailee's negligence, the common measure of damages is "the difference between the fair market value in its condition as delivered to the bailee versus its condition as returned."[414] If the property lacks market value, as with

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[407] *See* 22 NYCRR 137.1 (b) (2).

[408] *Id.* § 137.1 (b) (3).

[409] *Id.* § 137.1 (b) (6); *see Carling v Peters*, 170 AD3d 482, 484 (1st Dept 2019) (holding that Part 137 did not govern a fee dispute that began in 2013 over legal services rendered in 2008).

[410] *See Filemyr*, 186 AD3d at 119-121.

[411] *Pivar v Graduate Sch. of Figurative Art of the NY Academy of Art*, 290 AD2d 212, 212-213 (1st Dept 2002). It is irrelevant for these purposes whether the property was entrusted to the bailee by the owner or by another individual. (*See id.* at 213.)

[412] 9 NY Jur. 2d, *Bailments and Chattel Leases*, § 53.

[413] *See Rafael Jewels Corp. v Nezaj*, 2014 NY Slip Op 31251(U), at *2 (Sup Ct, NY County May 15, 2014).

[414] 9 NY Jur. 2d at § 137.

"apparel, household goods, family portraits, heirlooms" and the like, its value for damages purposes is the "value to the owner, determined by considering all of the circumstances in a rational way" in the "exercise of good sense and judgment by the triers of fact."[415] These circumstances may include the original cost and age of the item, the labor required to create the item or its uniqueness, its condition at the time of loss or damage, and its cost to repair or replace.[416] The item's emotional or sentimental value may not be taken into account.[417]

2. Bailment Examples

If one person lends jewelry to another, and the parties mutually understand that the jewelry would be returned to the lender, the borrower of the jewelry is a bailee.[418] A bailment exists where one party has custody of the property of another and maintains exclusive access to that property—for example, when a marina stores boats under lock-and-key.[419] And a bailment is established when a business like a restaurant or museum takes possession of a customer or patron's property (such as a coat or luggage) and keeps it in a separate room or area with assurances that the property will be protected during the patron's stay on the premises of the business.[420]

A bailment also is established when a customer drops off clothing to be dry-cleaned.[421] Given the inherent risks of clothing damage from the dry-

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[415] *Kemp v Midtown Movers*, 2003 NY Slip Op 51154(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists July 9, 2003).

[416] *See e.g. Kemp*, 2003 NY Slip Op 51154(U), at *2-3; *Correa,* 2004 NY Slip Op 50798(U), at *2; *Mohammed v Air France*, 2006 NY Slip Op 50462(U), at *2 (Civ Ct, Kings County Mar. 28, 2006).

[417] *See Mohammed,* 2006 NY Slip Op 50462(U), at * 2, citing *Twersky v Pennsylvania R.R. Co.*, 152 Misc 300, 301 (App Term, 1st Dept 1934).

[418] *See Nezaj*, 2014 NY Slip Op 31251(U), at *2.

[419] *See Weissman v City of New York*, 20 Misc 3d 562, 564 (Civ Ct, NY County 2008).

[420] *See Nierenberg v Wursteria, Inc.*, 189 AD2d 571, 571 (1st Dept 1993) (holding bailment established when defendant restaurant took possession of plaintiff's luggage containing valuable photography equipment, offered to store it for plaintiff, and assured plaintiff that property would be safe); *Conboy v Studio 54*, 113 Misc 2d 403, 404 (Civ Ct, NY County 1982) (holding bailment established when restaurant patrons checked their coats with a coatroom attendant for a fee and received claim tickets).

[421] *See Tannenbaum v New York Dry Cleaning, Inc.*, 2001 NY Slip Op 40076(U), at *1 (Sup Ct, NY County, July 9, 2001); *accord Landa v Organic Cleaners*, 2011 NY Slip Op 51222(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists June 28, 2011).

cleaning process, dry cleaners commonly include limitation-of-liability provisions on the back of the customer's claim ticket. These provisions may constitute an enforceable limit on damages resulting from negligence only if (i) the customer was aware of the limitations clause (or at least if the dry cleaner took steps to make the customer aware of the clause, whether verbally, through a prominent sign, or other means); and (ii) the clause's language was clear and readily discernable.[422]

A bailment generally is *not* established when a driver parks a car in a parking lot or garage, as long as the driver retains possession or control over the vehicle by selecting the vehicle's parking place and retaining the keys.[423] Where a parking-garage-type bailment does exist, damage to the vehicle gives rise to a presumption of negligence against the bailor.[424]

D. Barbers and Salons

A patron's claims for dissatisfaction with appearance-enhancement services, such as laser hair restoration, cannot succeed when the patron-claimant expressly acknowledged defendant's cautionary statements that efficacy was not guaranteed.[425]

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[422] *See Ginsberg v Spring Dry Cleaners, Inc.*, 2002 NY Slip Op 50084(U), at *2 (App Term, 1st Dept Mar. 5, 2002); *Tannenbaum*, 2001 NY Slip Op 40076(U), at *2-3, *10 (holding limitation-of-liability clause unenforceable because it appeared on the back of the claim ticket in 8-point gray type on a yellow background).

[423] *Compare Smith v Regal Entm't*, 2016 NY Slip Op 50277(U), at *2-3 (Civ Ct, NY County Mar. 8, 2016) (holding no bailment relationship existed, because claimant "could enter and exit the lot without supervision, select her own parking space, lock her own car, and retain the keys"), *with Chait v Town Hall, LLC*, 2011 NY Slip Op 51326(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists July 8, 2011) (holding that "bailment relationship was created when plaintiff surrendered the keys and control of his vehicle to defendants' valet parking attendant").

Courts have sometimes held that a bailment exists even when vehicle owners park their own cars and retain the keys, based on factors such as the presence of a security guard in the garage or if the garage made specific assurances of safety to the vehicle owner. But these decisions are more the exception than the rule. (*See Brown v Edison Parking Corp.*, 2005 NY Slip Op 50797[U], at *4 [Civ Ct, NY County May 26, 2005] [specific assurances]; *Sealey v Meyers Parking Sys.*, 147 Misc 2d 217, 219-220 [Civ Ct, Queens County 1990] [security guard].)

[424] *See Varga v Bay Harbor Motors Corp.*, 2010 NY Slip Op 51191(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists July 7, 2010).

[425] *See Zerbi v Perfect Body Image, LLC*, 2020 NY Slip Op 51021(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists, Aug. 27, 2020). *Zerbi* dealt with a written acknowledgment; presumably the same rule would apply if an adjudicator credited defendant's testimony that the patron gave an express oral acknowledgment.

A claimant can rightfully reject a custom human-hair wig that does not fit properly or is made of inferior quality hair.[426] The claimant can recover amounts paid to buy the wig, up to the court's jurisdictional monetary limit.[427]

A salon may be sued for negligence for a patron's injuries sustained in connection with the services the salon provides; or sued for negligence on other premises-liability-related grounds.[428] A salon can be strictly liable in products liability if claimant establishes that her injuries proximately resulted from the salon's product as applied to her hair or skin and also rules out other possible causes.[429]

E. Catering Establishments

Claimants may recover for damages caused by objects contained within their food. In assessing this type of claim, courts consider whether the object is something a consumer could reasonably anticipate finding in the subject food and whether any out-of-the-ordinary harmful substances in the food could have been removed through the exercise of ordinary care.[430]

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[426] *See* UCC 2–602.

[427] *See* UCC 2-711 (1); *Katz v Rodolfo Valentin Salon*, 2004 NY Slip Op 50312(U), *1-2 (App Term, 2d Dept, 9th & 10th Jud Dists, Apr. 20, 2004).

[428] *See Toner v Constable*, 61 Misc 2d 586, 587 (Civ Ct, NY County 1968), *mod* 61 Misc 2d 591 (App Term, 1st Dept 1969) (adjudicating plaintiff's negligence claim for alleged painful, blotchy, and scabbed skin reaction on plaintiff's forehead due to hair spray that an employee of defendant salon sprayed on her forehead); *Kurtz v Supercuts, Inc.*, 127 AD3d 546, 546 (1st Dept 2015) (denying summary judgment on a slip-and-fall negligence claim in which plaintiff testified she slipped on a "glossy" and "non-water-like substance on the salon's floor").

[429] *See Olsovi v Salon DeBarney*, 118 AD2d 839, 840 (2d Dept 1986).

[430] *See Amiano v Greenwich Village Fish Co., Inc.*, 151 AD3d 484 (1st Dept 2017) (dismissing claim based on bone remaining in fileted fish); *Vitiello v Captain Bill's Rest.*, 191 AD2d 429, 429 (2d Dept 1993) (same); *Schmidt v Fourth Wall Restaurants, LLC*, 155 AD3d 986, 987 (2d Dept 2017) (dismissing claim based on pit remaining in whole cocktail olive); *Stark v Chock Full O'Nuts*, 77 Misc 2d 553, 554 (App Term, 1st Dept 1974) (affirming judgment for plaintiff based on "large, hard walnut shell" remaining in "a 'nutted cheese' sandwich); *Kaplan v America Multi-Cinema, Inc.*, 2008 NY Slip Op 51940(U), at *2-3 (Civ Ct, NY County Sept. 19, 2008) (dismissing suit for an unpopped kernel remaining in a bag of movie popcorn).

Claimants asserting a claim based on food poisoning must show that they consumed contaminated food and that their illness resulted from consuming the contaminated food.[431]

F. Consumer Transactions

Because many small claims "arise from defective or misrepresented goods and services," Small Claims Court enables "consumers to enforce their rights under a variety of consumer protection statutes."[432] Claimants may, for example, bring claims in a wide range of consumer transactions under General Business Law (GBL) §§ 349 and 350 to recover damages for deceptive business and advertising practices.

1. Deceptive Business Practices (GBL § 349)

GBL § 349 prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service." GBL § 349 (h) allows consumers and corporations to sue for their actual damages, and permits the award of reasonable attorney fees to a prevailing claimant (or plaintiff). The statute also permits the court to treble claimant's actual damages, up to a total of $1,000, if defendant knowingly or willfully violated the statute.

To succeed on a § 349 claim, a claimant must show that defendant engaged in a (i) consumer-oriented act or practice that (ii) was misleading in a material respect and (iii) as a result injured the claimant.[433] An act or practice is "consumer-oriented" for § 349 purposes if it is "directed to consumers" generally or has an "impact on the consumer at large," as

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[431] *See Williams v White Castle Sys., Inc.*, 4 AD3d 161, 162 (1st Dept 2004); *Brown v City Sam Restaurants, Inc.*, 246 AD2d 301, 301 (1st Dept 1998); *Volenti v Great Atlantic & Pacific Tea Co.*, 207 AD2d 340, 341 (2d Dept 1994); *Kakihira v 7-Eleven Store*, 2017 NY Slip Op 50640(U), at *1 (App Term, 1st Dept May 16, 2017).

[432] Thomas A. Dickerson, *Consumer Transactions in Small Claims Court*, 25 Westchester BJ 155, 155-156 (1998); *accord* Thomas A. Dickerson, *Applying Consumer Protection Laws in Small Claims*, NYLJ, Sept. 21, 1998, at 5, col. 1.

[433] *See Blue Cross & Blue Shield of N.J., Inc. v Philip Morris USA Inc.*, 3 NY3d 200, 205-206 (2004).

opposed to occurring in a one-off transaction or a business interaction unique to the parties (such as a negotiated contract).[434]

New York City has enacted a similar consumer-protection statute that which prohibits "any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease rental or loan of any consumer goods or services or in the collection of consumer debts."[435] Consumer goods and services for this purpose are those that "are primarily for personal or household or family purposes."[436]

2. False Advertising (GBL § 350)

GBL § 350 prohibits "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service." The statute defines "false advertising" to mean "advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity" that is misleading in a material respect."[437] A claimant must demonstrate that the advertisement at issue is deceptive or misleading to the "vast multitude" of customers, "including the ignorant, the unthinking and the credulous who, in making purchases, do not stop to analyze but are governed by appearances and general impressions."[438] In considering whether an advertisement is materially misleading under GBL § 350, courts consider the standards of the industry in which the advertisement is being made.[439]

According to GBL § 350, retailers advertising sale items must provide enough inventory to meet "reasonably anticipated demand" when the sale begins or when the vendor begins advertising the promotion, whichever is earlier.[440] Retailers are not liable in this context if a reasonably

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[434] *See Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY3d 169, 177-178 (2021); *Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, N.A.*, 85 NY2d 20, 25-27 (1995).

[435] NYC Admin Code § 20-702 (a).

[436] *Id.* § 20-701 (c).

[437] GBL § 350-a (1). The statute exempts from its coverage "any television or sound radio broadcasting station or . . . any publisher or printer of a newspaper, magazine, or other form of printed advertising, who broadcasts, publishes, or prints such advertisement." (GBL § 350-f.)

[438] *Guggenheimer v Ginzburg*, 43 NY2d 268, 273 (1977).

[439] *See Migliorini v Musumeci*, 2013 NY Slip Op 52159(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists, Dec. 17, 2013).

[440] *De Santis v Sears, Roebuck & Co.,* 148 AD2d 36, 38 (3d Dept 1989).

stocked sale item sells out due to unanticipated demand—particularly if the advertisement includes an appropriate disclaimer.[441]

Medical service providers are not exempt from GBL § 350 when promoting their business to the public.[442] Medical-service providers may not escape their obligation to provide honest and accurate representations of expected results in their consultations, literature, and promotional materials through the use of boilerplate disclaimers such as "the amount of treatments and results will vary from patient to patient."[443]

3. Breach of Express or Implied Warranty of Merchantability

To state a claim for breach of express warranty under New York law, a claimant purchasing a product or service must allege (i) the existence of a specific representation amounting to a warranty; (ii) the claimant's reliance on this warranty in entering into a contract with the immediate seller; (iii) breach of the warranty; and (iv) injury to the buyer caused by the breach.[444]

The purchase of goods may be subject to an implied warranty of fitness.[445] Courts will recognize an implied a warranty of fitness for a particular purpose if the buyer establishes that (i) "the seller had reason to know, at the time of contracting, the buyer's particular purpose for which the goods are required"; (ii) "the buyer was justifiably relying upon the seller's skill and judgment to select and furnish suitable goods"; and (ii) the buyer did in fact rely on that skill."[446]

G. Electronics or Home Appliance Service Dealers

An electronics or home-appliance service dealer that lacks a license required by local law may not recover breach-of-contract or quantum-

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[441] *See De Santis*, 148 AD2d at 38.

[442] *See Karlin v IVF Am., Inc.,* 93 NY2d 282, 294 (1999).

[443] *Johnson v Body Solutions of Commack, LLC*, 2008 NY Slip 50964(U), at *2-3 (Suffolk Dist Ct Apr. 3, 2008).

[444] *See* UCC 2-313; *CBS Inc. v Ziff-Davis Publ. Co.*, 75 NY2d 496, 501-504 (1990); *Aracena v BMW of N. Am., LLC*, 159 AD3d 664, 665 (2d Dept 2018); *USCHP Real Estate Dev., Inc. v Mitrano*, 85 AD3d 1719, 1719-1720 (4th Dept 2011).

[445] *See* UCC 2-315.

[446] *Saratoga Spa & Bath, Inc. v Beeche Sys. Corp.*, 230 AD2d 326, 331 (3d Dept 1997).

meruit damages from a customer who fails to pay.[447] A dealer's lack of a license does not, however, entitle the purchaser to recover sums already paid to the dealer.[448]

When an appliance fails to meet a purchaser's standards, the purchaser is entitled to the purchase price, along with reasonable damages, upon a timely rejection of the nonconforming goods.[449] The purchaser must, however, give the seller an opportunity to cure the defect within a reasonable time.[450] The adjudicator (whether court or arbitrator) must therefore assess whether and when the seller was notified of the defect, whether and when the seller offered to cure the asserted defect, whether the purchaser accepted or rejected any offer to cure by the seller, and whether that offer to cure would, if accepted, have sufficiently remedied the purchaser's grievances.[451]

If claimant also contracts to install the appliance, the seller must perform the work in a skillful manner and use the same "degree of care or skill that a reasonably prudent, skilled worker would have exercised under the circumstances."[452]

H. Gifts and Loans

An important distinction exists—at least legally speaking—between a gift and a loan. For a transaction to constitute a loan, a claimant must establish that the parties had a mutual expectation that the transferee would later repay or return the money or property transferred.[453] A transaction is

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[447] *See* CPLR 3015 (e); NYC Admin Code § 20-412.

[448] *See Segrete v Zimmerman*, 67 AD2d 999, 1000 (2d Dept 1979) ("The parties, in these circumstances, should be left as they are."); *accord Rusin v Design-Apart USA Ltd.*, 173 AD3d 1231, 1232-1233 (2d Dept 2019); *Krasnoff v J. Tuman Assoc., Inc.*, 2019 NY Slip Op 50703(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists, May 3, 2019); *Pierre-Louis v Adkins*, 2009 NY Slip Op 51763(U), at *1 (App Term, 1st Dept Aug. 4, 2009).

[449] *See* UCC 2–711, 2–715.

[450] *See* UCC 2–508 (2).

[451] *See Frey v Appliance City*, 2006 NY Slip Op 51291(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists, July 3, 2006).

[452] *Len v Home Depot*, 61 Misc 3d 835, 837 (Cohoes City Ct 2018), quoting *Lunn v. Silfes*, 106 Misc 2d 41, 44 (Sup Ct, Allegany County 1980).

[453] *Collura v Collura*, 2009 NY Slip Op 50245(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists, Feb. 13, 2009); *accord Ramunno v Taylor-Hughes*, 2011 NY Slip Op 50772(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists, Apr. 26, 2011). When an agreement to repay a personal loan can be performed within one year, the claimant is not

a gift when the donor intends to effect a present transfer of ownership, and the money or property given is delivered and is accepted by the recipient.[454]

To determine whether a given transaction is a gift or a loan, courts consider the parties' actions relating to the transaction, taking into account witness testimony about that conduct to the extent it is credible. For example, a claimant can establish that the transfer of property to defendant was a loan by demonstrating ownership of the property, a demand for its return, and defendant's refusal to return the property following the demand.[455] A mere notation that a check is for a "loan" does not necessarily establish that the recipient promised to repay.[456] Efforts to repay a loan in installments can, however, be construed as "an acknowledgment of the existence and nature of the debt."[457]

I. Gyms/Health Clubs

GBL article 30 (§§ 620-631) regulates many aspects of a health-club membership. For example, health-club fees may not exceed $3600 a year, except for the use of tennis and racquet ball facilities;[458] terms of membership may not exceed three years;[459] individuals may cancel a membership within three business days of receiving the membership contract;[460] a member may recover membership fees if the services and facilities enumerated in the contract are substantially unavailable due to a

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required to introduce a written agreement in order to recover. (*See Austria v Thorpe*, 2019 NY Slip Op 50062[U], *2 [App Term, 2d Dept, 9th & 10th Jud Dists, Jan. 10, 2019].)

[454] *See Mongelli v Cabral*, 166 Misc 2d 240, 242 (Yonkers City Ct 1995), citing *Matter of Szabo*, 10 NY2d 94, 98 (1961).

[455] *See Trama v Trama*, 2011 NY Slip Op 50742(U), at *1 (App Term, 9th & 10th Jud Dists Apr. 22, 2011).

[456] *See Parnes v Roshkind*, 2007 NY Slip Op 50926(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists May 3, 2007).

[457] *See Stein v Anderson*, 123 AD3d 1322, 1323 (3d Dept 2014).

[458] *See* GBL § 623 (1).

[459] *See id.* § 623 (2). For purposes of this restriction, if a membership contract provides that it will be automatically renewed unless the member submits a notice of cancellation, the contract's original term *and* any renewal terms will be aggregated and considered one single term. (*See Steuben Place Recreation Corp. v McGuiness*, 2007 NY Slip Op 50641[U], at *2 [Albany City Ct Mar. 30, 2007]; *Nadoff v Club Central*, 2003 NY Slip Op 51071[U], at *3 [Nassau Dist Ct June 27, 2003].)

[460] *See* GBL § 624 (2).

discontinuance or substantial change in club operations;[461] and members may recover treble damages plus attorney fees for a violation of GBL article 30.[462]

J. Home Inspectors/Home-Improvement Contractors

Home inspections are regulated by Real Property Law (RPL) § 444-d. This statute requires individuals conducting a home inspection (or holding themselves out as permitted to conduct a home inspection) to be licensed to do so. Many municipal ordinances similarly impose licensing requirements on home-improvement contractors.[463]

A claimant may sue a licensed home inspector for negligence.[464] To prove that claim, claimant must establish through expert testimony that "the defendant failed to conduct the inspection in the manner and up to the standards of licensed home inspectors in the community."[465]

As with the electronics/appliance dealers discussed above, an unlicensed home inspector or home-improvement contractor may not recover damages in contract or quantum meruit for an inspection or home-improvement work.[466] Nor may an unlicensed contractor seek to foreclose

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[461] *See id*. § 624 (3). In that circumstance, a member's damages must be pro-rated to account for the period of the membership in which the claimant enjoyed the use and benefit of the facility or services. (*See Soroudi v O'Kefe*, 2006 NY Slip Op 51296[U], at *1 [App Term, 2d Dept, 9th & 10th Jud Dists July 3, 2006].)

[462] *See id*. § 628 (1).

[463] *See e.g*. *Cunningham v Nolte*, 188 AD3d 806, 808 (2d Dept 2020) (Rockland County ordinance); *Kristeel, Inc. v Seaview Dev. Corp*., 165 AD3d 1243, 1244 (2d Dept 2018) (Town of East Hampton ordinance); *Bread Over Bread Corp. v Tardieu*, 2020 NY Slip Op 51537(U), at *4 & n 2 (Sup Ct, Suffolk County Dec. 22, 2020) (Suffolk County ordinance); *Krasnoff,* 2019 NY Slip Op 50703(U), at *2 (New York City ordinance).

[464] *See Cafferata,* 2013 NY Slip Op 50209(U), at *3.

[465] *Id*.

[466] *See* CPLR 3015 (e); Administrative Code of City of N.Y. § 20-387; *Thorne v. Alleyne*, 54 Misc 3d 38, 39 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2016) (holding that the small-claims adjudicator must determine as a threshold matter whether a contractor has the requisite license); *Remy v Guastella*, 2021 NY Slip Op 50774(U), at *1-2 (App Term, 2d Dept, 9th & 10th Jud Dists, July 30, 2021). At least one court has concluded that an individual who has not been licensed as a home inspector may not offer expert testimony on home-inspection-related subjects absent sufficient testimony establishing the individual's expertise on the subject. (*See Brady v Posse*, 2007 NY Slip Op 50276[U], at *2-3 [Civ Ct, Richmond County Feb. 16, 2007].)

on a mechanic's lien for the balance of the contract price.[467] In this context, a license acquired after the performance of the work "cannot be used to validate a contract that was prohibited when performed."[468] Adjudicators must carefully consider, though, whether a given contractor is, in fact, subject to the contractor-licensing ordinance in question.[469]

K. Malpractice

Malpractice actions may be brought in Small Claims Court. A claimant may sue, for example, for accounting malpractice;[470] medical, dental, or podiatric malpractice;[471] and legal malpractice.[472] In each instance, the claimant must establish that the defendant deviated from

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[467] *See Kristeel.,* 165 AD3d at 1244. And, as discussed in note 27, *supra*, an action to foreclose on a mechanic's lien may not be brought in Small Claims Court to begin with. (*See Port Vill. HOA*, 33 Misc 3d at 45.)

[468] *B&F Building Corp. v Liebig*, 76 NY2d 689, 694 (1990).

[469] *See Ayres v Dunhill Interiors*, 138 AD2d 303, 305 (1st Dept 1988) (explaining that parties' contract might be "enforceable despite defendant's lack of license," because New York City's licensing ordinance does not require a license "for a building with more than four units and where the work is not for a tenant's residence"); *see also e.g. Jack A. Corcoran Marble Co. v Clark Constr. Corp.,* 155 Misc 2d 49, 50-51 (App Term, 1st Dept 1993) (construing scope of class of persons intended to be protected by New York City's licensing ordinance); *cf. Mauro Const. Corp. v Raneri*, 182 Misc 2d 538, 539 (Civ Ct, Queens County 1999) (holding that New York City's licensing requirement applied to replacing concrete driveway).

[470] *See Driscoll v Falk*, 2008 NY Slip Op 52537(U), at *1 (App Term, 1st Dept Dec. 19, 2008), citing *D.D. Hamilton Textiles, Inc. v. Estate of Mate*, 269 AD2d 214, 215 (1st Dept 2000)

[471] *See Cohen v Kalman,* 54 AD3d 307, 307 (2d Dept 2008) (dental malpractice); *Iodice v Giordano*, 170 AD3d 971, 972 (2d Dept 2019) (podiatric malpractice).

A claimant also may sue for breach of contract relating to the rendition of medical or dental services by a physician or dentist—but only if the defendant made the claimant an express, specific promise to effect a cure or to accomplish a definite result. (*See e.g. Agaeva v Bay Ridge Dental Grp., P.C.*, 2015 NY Slip Op 50908[U], at *1 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists, June 11, 2015] [reversing trial court's award to claimant of $850 paid for a root canal given claimant's failure to show that defendant had made her the type of promise of results that could support a breach-of-contract claim]; *Katzab v Chaudhry*, 2006 NY Slip Op 50418[U], at *3 [Civ Ct, Kings County Mar. 22, 2006] [claimant established a breach of contract by her plastic surgeon based on evidence that defendant expressly promised to make surgical incisions on the inside, rather than outside, of claimant's arms, but did not do so].)

[472] *Kovitz v Wenig, Ginsberg, Saltiel & Greene, LLP*, 2011 NY Slip Op 50768(U), at *1-2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Apr. 26, 2011) (internal quotation marks omitted; alterations in original).

accepted professional standards in the defendant's field and that this deviation proximately caused claimant's injuries.[473]

Because the malpractice inquiry turns on the standards of the relevant professional community, expert evidence is generally required to support a malpractice claim even in a small-claims action. Expert testimony is unnecessary to make out a prima facie case, however, if the "very nature of the acts complained of bespeaks improper treatment and malpractice."[474]

L. Motor Vehicles

1. Lemon Laws

New and used motor vehicles purchased from a dealer or merchant carry an implied warranty of merchantability.[475] This warranty can be disclaimed, however, if the disclaimer is written and conspicuous.[476]

GBL § 198-a, the "New Car Lemon Law," allows the purchaser of a new motor vehicle to exchange it for a comparable vehicle or to return it for a refund if (i) it has defects that substantially impair its value; and (ii) the manufacturer or authorized dealer cannot fix the defects after a reasonable number of attempts.[477] GBL § 198-b, the "Used Car Lemon Law," provides

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[473] *See Driscoll*, 2008 NY Slip Op 52537(U), at *1; *Kalman*, 54 AD3d at 307; *Kovitz*, 2011 NY Slip Op 50768(U), at *1-2. In the particular context of legal malpractice, satisfying this causation element requires a claimant to establish that "but for the [attorney's] negligence . . . [claimant] would have prevailed in the underlying action." (*See Kovitz*, 2011 NY Slip Op 50768[U], at *2 [internal quotation marks omitted].)

[474] *Mathew v Jerome L. Klinger, D.V.M., P.C.*, 179 Misc 2d 609, 610 (App Term, 2d Dept, 9th & 10th Jud Dists 1998) (affirming trial-court's finding of malpractice without expert evidence, when veterinarian did not x-ray a dog's throat, esophagus, and stomach despite his suspicion that dog swallowed something harmful).

[475] *See Cumo v Bray*, 57 Misc 3d 808, 812 (Glens Falls City Ct 2017).

[476] *See id.*

[477] *See BMW of N. Am., LLC v Leonidou*, 183 AD3d 444, 445 (1st Dept 2020) (holding that the buyer of a new BMW did not establish that his noise complaints substantially impaired the car's value); *BMW of N. Am., LLC v Riina*, 149 AD3d 420 (1st Dept 2017); *BMW of N. Am., LLC v Burgos*, 2015 NY Slip Op 32654(U), at *2-3 (Sup Ct, Nassau County 2015); *see also Kucher v DaimlerChrysler Corp.*, 20 Misc 3d 64, 67-68 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2008) (holding that when plaintiff lessee had sought termination of the car's lease and return of the lease price, and defendant had refused plaintiff's tender of the car at the time of trial, plaintiff's subsequent return of the car to another dealership at the end of the lease did not bar plaintiff from asserting a New Car Lemon Law claim).

similar rights to anyone who buys a used car for more than $1500 from a party that sells three or more used cars a year.[478]

The New and Used Car Lemon Laws contemplate multiple avenues of arbitration as an alternative to litigation—one mandatory in certain circumstances, the other optional. The New Car Lemon Law provides that "*[i]f* a manufacturer "has established an informal dispute settlement mechanism," the remedial provisions of the statute "shall not apply to any consumer who has not first resorted to such mechanism."[479]

Similarly, the Used Car Lemon Law provides that "*[i]f* a dealer has established or participates in an informal dispute settlement procedure which complies in all respects with the provisions of" 16 CFR pt 703, the "provisions of this article concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure."[480] At least one court has held that given § 198-b (f) (1)'s conditional language, a Used Lemon Law defendant dealer bears the burden to establish as an affirmative defense that an arbitration procedure exists and that the purchaser was notified of the procedure but did not seek to arbitrate before bringing suit.[481]

Alternatively, a vehicle purchaser *may* (but need not) pursue arbitration of a New or Used Car Lemon Law claim through an arbitration program established by the New York State attorney general.[482]

Participation in a Lemon Law arbitration does not necessarily foreclose a vehicle purchaser from bringing a later plenary action for

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[478] *See Dunn v BC Benjamin Auto Sales, Inc.*, 2015 NY Slip Op 50697(U), at *2 (App Term, 2d Dept, 9th & 10th Jud Dists May 1, 2015) (affirming trial court's finding of liability under Used Car Lemon Law based on evidence that defendant dealership had made clear that it would not repair plaintiff's car if plaintiff were to request repairs, contrary to the statute's requirements).

[479] GBL § 198-a (g) (emphasis added). A manufacturer using an arbitration program must provide to purchasers who seek arbitration, and to arbitrators in the program, a copy of § 198-a itself and a copy in 10-point bold type of the "New Car Lemon Law Bill of Rights" set out in the statute. (*See id.* § 198-a [m] [1]-[2].)

[480] GBL § 198-b (f) (1) (emphasis added). As with New Car Lemon Law arbitration, a used-car dealer using an arbitration program must provide to arbitrators and to purchasers who seek arbitration a copy of § 198-b itself and a copy in 10-point bold type of the "Used Car Lemon Law Bill of Rights" set out in the statute. (*See id.*)

[481] *See Hurley*, 2008 NY Slip Op at *4.

[482] *See* GBL § 198-a (k) (New Car Lemon Law); GBL § 198-b (f) (3) (Used Car Lemon Law).

different relief.[483] The arbitrator's findings, however, will be given issue-preclusive effect if they satisfy the typical preclusion requirements.[484]

When GBL § 198-b does not cover a used-car-lemon claim, the claimant may still have a claim for breach of the statutory warranty of serviceability under Vehicle and Traffic Law (VTL) § 417.[485] Section 417 requires used-car dealers to provide a certificate to buyers stating that the subject vehicle is "in condition and repair to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery." This statutory warranty may not be waived.[486]

2. Collisions

Individuals injured in motor-vehicle collisions may sue the owner (or the non-owner driver) of the offending vehicle. Owners are statutorily liable under VTL § 388 (1), and most liability insurance policies name the owners as the insured. Adjudicators should ask for any police or insurance-company reports (and admit them into evidence as exhibits), and should allow witnesses to draw rough sketches of what happened.

If a vehicle rear-ends a second, stopped vehicle, a presumption arises "that the operator of the rear vehicle was negligent," entitling "the injured occupant of the front vehicle" to summary judgment on liability "unless the driver of the second vehicle provides a non-negligent explanation for the collision."[487]

An owner of a motor-vehicle damaged in a collision who cannot reach agreement with the collision insurer on the cost of repairs may bring an action for the difference between what the insurer has paid and what the owner's preferred repair shop charged.[488] In this type of action, the vehicle

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[483] *See id.* §§ 198-a (h), 198-b (f) (4); *Felton v World Class Cars*, 12 Misc 3d 64, 65 (App Term, 2d Dept, 9th & 10th Jud Dists 2006); *Williams v Planet Motor Car*, 190 Misc 2d 22, 26-27 (Civ Ct, Kings County 2001).

[484] *See Felton*, 12 Misc 3d at 65; *Williams*, 190 Misc 2d at 30-32.

[485] *See Cumo*, 57 Misc 3d at 812; *Tulley v Nemet Motors Inc.*, 2012 NY Slip Op 50902(U), at *3 (Civ Ct, NY County Apr. 30, 2012); *Neil v Parker Ave. Xtra, Inc.*, 2012 NY Slip Op 50363(U), at *4 (Poughkeepsie City Ct, Feb. 22, 2012); *Hurley*, 2008 NY Slip Op 52644(U), at *5-6; *Barilla v Gunn Buick-Cadillac-GMC, Inc.*, 139 Misc 2d 496, 505 (Oswego City Ct 1988).

[486] *See Cumo*, 57 Misc 3d at 812.

[487] *Somers v Condlin*, 39 AD3d 289 (1st Dept 2007).

[488] *See Rizzo v Merchants & Businessmen's Mut. Ins. Co.*, 188 Misc 2d 180, 181 (App Term, 2d Dept 2001).

owner "bears the burden of establishing the reasonable cost of the repairs necessary to bring the vehicle to its condition prior to the loss."[489]

3. "No-Fault" Law

Under Insurance Law article 51's no-fault-liability provisions, a taxicab passenger injured in a motor-vehicle accident may not recover tort damages for medical expenses or lost wages if the passenger is a "covered person" under the statute due to either the taxicab or the passenger having automobile insurance in effect at the time of the accident.[490] If a second vehicle causes the accident and the taxicab is uninsured, an injured passenger may recover medical expenses from the insurance carrier of the second vehicle, should the passenger otherwise lack automobile insurance coverage.[491]

M. Moving Companies/Deliveries

1. Household Goods

The New York State Department of Transportation (DOT) regulates the transportation of household goods pursuant to Transportation Law article nine.

A common carrier may transport household goods within New York only if it has obtained a DOT certificate permitting it to do so.[492] Article 9's implementing regulations define "household goods" as "personal effects and property used or to be used in a dwelling when a part of the equipment

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[489] *See id.* at 183; *see also e.g. Mass v Melymont*, 2003 NY Slip Op 51554(U) (Nassau Dist Ct Dec. 23, 2003) (assessing plaintiff's evidence about the reasonable cost of repairs and holding that plaintiff had met his burden to show that the rates charged by his preferred repair shop were fair and reasonable).

[490] See Insurance Law §§ 5102 (j) (defining "covered person"), 5104 (a) (restricting the ability of "covered persons" to bring, and recover on, tort actions). (*See Laba v Petrullo*, 191 Misc 2d 758, 760-764 (Nassau Dist Ct 2002] [describing operation of statutory scheme]), *judgment affd by Laba v Petrullo*, 2003 WL 21005040, at *1 [App Term, 2d Dept, 9th & 10th Jud Dists Mar. 11, 2003].) Section 5104 (a) provides for a narrow exception to the bar on tort actions by when the passenger has suffered a "serious injury" within the meaning of § 5102 (d).

[491] *See Laba*, 2003 WL 21005040, at *1.

[492] *See* Transportation Law § 191.

or supply of such dwelling and such other similar property."[493] These regulations also require carriers to give prospective shippers a copy of a "Summary of Information for Shippers of Household Goods" in a regulatorily prescribed form when arrangements for shipping services are made in person.[494]

Carriers may "limit their liability for loss, damage or injury to property to an agreed-upon, declared, or released value of the property."[495]

2. Furniture Deliveries

As a general matter, the sale and delivery of furniture, as with other goods, is governed by the UCC.[496]

The General Business Law also has specific provisions governing delivery of furniture and appliances. GBL § 396-u (2) (a) prohibits a non-mail-order furniture or major household appliance dealer from failing to disclose conspicuously an estimated delivery date or date range. If a dealer fails to deliver the goods by the last date in that range, the dealer must advise the purchaser of the delay and the revised anticipated delivery date or date range.[497] The dealer must also advise the purchaser that if the goods are not delivered by the last original delivery date, the purchaser will have the option of canceling the contract and receiving a full cash refund or store credit, negotiating a new delivery date or date range, or modifying the

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[493] 17 NYCRR 841.0.

[494] 17 NYCRR 814.1 (d). If the services are not agreed upon in person, and the arranged time for pickup is more than 24 hours from the time the services were agreed upon, carriers must deliver this summary to the shipper in person or electronically before pickup. (*See id*. § 814.1 [e].)

[495] *Wenig Ginsberg Saltiel & Greene, LLP v Precision Movers, Inc.*, 2005 NY Slip Op 51679(U), at *4 (Civ Ct, Kings County Oct. 20, 2005), *affd* 2008 NY Slip Op 51058(U) (App Term, 2d Dept, 2d, 11th & 13th Jud Dists, Apr. 25, 2008); *see also* Transportation Law § 199.

[496] *See Y & N Furniture v Nwabuoku*, 190 Misc 2d 402, 404-405, 407-409 (Civ Ct, Kings County 2001) (holding that when a buyer rejects in bad faith an article of furniture that has been delivered and that conforms to the contract, yet does not then return the furniture, the buyer should be deemed to have accepted the furniture, and as a result be liable for its contract price; *cf. Ferraro v Perry's Brick Co*., 2011 NY Slip Op 50055(U), at *6 (Civ Ct, Richmond County Jan. 7, 2011) (applying UCC provisions to dispute over the purchase of a door).

[497] *See* GBL § 396-u (2) (b) (1).

contract by choosing new goods.[498] Refunds are due within two weeks of demand.[499]

Consumers who have been injured may recover treble damages unless the dealer shows by a preponderance of the evidence that the violation was unintentional and resulted from a bona fide error. Consumers may also recover reasonable attorney fees.[500]

These provisions do not apply to an article of furniture that is "in substantial part custom or custom finished."[501] The statute does not, however, define "custom" or "custom finished"; and lower courts have differed over how broadly (or narrowly) to interpret these terms.[502] Both broader and narrower interpretations of the text have some support as a matter of ordinary meaning. The broader reading, though, is a poor fit for the function of the "custom" exception, namely, carving out a limited set of circumstances in which it would be unnecessary or inappropriate to require a furniture manufacturer or dealer to provide a firm delivery estimate. That is, it is difficult to see why a buyer's ability to choose among several possible combinations offered by the seller of standard furniture attributes (size, color, finish, fabric)—as opposed to placing a one-off, made-to-measure order—should affect whether the seller can, and should, tell the customer when the finished product will be delivered. Adjudicators should therefore limit the scope of the "custom" exception in § 396-u (1) (c) to circumstances in which the article of furniture in question has been built to unique measurements and specifications.

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[498] *Id.* § 396-u (2) (b) (2).

[499] *Id.* § 396-u (2) (d). *See May v Devco Shops*, 156 Misc 2d 656, 660 (Civ Ct, NY County 1993) (holding that claimant was entitled to recover her $1,600.00 deposit paid for two Bombay commodes for furniture company's failure to comply with § 396-u (2) (b)).

[500] GBL § 396-u (7).

[501] *See id.* § 396-u (1) (c).

[502] *See Julio v Maurice Villency, Inc.*, 15 Misc 3d 913, 917-919 (Civ Ct, NY County 2007) (concluding that "an item of furniture ordered in one of several designs, materials, sizes, colors, or fabrics offered by a manufacturer to all of its customers" is "custom" if made pursuant to an order specifying a substantial portion of its components and elements"). *Compare Griffin v Corner Furniture Clearance Outlet*, 2020 NY Slip Op 50767(U), at *1 (Civ Ct, Bronx County June 30, 2020) (concluding that furniture is "custom" or "custom finished" within statute's meaning when "built according to measurements and specifications unique to the customer's order"), citing *Dweyer v Montalbano's Pool & Patio Center, Inc.*, NYLJ, Mar. 16, 2004 at 18 (Civ Ct, Richmond County Mar. 16, 2004), *affd on other grounds* 2005 NY Slip Op 52122(U) (App Term, 2d Dept, 2d, 11th & 13th Jud Dists, Dec. 15, 2015).

N. (Actions Against) Municipal Corporations

1. State Law Notice-of-Claim Requirement

As discussed above in the Statute of Limitations section,[503] claims against a municipal corporation are subject to two related procedural requirements.[504] Claimant must first file a notice of claim against the municipality within 90 days under GML § 50-e.[505] The notice must allege "the nature of the claim"; "the time when, the place where and the manner in which the cause of action arose"; and "the items of damage or injuries claimed to have been sustained."[506] The claimant must, under GML § 50-*i*, then bring the action itself within one year and 90 days after the incident or the event on which the claim is based.

2. Municipal "Pothole Law" Notice of Claim Requirements

With respect to personal-injury claims against New York City, § 7-201 (c) (2) of the City Administrative Code (often referred to as the "Pothole Law") imposes additional restrictions on claims for property damage or personal injuries caused by a defect in any sidewalk.[507] The Pothole Law bars these claims unless (i) written notice of the defective condition was actually given to the commissioner of transportation or any authorized person or department; or (ii) the condition previously caused property damage or personal injuries, and written notice thereof was given to a City agency; or (iii) the City had previously acknowledged the condition in writing, and failed to repair or remove the defect within 15 days after receipt

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[503] *See* section I(G), *supra* at 43.

[504] "Municipal corporation" includes a "county, city, town, village and school district." (General Construction Law § 66 [2].)

[505] Other statutes involving claims against school districts or public authorities similarly require notices of claim that comply with GML § 50-e. (*See* Education Law § 3813 [claims against school districts and school-district officials]; *O'Connell v Kings Park Cent. Sch. Dist.*, 2020 NY Slip Op 50146[U], at *1-2 [App Term, 2d Dept, 9th & 10th Jud Dists Jan. 30, 2020]; *see also e.g.* Public Authorities Law § 1744 [claims against New York City School Construction Authority or its employees]; *C.S.A. Contr. Corp. v New York City Sch. Constr. Auth.*, 5 NY3d 189, 192 [2005].)

[506] See GML § 50-e (2).

[507] Town Law § 65-a imposes similar requirements on claims against towns for defects in highways, bridges, and sidewalks.

of written notice.[508] If the requisite written notice has not been provided, claimant may recover only by establishing either that the City "affirmatively created the defect through an act of negligence, or that a special use resulted in a special benefit to the locality."[509]

Like GML § 50-e's notice-of-claim requirement, the Pothole Law's prior-written-notice requirement is a substantive element of a claimant's cause of action rather than merely a procedural requirement.[510] It therefore applies in the small-claims context.[511]

O. Pets

1. "Pet Shop Lemon Law"

GBL article 35-D, commonly called the "Pet Shop Lemon Law," allows consumers who purchase sick dogs or cats from commercial pet stores or breeders to obtain a refund, exchange, or reimbursement of veterinary costs. Consumers may obtain this relief if (i) within 14 days of the sale or 14 days of receiving written notice of their rights under the law (whichever comes last), they provide a certification from a licensed veterinarian that the animal was unfit for sale due to illness or the presence of symptoms of a contagious disease; or (ii) within 180 days of sale or receipt of written notice, they provide a certification from a licensed veterinarian that the animal was unfit for sale due to a congenital malformation that adversely affects the animal's health.[512]

In addition to claims under GBL article 35-D, an animal constitutes an item of "goods" under UCC 2-105, and the seller of the animal is a "merchant" within the meaning of UCC 2–104(1). Purchasers of an unfit

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[508] *See Bruni v City of New York*, 2 NY3d 319, 324-327 (2004) (discussing these requirements). *Bruni* held that for these purposes a "written acknowledgement" of the defective condition could be a solely internal document not provided to a member of the public. (*See id.* at 326-327.)

[509] *Yarborough v City of New York*, 10 NY3d 726, 728 (2008).

[510] *See Cipriano v City of New York*, 96 AD2d 817, 818 (2d Dept 1983).

[511] *See Lurie,* 154 Misc 2d at 954-955; *accord Costa v Town of Babylon*, 6 Misc 3d 7, 9 (App Term, 2d Dept, 9th & 10th Dists 2004) (construing prior-written-notice requirement of Town Law § 65-a).

[512] *See* GBL § 753 (1).

animal may therefore recover damages, such as veterinary expenses, under a theory of implied warranty of merchantability.[513]

2. Dog Bites

If a dog injures a person or another dog, the dog's owner (or the person controlling the premises where the dog lives) is strictly liable for the resulting harm if that person knew or should have known that the dog had so-called vicious propensities.[514] Knowledge of vicious propensities may be shown by proof of prior acts of a similar nature of which the owner had notice, or evidence that the dog "had been known to growl, snap or bare its teeth."[515] Other relevant factors may include whether the owner restrained the dog (and the manner of the restraint) and whether the dog had "a proclivity to act in a way" that, although not itself "dangerous or ferocious," still had a tendency to "put[] others at risk of harm."[516]

A claimant who cannot satisfy this strict-liability standard may not argue that the defendant is liable for negligent supervision of the animal.[517] That does not necessarily mean that *all* negligence-based claims are barred.[518] But it does mean that the most straightforward category of claims

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[513] *See Lombardo v Empire Puppies*, 2016 NY Slip Op 50218(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists, Feb. 23, 2016); *Badillo v Bob's Tropical Pet Ctr., Inc.*, 2013 NY Slip Op 51386(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists, Aug. 8, 2013) (collecting cases); *Hardenbergh v Schulder*, 2009 NY Slip Op 52454(U), at *2 (App Term, 2d Dept, 11th & 13th Jud Dists, Dec. 1, 2009).

[514] *See Collier v Zambito*, 1 NY3d 444, 446 (2004); *King v Hoffman*, 178 AD3d 906, 908 (2d Dept 2019); *Velez v Andrejka*, 126 AD3d 685, 685 (2d Dept 2015).

[515] *Collier*, 1 NY3d at 447.

[516] *Id. See Musella v Tufano*, 2016 NY Slip Op 51082(U) (App Term, 2d Dept, 9th & 10th Jud Dists July 8, 2016) (affirming judgment for defendant in small-claims action to recover veterinary bills, based on claimant's failure to establish that defendant's dog had vicious propensities or that defendant knew of any such propensities); *Stalzer v Deabrue*, 2016 NY Slip Op 50205(U), at *1-2 (App Term, 2d Dept, 9th & 10th Jud Dists 2016) (reversing judgment for defendant in small-claims action to recover veterinary bills and remanding for new trial, based on evidence that defendants had notice of their dog's "inclination and propensity to leap and jump in a manner which might cause injury to people or other dogs").

[517] *See Doerr v Goldsmith*, 25 NY3d 1114, 1123 (2015); *Bard v Jahnke*, 6 NY3d 592, 599 (2006).

[518] Thus, in *Hayes v Mia's Bathhouse for Pets* (57 Misc 3d 78, 79 [App Term, 1st Dept 2017]), the Appellate Term held that although claimant dog groomer could not recover merely for having been bitten by dog she was grooming, she *could* recover for additional personal injuries and medical costs stemming from defendant's negligent failure to screen dog for proper immunizations before providing dog for grooming.

(injuries suffered simply from having been bitten, scratched, knocked down, or the like) may be pursued only on the traditional strict-liability/vicious-propensities theory.

P. Pooling Money

1. Lotteries

The New York State Constitution and General Municipal Law strictly limit games of chance, such as raffles and similar events, "in which prizes are awarded on the basis of a designated winning number or numbers, color or colors, symbol or symbols determined by chance."[519] A participant in an illegal lottery game may not sue to recover a prize won in the game but not awarded.[520] At most, the General Municipal Law permits the participant to recover double the money paid for the lottery ticket and double the costs of the action.[521]

2. Pyramid Schemes

GBL § 359-fff prohibits "chain distributor schemes," commonly known as "pyramid schemes."[522] This statutory prohibition applies whenever an investor "is granted a license or right to solicit or recruit for profit or economic gain one or more additional persons" who are then themselves "granted such license or right upon condition of making an

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[519] GML § 186 (3); *see generally* NY Const, art 1, § 9 (restrictions on gambling and games of chance); GML art 9-A (limited authorization and regulation of games of chance, as permitted under art. 1, § 9 [2]); *see also* GML art 14-H (limited authorization and regulation of games of bingo).

[520] *See* General Obligations Law (GOL) § 5-417 (voiding contracts and agreements "made or executed . . . on account of any raffle . . . or for the delivery of any money, goods or things in action, so raffled for"); *Harris v Economic Opportunity Com'n of Nassau County, Inc.*, 142 Misc 2d 980, 981 (App Term, 9th & 10th Jud Dists 1989) (striking award to plaintiff of value of automobile won in a charitable raffle), *affd* 171 AD2d 223 (2d Dept 1991).

[521] *See* GOL § 5-423; *see also e.g. Harris,* 142 Misc 2d at 982; *Valentin v El Diario LaPrensa*, 103 Misc 2d 875, 878 (Civ Ct, Bronx County 1980).

[522] *See Brown v Hambric*, 168 Misc 2d 502, 507 (Yonkers City Ct 1995); *Cochran v Dellfava*, 136 Misc 2d 38, 39 (Rochester City Ct 1987). Pyramid schemes may also in some instances violate GBL § 349. (*See Brown*, 168 Misc 2d at 507.)

investment" and may then "further perpetuate the chain of persons who are granted such license or right upon such condition."[523]

At least two Civil Court decisions have held that a pyramid-type scheme sufficiently resembles a lottery that participants in the scheme may sometimes recover money paid into, and lost in, the scheme.[524] The Appellate Term, Second Department, disagrees: it has held that this type of recovery is categorically unenforceable as against public policy.[525] Given that promoting, offering, or granting participation in a pyramid scheme is statutorily barred as, essentially, a form of fraud—*i.e.*, conduct wrongful in itself—adjudicators should follow the Appellate Term's conclusion that a party who paid money into a pyramid scheme may not sue other participants in the scheme to recover that money.[526]

3. Sou-Sous/Rotating Savings Clubs

A sou-sou, or susu, "is a system of group savings in a rotating savings club that consists of participants who pay a coordinator a specific amount at regularly scheduled intervals."[527] The coordinator subsequently "disburses the entire amount collected to one participant," and "[a] different participant receives the entire amount each time until every participant has received a disbursement, and then a new cycle begins."[528] A sou-sou coordinator has standing to sue a participant for failing to make a required payment, because the coordinator is potentially liable to the other participants in the sou-sou to make up any shortfall.[529] Depending on the sou-sou's duration, an agreement to participate in the sou-sou may need to

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[523] GBL § 359-fff (2).

[524] *See Solon v Meuer*, 141 Misc 2d 993, 995 (Civ Ct, NY County 1987); *accord Pacurib v Villacruz*, 183 Misc 2d 850, 862-864 (Civ Ct, Bronx County 1999.)

[525] *See Ford v Henry*, 155 Misc 2d 192, 193-194 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 1993); *accord Cochran v Dellfava*, 136 Misc 2d 38, 40-41 (Rochester City Ct 1987); *Schaffer v Talerico*, 118 Misc 2d 66, 67 (Utica City Ct 1983).

[526] *Cf. Centi v McGillin*, 34 NY3d 1072, 1073 (2019) (holding that a party may sue to enforce the terms of a loan funded with illegal gambling proceeds if the loan itself, and its terms, are not "intrinsically corrupt or illegal").

[527] *Speare v Johnson*, 42 Misc 3d 882, 883 (Civ Ct, Bronx County 2014).

[528] *Id.*

[529] *Id.* The *Speare* court nonetheless dismissed the action, because the coordinator had failed to prove that she had, in fact, suffered damages in the form of having to pay the missing funds out of her own pocket.

be in writing to be enforceable (whether by coordinator or participants) under the statute of frauds.[530]

Q. Property Damage

A claimant may sue for damages to personal property under several theories of liability, including negligence and conversion.[531] As discussed above in the personal-property-damage section in Part I, claimant, to recover, must offer some evidence (either documentary or testimonial) of the property's value at the time of the alleged damage or destruction.[532]

R. Refunds

GBL § 218-a (1) requires "retail mercantile establishments" to post their refund policies "conspicuously." Failure to do so entitles a purchaser who has neither used nor damaged the goods to receive, up to 20 days from the date of purchase, a cash refund or store credit.[533] If the goods sold are defective and breach the warranty of merchantability of UCC 2-314, the purchaser is entitled to recover the purchase price from the seller under UCC 2-714, notwithstanding an otherwise-enforceable no-refund policy.[534]

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[530] *See Duncan v Campbell*, 2013 NY Slip Op 52286(U), at *4-5 (Civ Ct, Kings County Dec. 30, 2013) (holding that the statute of frauds rendered unenforceable an oral agreement to participate in a sou-sou lasting 20 months).

[531] *See e.g. Rowe v Silver & Gold Expressions*, 107 AD3d 1090, 1091 (3d Dept 2013) (affirming judgment for claimant in small-claims action for converting diamond ring); *Contreras v Parkash 1530 LLC*, 2018 NY Slip Op 51435(U) (App Term, 1st Dept Oct. 15, 2018) (affirming judgment for claimant in small-claims action for property damage caused by negligent repair of leaking radiator).

[532] *See* paragraph I(J)(8)(f), *supra* at 70; *see also e.g. White v Comunilife Scattered Site*, 2018 NY Slip Op 50582(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists, Apr. 13, 2018) (in small-claims action to recover damages for damage to a television set, affirming judgment for defendant based on claimant's failure to offer any "proof, documentary or testimonial, of the original cost of the television set, of its condition immediately before the fire, and of the extent of the damage it sustained as a result of the fire").

[533] GBL § 281-a (3).

[534] *Perel v Eagletronics*, 2006 NY Slip Op 50565(U), at *1 (Civ Ct, Kings County Mar. 31, 2006), citing *Baker v Burlington Coat Factory Warehouse*, 175 Misc 2d 951, 955 (Yonkers City Ct 1998).

S. Residential Housing Issues

As a general matter, it is important to understand that small-claims adjudicators—unlike judges in the housing parts of the Lower Courts—lack jurisdiction to grant equitable relief, such as awarding possession of a house or apartment or directing repairs.[535]

1. Attorney Fees

The Housing Stability and Tenant Protection Act (HSTPA), enacted by the Legislature in June 2019, added a section to the Real Property Actions and Proceedings Law (RPAPL) providing that "[n]o fees, charges or penalties other than rent may be sought in a summary proceeding pursuant to this article, notwithstanding any language to the contrary in any lease or rental agreement."[536]

As a result, going forward, a significant number of these claims—particularly for attorney fees incurred in summary proceedings—will be brought as small-claims actions.

In an attorney-fee small-claims action, the adjudicator must first determine whether an applicable provision of the lease expressly provides

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[535] *See* paragraph I(D)(1)(ii), *supra* at 12.

[536] RPAPL 702 (1). As of this writing, the scope of this provision has not been construed by an appellate court with respect to attorney fees. Several trial-court decisions have held that § 702 (1) categorically bars attorney-fee claims in summary proceedings. *See Magnano v Stewart*, 2021 NY Slip OP 50466(U), at *3 (Town of Ossining Just Ct, May 20, 2021); *950 Rutland Road Co. LLC v Lord*, 2020 NY Slip Op 51615(U), at *4-5 (Civ Ct, Kings County Dec. 21, 2020); *744 E. 215 LLC v Simmonds*, 2019 NY Slip Op 51996(U), at *4 (Civ Ct, Bronx County, Dec. 9, 2019); *Warren v Ramsey*, 2019 WL 7667663, at *1 (Civ Ct, Queens County Nov. 20, 2019).

Some commentators have noted that RPL § 234 still provides that a tenant may sometimes assert a counterclaim for attorney fees in a summary proceeding—thereby suggesting that RPAPL 702 (1) does not bar attorney-fee claims categorically. RPL § 234, though, implies a covenant permitting a tenant to recover attorney fees only "*as provided by law*" in an action or through a counterclaim in an action or summary proceeding. (RPL § 234 [1] [emphasis added].) And, under RPAPL 702, an attorney-fee counterclaim in a summary proceeding is no longer provided for by law. To be sure, it is generally undesirable to interpret statutory language as impliedly having been rendered meaningless. The alternative here, though, would be the undesirable course of reading the broad, categorical language of RPAPL 702 (1) to mean something other than what it clearly says. Additionally, the purpose of RPL § 234 is to put landlords and tenants on equal footing with respect to attorney fees. It would be anomalous to read language in that provision *left unchanged by HSTPA* as now giving tenants more avenues for seeking attorney fees under HSTPA than landlords enjoy.

for the award of attorney fees to the prevailing party in actions brought by the landlord under the lease—and, if so, whether RPL § 234 also implies an additional attorney-fee provision into the lease for tenants.[537] The adjudicator must then determine which party prevailed in the underlying Housing-Court summary proceeding. If the Housing Court judge found that one side or the other prevailed, that determination constitutes the law of the case and should not be reexamined by the small-claims adjudicator.[538]

If the Housing Court judge did not make a prevailing-party determination (whether for attorney-fee purposes or otherwise), the small-claims adjudicator must do so in the first instance. In doing so, the adjudicator must consider the "true scope of the dispute litigated and what was achieved within that scope"—*i.e.*, whether the party claiming fees "prevail[ed] on the central claims advanced, and receive[d] substantial relief in consequence thereof."[539] Relatedly, the adjudicator must determine whether a disposition in a party's favor constituted the "ultimate outcome" in proceeding.[540] A dismissal without prejudice will not itself constitute an "ultimate outcome" unless it is evident that the petitioner may not recommence the proceeding, or that the petitioner has not recommenced the proceeding within a reasonable time.[541]

An adjudicator who determines that a party prevailed in the underlying Housing Court proceeding must go on to consider the

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[537] For a discussion of the purpose and functioning of RPL § 234, see *Graham Court Owner's Corp v Taylor*, 24 NY3d 742, 747-751 (2015). *See also Marsh v 300 W. 106th St. Corp.*, 95 AD3d 560, 560 (1st Dept 2012); *Kattan v 119 Christopher LLC*, 2020 NY Slip Op 51469, at *3-4 (Sup Ct, NY County Dec. 11, 2020) (G. Lebovits, J.).

[538] *See e.g. Erickson v Cross Ready Mix, Inc.*, 98 AD3d 717, 717 (2d Dept 2012) (describing law-of-the-case doctrine).

[539] *Sykes v RFD Third Ave. I Assocs., LLC*, 39 AD3d 279, 279 (1st Dept 2007) (internal quotation marks omitted).

[540] *Sacchetti v. Rogers*, 2003 NY Slip Op 51259(U), at *1 (App Term, 1st Dept Sept. 10, 2003), citing *Centential Restorations Co. v Wyatt*, 248 AD2d 193, 197 (1st Dept 1998).

[541] *See id.*; *accord Murray House Owners Corp. v Welter*, 2019 NY Slip Op 51013(U), at *1 (App Term, 1st Dept 2019) (holding that the ultimate outcome was in tenant's favor when landlord had not recommenced a holdover proceeding for 11 months following dismissal without prejudice); *Freeman Street Props., LLC v Coirolo*, 2007 NY Slip Op 52299(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Nov. 29, 2007) (modifying motion-court order to grant summary judgment dismissing landlord's proceeding without prejudice to its recommencement in the proper forum, and grant summary judgment to landlord dismissing without prejudice tenant's attorney-fee counterclaim); *Glebow Realty Assocs v Dietrich*, 2020 NY Slip Op 51172(U), at *3 (Civ Ct, NY County Oct. 7, 2020) (denying without prejudice tenant's attorney-fee motion, when landlord indicated that its delay in recommencing the underlying proceeding was largely due to pandemic-related delays).

appropriate amount in attorney fees to award. A prevailing-party claimant seeking fees must demonstrate that the amount sought is reasonable and not excessive.[542] What constitutes a "reasonable" fee is within the adjudicator's discretion,[543] considering factors such as counsel's typical rate; "the difficulty of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charged for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved."[544]

The adjudicator has the discretion to deny a request for attorney fees based upon "equitable considerations," particularly circumstances under which it would be manifestly unfair to award fees.[545]

Amounts incurred by the prevailing party in prosecuting the party's claim for an award of attorney fees, so-called "fees on fees," may not be awarded absent "clear language" in the lease "expressly providing for an award of fees on fees."[546]

2. Breach of Warranty of Habitability

Real Property Law § 235-b (1) implies a warranty of habitability in residential leases in New York. Under this provision, "[i]n every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant" that (i) "the premises so leased or rented," including common areas, are "fit for human habitation"; (ii) the premises are fit "for the uses reasonably intended by the parties"; and (iii) the "occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety."

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[542] *RMP Capital Corp. v Victory Jet, LLC*, 139 AD3d 836, 839 (2d Dept 2016).

[543] *Nestor v Britt*, 16 Misc 3d 368, 375 (Civ Ct, NY County 2007) (G. Lebovits, J.), *affd* 2008 NY Slip Op 51042(U) (App Term, 1st Dept, May 23, 2008).

[544] *Morgan & Finnegan v Howe Chem. Co., Inc.*, 210 AD2d 62, 63 (1st Dept 1994); *see also Ross v Congregation B'Nai Abraham Mordechai*, 12 Misc 3d 559, 563-570 (Civ Ct, NY County 2006) (G. Lebovits, J.).

[545] *Greenbrier Garden Apts. v Eustache*, 2016 NY Slip Op 50210(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists, Feb. 22, 2016); *see also e.g. Wells v. E. 10th St. Assocs.*, 205 AD2d 431, 431 (1st Dept 1994) (affirming denial of attorney fees).

[546] *IG Second Generation Partners, L.P. v Kaygreen Realty Co.*, 114 Ad3d 641, 643 (2d Dept 614).

This implied warranty of habitability requires the landlord to prevent tenants from being subjected to conditions that materially affect their health and safety, or which deprive the tenant of "the essential functions which a residence is expected to provide."[547] Absent a separate agreement between landlord and tenant, though, the warranty does not require the landlord "to ensure that the premises are in perfect or even aesthetically pleasing condition."[548] Determining whether a given condition does or does not qualify as a breach of the warranty of habitability is, by its very nature, an inexact inquiry within the court's discretion.

The landlord's obligation under this warranty to maintain the premises in a safe and habitable condition is nondelegable and nonwaivable—including when the unsafe condition resulted from the acts of third parties or a natural disaster.[549] A tenant must show that the landlord had actual or constructive notice of the unsafe condition at issue.[550] Upon making that showing, the tenant may bring a damages action to recover an abatement of rent already paid—whether or not the apartment is a lawful dwelling unit—or may raise the warranty as a defense or counterclaim in a nonpayment action brought by the landlord.[551] Damages are limited to "the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach."[552]

(a) Bedbugs

A bedbug infestation may constitute a breach of the statutorily implied warranty of habitability if claimant establishes that the infestation "impacted or affected his health, safety and welfare and use of the

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[547] *Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 328 (1979).

[548] *Id.*

[549] *See Sargent Realty Corp. v Vizzini*, 101 Misc 2d 763, 765 (Civ Ct, NY County 1979), quoting *Mitchell*, 47 NY3d at 327; *accord Richardson v Akelius Real Estate Mgt. LLC*, 2021 NY Slip Op 50788(U), at *4 (Civ Ct, NY County Aug. 9, 2021).

[550] *See 386 Ft. Washington Realty LLC v Brenes*, 2015 NY Slip Op 50286(U), at *1 (App Term, 1st Dept Mar. 9, 2015).

[551] *See Mateo v Anokwuru*, 57 Misc 3d 61, 62 (App Term, 1st Dept 2017).

[552] *Richardson*, 2021 NY Slip Op 50788(U), at *5, quoting *Mitchell*, 47 NY2d at 329; *accord Joseph v Apartment Mgt. Assoc., LLC*, 2011 NY Slip Op 50303(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Feb. 25, 2011) (collecting cases).

premises."[553] In determining the amount of a rent abatement for a bedbug infestation, courts have considered factors like the size of the premises, the severity of the infestation, the landlord's efforts to eradicate the bedbugs, and tenant's use of the premises during the course of the infestation.[554]

(b) Mold/flood damage

The presence of mold on the premises may, if sufficiently hazardous, constitute a breach of the warranty of habitability.[555] One possible source of mold exposure is work by third-party contractors leading to the infiltration of water and particulates into a tenant's apartment.[556] Another source is water leaks from another apartment within the building.[557]

In considering whether and to what extent water damage leads to a breach of the warranty of habitability, courts consider factors such as the number, frequency, and extent of leaks and floods; the severity and duration of resulting damage to the apartment, and the landlord's efforts to remedy the damage (or to prevent other tenants from engaging in conduct leading to leaks or floods).[558]

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[553] *Ludlow Properties, LLC v Young*, 4 Misc 3d 515, 519 (Civ Ct, NY County 2004) (awarding 45% rent abatement for period of infestation); *see also JWD & Sons, Ltd. v Alexander*, 2011 NY Slip Op 51962(U), at *3-4 (Ossining Just Ct Sept. 28, 2011) (awarding 50% rent abatement for duration of 81-day infestation); *Bender v Green*, 24 Misc 3d 174, 185 (Civ Ct, NY County 2009) (awarding 12% rent abatement for duration of four-month infestation).

[554] *See id.*; *see also e.g. Valoma v G-Way Mgt. LLC*, 2010 NY Slip Op 51943(U), at *2-3 (Civ Ct, Kings County Nov. 3, 2010) (awarding 50% rent abatement and directing return of tenants' security deposit).

[555] *See Wienecke v Evans*, 2007 NY Slip Op 50887(U), at *3-4 (Webster Just Ct Apr. 30, 2007) (holding that tenant's evidence of some mold in the premises was insufficient to establish a breach of warranty).

[556] *See Daitch v Naman*, 25 AD3d 458, 459 (1st Dept 2006) (affirming denial of summary judgment in tenant's action against landlord for mold exposure assertedly resulting from negligence of independent building-renovation contractor).

[557] *See Grinberg v Eissenberg*, 58 Misc 3d 84, 86-87 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017) (holding building owner liable for breach of warranty of habitability based on owner's failure to repair water damage and mold in plaintiff's apartment that had been caused by a water leak originating from the toilet in the upstairs apartment).

[558] *See Wallace 18 LLC v Tucker*, 2020 NY Slip Op 50031(U), at *7 (Civ Ct, Bronx County Jan. 14, 2020) (collecting cases); *see also 3 Green Street, LLC v Caceres*, 2019 NY Slip Op 50808(U), at *2-3 (Hastings on Hudson Just Ct May 24, 2019) (awarding rent abatement for warranty-of-habitability breach due to water damage and other conditions, in action in which "superintendent's written response" to complaints by tenant of leaky roof was "O no that sucks").

3. Mitigation of Damages

Under HSTPA, when a residential tenant vacates the leased premises before the lease's scheduled expiration, the landlord has a duty to mitigate damages. The landlord must undertake reasonable, good-faith efforts to relet the premises at the fair-market rental rate or the rate set in the unexpired lease, whichever rate is *lower*.[559] The landlord's entering into a lease with a new tenant extinguishes the former tenant's liability for any additional rent payments.[560] The burden of proof is "on the party seeking to recover damages"—that is, in most cases, the landlord.[561]

4. Personal Property Damage

A landlord "has no absolute right to retain or destroy personal property belonging to a tenant."[562] Even when the tenant has been "legally dispossessed, the landlord's rights extend only to the real property," without a "concomitant right to use or retain the tenant's personal property."[563] If a claimant prevails on a claim of conversion against a current or former landlord, the landlord is responsible for the costs of the personal items that were not returned to claimant.[564]

5. Security Deposits

Sections 7-103 and 7-108 of General Obligations Law (GOL) govern security deposits for residential tenants.

GOL § 7-103 makes clear that security deposits remain the tenant's property. Section 7-103 (1) requires landlords to maintain tenants' security deposits in a separate account, rather than commingling the deposits with the landlord's own funds.[565] A landlord's violating this requirement

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[559] *See* RPL § 227-e; *see 14 E. 4th St. Unit 509 LLC v Toporek*, 203 AD3d 17, 23-24 (1st Dept 2022), *lv dismissed* 38 NY3d 1019 (2022) (discussing this provision).

[560] *See* Real Property Law § 227-e.

[561] *Id.*

[562] *Glass v Wiener*, 104 AD2d 967, 968 (2d Dept 1984).

[563] *Id.*

[564] *See Khan v Pickens*, 2019 NY Slip Op 50039(U), at *9 (Albany City Ct Jan. 11, 2019).

[565] *See LeRoy v Sayers*, 217 AD2d 63, 68 (1st Dept 1995).

constitutes conversion, entitling the tenant to the immediate return of the deposit; and the landlord "forfeits any right it had to avail itself of the security deposit for any purpose," including to offset unpaid rent or other debts owed by the tenant to the landlord.[566] A violation of the § 7-103 (1) commingling prohibition may be cured during the term of the lease.[567]

GOL § 7-108, as amended by HSTPA, has several significant provisions restricting how landlords may charge and handle security deposits. These provisions apply to any lease or rental agreement, or any renewal of a lease or rental agreement, entered into on or after HSTPA's effective date of July 14, 2019.[568]

GOL § 7-108 (1-a) (a) limits the amount of a security deposit to one month's rent. Section 7-108 (1-a) (b) requires the landlord to return the full amount of the deposit to the tenant when the tenant vacates the premises, absent limited circumstances itemized in the statute—*i.e.*, nonpayment of rent or utilities, costs from moving or storing the tenant's belongings, or costs to remedy damage caused by the tenant beyond ordinary wear and tear.[569] A lease provision permitting the landlord to retain part or all of the security deposit on other grounds, for example, to cover the cost of repainting the apartment or remedying ordinary wear and tear, is unenforceable as against public policy.[570]

Section 7-108 (1-a) (e) imposes a strict deadline to return security deposits: The landlord must return the deposit within 14 days of the tenant's vacating the premises, and must provide the tenant "an itemized statement indicating the basis for the amount of the deposit retained, if any." If the landlord fails to return the deposit (and/or provide the required statement) within the 14-day statutory period, the landlord forfeits any right to retain

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[566] *Jimenez v Henderson*, 144 AD3d 469, 470 (1st Dept 2016) (internal quotation marks omitted).

[567] *See DeVries v Jim Duffy LLC*, 2021 NY Slip Op 50068(U), at *1 (App Term, 1st Dept Jan. 29, 2021), citing *Harlem Capital Ctr., LLC v Rosen & Gorden, LLC*, 145 AD3d 579 (1st Dept 2016).

[568] If a lease was entered into before July 14, 2019, and merely *extended* after that date—as distinct from being renewed—the provisions of HSTPA would not apply to that lease.

[569] *See Yafei Li v Dao Ying Gao*, 2021 NY Slip Op 50478(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists May 20, 2021); *Gable v Cahill*, 2020 NY Slip Op 51135(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Oct. 2, 2020).

[570] *See Felder v Fleet Mills, LLC*, 2021 NY Slip Op 50713(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists July 22, 2021).

any of the deposit.[571] If the tenant brings an action to recover part or all of a security deposit withheld by the landlord, the landlord "shall bear the burden of proof as to the reasonableness of the amount retained."[572] To defeat liability, the landlord must establish (i) damage by tenant to the premises beyond ordinary wear and tear; and (ii) the landlord's reasonable costs to remedy the damage.[573]

If the tenant prevails in an action to recover a security deposit, the landlord shall be "liable for actual damages."[574] If the court also finds that the landlord's failure to return the security deposit within the 14-day period was "willful," the landlord shall also be liable for "punitive damages."[575] A court may award punitive damages under this provision "of up to twice the amount of the deposit or advance"—not merely up to twice the amount of actual damages.[576]

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[571] *See* GOL § 7-108 (1-a) (e); *Toporek*, 203 AD3d at 24-26 (discussing this provision).

[572] *Id.* § 7-108 (1-a) (f).

[573] *See Hamilton v Bosko*, 54 Misc 3d 386, 388 (Cohoes City Ct 2016); *accord Mills v Lynch*, 2015 NY Slip Op 51046(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists, July 7, 2015); *Camacho v Paduch*, 60 Misc 3d 837, 843-844 (Middletown City Ct 2018). In seeking to establish the cost of repairs, a landlord must provide paid receipts, two itemized estimates, or other evidence satisfying the evidentiary requirements of Lower Courts Acts § 1804, or of § 1804-A of the CCA, UDCA, and UCCA. (*See Trimble v Hughes*, 2020 NY Slip Op 50742[U], at *1 [App Term, 2d Dept, 9th & 10th Jud Dists, June 18, 2020]; *see also* paragraph I(J)(8)(g), *supra* at 70.)

[574] GOL § 7-108 (1-a) (g). The tenant is also entitled to prejudgment interest on the amount recovered at the statutory interest rate of 9%. (*See Scotti v Barrett*, 166 AD3d 698, 699 [2d Dept 2018], citing *23 E. 39th St. Mg. Corp. v 23 E. 39th St. Dev., LLC*, 134 AD3d 629, 632 [1st Dept 2015]; *Karole v 340 W. End Ave., LLC*, 2022 NY Slip Op 50317[U], at *4 [Civ Ct, NY County Apr. 6, 2022].)

[575] *See id.*

[576] *See id.*; *see also Karole*, 2022 NY Slip Op 50317[U], at *3-4. An interesting question is whether a small-claims *arbitrator*, not just a judge, may award multiple damages to a tenant under this provision. New York public policy bars arbitrators from awarding punitive damages. (*See Kudler v Truffelman*, 93 AD3d 549, 550 [1st Dept 2012] [vacating judgment confirming arbitral award of punitive damages]; subsection [I][K][3], *supra* at 74.) In considering whether the multiple-damages provision at issue is "punitive in nature" (*Svenson v Swegan*, 133 AD3d 1279, 1281 [4th Dept 2015]), an important factor is whether the claimant must prove that the landlord's conduct was sufficiently reprehensible to meet the high bar ordinarily required for an award of punitive damages. (*See Backus v Lyme Adirondack Timberlands II, LLC*, 144 AD3d 1454, 1458 [3d Dept 2016], citing *Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 491 [2007].) As of July 2022, it is unclear from the statute—and caselaw has not yet clarified—whether proving a "willful" failure to return the security deposit requires a claimant to show only that the retention of the deposit was intentional (which might point away from the damages being punitive), or

T. Vendors

1. Special Event Vendors

A claimant can bring a breach-of-contract claim against a wedding venue for providing inadequate food and services; and, if successful, may recover the difference in value between the services contracted-for and those delivered.[577] Depending on the circumstances, a claimant may also be able to recover under other theories of liability, such as negligent misrepresentation or a violation of GBL § 349.[578]

2. Photography/Videography

Courts have held that a contract for event photographs imposes an implied obligation on the photographer to take pictures in a reasonably skillful and workmanlike way consistent with standard industry practices.[579] If that standard is met, stylistic disagreements between the couple and the photographer over the subjects and composition of the photographs taken will not give rise to a claim, absent specific contractual requirements for certain kinds of photographs (or perhaps express directions by the couple to the photographer at the wedding itself).[580]

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entails a showing of "some element of turpitude" (which might point toward the damages being punitive). (*Karole*, 2022 NY Slip Op 50317[U], at *4 [discussing this issue] [internal quotation marks omitted].) That the statute's multiple-damages award will in many instances be extra-compensatory, as noted above; and that the statute itself refers to these damages as "punitive" each point toward treating the damages as punitive in nature, and thus beyond the power of a small-claims arbitrator to award. At a minimum, prudence suggests that a judge presiding in small-claims court not refer out for arbitration a claim seeking damages under GOL § 7-108 (1-a) (g).

[577] *See Smith-Nedd v Crystal Manor, Inc.*, 2012 NY Slip Op 51657(U), at *2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Aug. 24, 2012); *Griffin-Amiel v Frank Terris Orchestras*, 178 Misc 2d 71, 76 (Yonkers City Ct 1998) (holding that a wedding band breached its contract in failing to produce a specific contracted-for singer).

[578] *See Griffin-Amiel*, 178 Misc 2d at 77-78.

[579] *See Whalen v Villegas*, 40 Misc 3d 310, 316 (Nassau Dist Ct 2013) (wedding photographer), citing *Andreani v Romeo Photographers & Video Productions*, 2007 NY Slip Op 52141(U), at *2 (Civ Ct, Kings County Nov. 7, 2007) (same).

[580] *See Roberto v Star Photo & Video*, 2008 NY Misc LEXIS 4749 (Yonkers City Ct June 30, 2008).

3. Wedding Dresses

The UCC applies to the purchase of a wedding dress. If the buyer accepted the dress after having an opportunity to inspect it (and to reject it for any contractual nonconformity), UCC 2-607 limits the buyer's ability to later revoke acceptance and sue for the dress's purchase price.[581] Conversely, if a dress accepted on condition that the seller will make alterations still does not fit properly or appear as depicted in the manufacturer's catalogue after alteration sessions, the buyer may recover the dress's purchase price under UCC 2-711.[582]

If the buyer's rejection of a wedding dress is wrongful, the seller may recover damages under UCC 2-708. Alternatively, the seller may recover the full contract price under UCC 2-709 if the seller establishes that the dress could not be resold at a reasonable price, or that resale is impracticable or unavailing under the circumstances.[583]

U. Wage Claims

A claimant working as an employee may bring a small-claims action to recover for lost wages or tips under Labor Law article 6,[584] and may bring an action for unpaid minimum wages or overtime under Labor Law article 19.[585] The protections of Labor Law articles 6 and 19 apply to all employees

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[581] *Cuccia v Valentina Bridal Salon*, 2007 NY Slip Op 50360(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Feb. 16, 2007) (bridesmaid's gown).

[582] *See D'Avino v Princess Bridals, Inc.*, 2020 NY Slip Op 51020(U), at *1 (App Term, 2d Dept, 9th & 10th Jud Dists, Aug. 27, 2020). The holding in *D'Avino* would presumably also extend to the costs of alterations to the dress, as well as the price of the dress itself. (The seller in the case had already agreed to refund alteration costs.)

[583] *Creations By Roselynn v Costanza*, 189 Misc 2d 600, 601 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2001). If the adjudicator determines that the seller may recover the full contract price, it may be appropriate to enter a conditional judgment under Lower Court Acts § 1805, or § 1805-A of the CCA, UDCA, and UCCA, directing the seller to turn over the dress to the buyer. (*See id.*)

[584] *See* Labor Law § 198. An "employee" under Labor Law article 6 is "any person employed by an employer in an employment." (Labor Law § 190 [2].) Government agencies are not considered "employers" for these purposes. (*See* Labor Law § 190 [3].)

[585] *See* Labor Law § 663.

within their statutory definitions, regardless of an employee's immigration status or (lack of) work authorization.[586]

The Labor Law's implementing regulations set minimum hourly wage rates and overtime rates.[587] For purposes of determining the wages to which an employee is entitled, courts look either to the employee's hourly wages (if the employee is paid on an hourly basis) or to the employee's total earnings divided by hours worked per week (if the employee is paid on a non-hourly basis).[588] Labor Law § 198 (1-a) entitles an employee who prevails on an unpaid-wages claim to recover the unpaid wages, the same sum again in liquidated damages, and reasonable attorney fees. Labor Law § 663 (1) affords the same remedies to an employee who prevails on a minimum-wage or overtime claim.

In New York City, a claimant working on a freelance basis, rather than as an employee, is afforded protections by the City's Freelance Isn't Free Act (FIFA).[589] FIFA entitles freelancers to written contracts on request from the hiring party for any work that exceeds $800 in compensation over a 120-day period, timely payment for completed work, and freedom from retaliation.[590] A claimant suing for a FIFA violation may obtain damages (including double damages for untimely payment of compensation) and attorney fees.[591]

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[586] *See Nizamuddowlah v. Bengal Cabaret, Inc.,* 69 AD2d 875, 876 (2d Dept 1979); *Hobart v Mendelson*, 2020 NY Slip Op 50161(U), at *2)App Term, 2d Dept, 9th & 10th Jud Dists 2020) (in small-claims decision, affirming award of unpaid wages withheld by the employer due to the employee refusing to provide the employer with his Social Security number and address); *Garcia v. Pasquareto*, 11 Misc. 3d 1, 2-3 (App Term, 2d Dept, 9th & 10th Jud Dists 2004) (in small-claims action, reversing trial-court's decision dismissing a wage-and-hour claim on the ground that the underlying employment agreement between an employer and an unauthorized immigrant was putatively illegal).

[587] *See e.g*. 12 NYCRR pts 142, 146.

[588] *See* 12 NYCRR 142-2.16; *see also Julien v Bischoff*, 2020 NY Slip Op 50738(U), at *1-2 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists, June 12, 2020) (discussing this provision).

[589] *See* NYC Admin Code §§ 20-927 to 20-936. *See also e.g. St Clair v Sansal*, 73 Misc 3d 492 (Civ Ct, NY County 2021); *Turner v Sheppard Grain Enters., LLC*, 68 Misc 3d 385 (Sup Ct, NY County 2020); *Van Den Berg v Clinton Hall Holdings, LLC*, 2019 NY Slip Op 32036(U), at *3-4 (Sup Ct, NY County July 9, 2019) (G. Lebovits, J.).

[590] *See* NYC Admin Code §§ 20-928 (written contract), 20-929 (timely payment), 20-930 (retaliation).

[591] *See* NYC Admin Code § 20-933 (b). This provision also permits a claimant who establishes a violation of FIFA's timely payment requirements to obtain injunctive relief. (*See id*. at § 20-933 [b] [3].) Small Claims Court lacks jurisdiction to award injunctive relief, however.

CHAPTER III

NUTS AND BOLTS OF SMALL-CLAIMS ARBITRATION

Small-claims arbitration provides a crucial contribution to the work of the small-claims courts where it exists, particularly in New York City. Arbitrators have long helped ensure the prompt and fair adjudication of many, many small-claims actions. In doing so, arbitrators continue to earn the respect and appreciation of the members of the public whose disputes they resolve.

To become a small-claims arbitrator, one must be a licensed and registered New York attorney in good standing and have been admitted to the New York bar for at least five years.[592] Attorneys must complete a training session offered by the Small Claims Arbitrators Association,[593] must spend a day (or evening) observing an experienced arbitrator, and complete a brief interview. The Arbitrators Association provides a list of qualified arbitrators to the Civil Court clerk's office, which then invites arbitrators to serve.

This Chapter of the *Manual*, after briefly discussing some of the qualities of good arbitrators, will go step-by-step through the process of conducting and deciding an arbitration or an inquest on referral of the judge presiding.

A. The Qualities of a Good Arbitrator

Arbitrators should be dignified, courteous, and attentive.[594] Sarcasm is inappropriate; attempts at humor may be misconstrued. Litigants are

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[592] Attorneys employed by the New York State courts with at least one year of court experience need only have been admitted to the New York bar for two years, rather than five.

[593] Training sessions are currently announced by emails from the Small Claims Arbitrators Association's email lists and on the Associan's EventBrite webpage, https://www.eventbrite.com/o/small-claims-arbitrators-association-15590509945 (last visited July 21, 2022). Notices of upcoming training sessions are also given to many local bar associations through the Network of Bar Leaders to disseminate to their members. (*See e.g.* Asian American Bar Association of New York, Small Claims Arbitrators Association Training, https://www.aabany.org/m/ event_details.asp?id=1263281 [last visited July 21, 2022].)

[594] *See* Rules Governing Judicial Conduct, 22 NYCRR 100.3 (B) (3) (requiring judges to be "patient, dignified and courteous"). Arbitrators are subject to these rules

often fatigued (many having worked all day), intimidated, disoriented, or frustrated by their underlying dispute or their case. Many are in court for the first (and last) time. An arbitrator must be empathetic and patient, while maintaining control over the proceedings to prevent shouting, insults, wild gesticulations, or other abusive behavior.[595] Although it may be more effective to let go small instances of a party's blowing off steam, rather than keeping a tight lid on all interruptions, an arbitrator should not let testimony or questioning become intimidating, racist, sexist, or otherwise offensive.

Arbitrators must be—and must appear to be—impartial and even-handed. They should not greet, or address by first name, attorneys they know, and they should not discuss personal matters with anyone connected to a case they are adjudicating. Arbitrators must recuse themselves if they witnessed the events in issue, if they or a family member have a financial interest at stake, or if they have a personal relationship with a party or attorney. Arbitrators who are acquainted with a party or attorney (for example, through serving on a bar-association committee with an attorney years ago), but who believe that they can still be impartial, should disclose the acquaintance, indicate that this will not affect their impartiality or the decision, and ask whether any party objects to the arbitrator's presiding over the case. (If there is a reason for the arbitrator to recuse, the arbitrator should not ask an unrepresented litigant to waive recusal.) Because small-claims arbitration is a matter of consent, arbitrators should disqualify or recuse themselves if a party raises a reasonable objection to their hearing a case.

Arbitrators may not communicate ex parte with parties or witnesses. Before, during, *and* after the arbitration, and during any settlement discussions, everything an arbitrator says either to any party or any witness should be within the sight and sound of all parties in attendance.[596]

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because they "perform judicial functions within the judicial system." (*Id.* at § 100.6 (A). For the same reason, arbitrators are shielded by judicial immunity if sued (*see Sullivan v Elliott*, 157 Misc 2d 456, 457 [Suffolk Dist Ct 1993]); and they are entitled to legal representation from the State in such suits under Public Officers Law § 17.

[595] *See* Gerald Lebovits, *Freedom and Equal Justice in Small Claims Court*, NYLJ, May 1, 1997, at S3 col 1 (emphasizing that "[e]ach proceeding must be conducted with dignity" and that "[l]itigants, witnesses and counsel must always be treated with respect"), available at https://works.bepress.com/gerald_lebovits/92/ (last visited July 21, 2022).

[596] Arbitrators may properly speak with judges, court staff, or other arbitrators outside the presence of the parties.

Arbitrators should avoid giving clues about how they are leaning toward deciding the case—whether through facial expressions, body language, or stating preliminary impressions of the quality of the parties' arguments.

In sum, arbitrators "should aspire to be the judge before whom they always wanted to appear: dignified, courteous, prompt decisionmakers, in command, honest in assessing facts, and learned in the law, with no agenda other than to do what is right under the law."[597]

B. The Arbitral Process

Arbitrators should come to court with several pens (and a copy of the *Manual*). Court personnel should supply arbitrators with the necessary case-decision, notice-of-judgment, and stipulation-of-settlement forms.

Arbitrators must swear in or be sworn in each time they sit. In some locations, the judge or clerk swears in the arbitrators. New York County arbitrators "swear in" by signing a sign-in sheet that includes the requisite oath/affirmation language.

1. Litigants' Electing Arbitration

The method by which litigants elect to have their case arbitrated rather than decided by the judge (assuming arbitrators are available) has varied over time.

At times, the process has been more formal—litigants electing arbitration through answering a calendar call by saying "ready," rather than electing to have the judge hear their case by saying "by the court." Alternatively, judges may suggest to parties, after a case conference has shown that the parties are ready to proceed and not interested in settling, that they may wish to have their case arbitrated. Judges may point out to litigants that arbitration is a more informal and relaxed way of having their cases heard under the same substantive law, compared to trying the case to a judge wearing black robes. Judges may also note that if the litigants choose to arbitrate, they can have their case heard immediately and are likely to get a decision that day (or evening), rather than having to wait until a judge is available to try the case. (During this time, thoughtful judges will greet the

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[597] Gerald Lebovits, *President's Message*, 9 Small Claims J 2 (Fall 1997), available at https://works.bepress.com/gerald_lebovits/141/ (last visited July 21, 2022).

arbitrators and thank them for their service to the court system and the public.)

Historically, judges and clerks have also encouraged parties to settle cases before trained mediators and law students.[598] The use of mediation benefits litigants by enabling them to resolve their disputes without the need for a trial, and significantly eases the trial caseload. Although these mediation programs have been brought to a halt by the COVID-19 pandemic, we hope it will return as the pandemic's effects ebb.

If the litigants select arbitration, a clerk or court officer will escort the litigants and their attorneys and entourages (if any) to the arbitration room or area. The clerk or court officer will also give the arbitrator the casefile, which includes the case-information form, a decision form, and any other documentation for the case. The case-information form (and the decision form) indicates the names of the parties, the type of case, and the amount of damages the claimant seeks.[599]

If the arbitration is being held in a courtroom, the arbitrator should consider whether to sit on the judge's bench. If the arbitrator is recording the trial, it might be necessary to sit on the bench to talk into the microphone system.[600] On the other hand, sitting on the bench could erode the informality of the proceeding, undercutting an important benefit of arbitration—and doing so runs the risk of giving litigants the erroneous impression that the arbitrator is a judge.

Arbitrators should introduce themselves to the parties, giving both their name and their role as arbitrator. The arbitrator should check at the outset whether all parties are able to speak and understand English. If a party does not speak and understand English, the arbitrator should have a court officer escort everyone back to the judge presiding so that the court can provide an interpreter (which may entail an adjournment).

The arbitrator *must* ensure that the parties both (or all) consent to arbitration—and that they understand what they are consenting to. Failure

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[598] Mediations were often conducted by small-claims arbitrators serving as mediators; and, in some cases, by professors and students in clinical mediation programs offered by local law schools such as NYU, Fordham, and Cardozo Law Schools.

[599] Arbitrators may amend the ad damnum clause on consent if they so indicate on this form. But only the judge may grant leave to claimant to amend the ad damnum over an objection. Given the lack of notice to the opposing party, the ad damnum clause cannot properly be amended at an inquest. For a general discussion of amending the ad damnum, see clause (I)(D)(1)(a)(iii)(3), *supra* at 18.

[600] *See* Using FTR to Record the Arbitration, subsection (3)(B)(2), *infra* at 138.

to obtain a properly informed consent will vitiate the proceedings.[601] The judge might have already described the arbitration process to the parties, and how it differs from having the case tried before a judge—but the arbitrator should not assume this description has been given. The arbitrator must therefore explain to the parties at the outset that:

(i) an arbitrator is not a judge;

(ii) the arbitrator will listen to what the parties have to say and look at any evidence that they have brought;

(iii) unless the arbitrator settles the case, the arbitrator will decide the case based on the facts as the arbitrator determines them and the law as the arbitrator knows it, just as a judge would;

(iv) the arbitrator's decision is final, and the parties cannot appeal to a higher court;

(v) the parties have the right to have their case heard by a judge rather than by an arbitrator, but that given the number of pending cases, exercising that right may entail a significant wait and, perhaps, one or more adjournments;

(vi) if the parties choose to have their case heard by an arbitrator, they are giving up their right to have the case heard by a judge; and

(vii) if the parties understand and consent to arbitration, they must sign a form to show this consent.

If all parties agree to arbitration, they or their attorneys must sign the appropriate form.[602] (In New York City this is the "Consent to Arbitration" section at the top of the second page of the decision form.) If any party does not consent to arbitration, the arbitrator or court officer should escort all parties back to the judge presiding.

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[601] *See DeLeon v. Katz*, 124 Misc 2d 1064, 1065 (App Term, 1st Dept 1984) (vacating arbitral award and remanding for further proceedings because neither party signed the arbitral consent form and because defendant contended that he had not been given notice that he was waiving his right to a trial by the court).

[602] It is possible that a court could exercise its discretion to overlook the lack of signed consents from the parties, if the parties are represented by counsel and the contextual evidence of consent is sufficiently clear. (*See McCalman v 745 Owners Corp.*, 2008 NY Slip Op 51392[U], at *1 [Civ Ct, Kings County July 15, 2008].) Much, much better, though, is to avoid the issue altogether by obtaining the necessary signatures.

During the arbitration itself, if a litigant or litigator refers to the arbitrator as "judge" or "your honor," the arbitrator should remind the person that an arbitrator is not a judge.

After obtaining consent to arbitration, arbitrators should ask all parties to verify their names and addresses, to self-address envelopes so that the clerk can send them the judgment in the case, and to return the envelopes to the arbitrator.[603] If an arbitrator determines that defendant's true name is different from the name on the case-information form, the arbitrator should have the clerk or judge presiding amend and initial the form accordingly. Arbitrators may not themselves alter the case-information form.

2. Using FTR to Record the Arbitration

Arbitrations can be conducted on the record using New York's For The Record (FTR) digital recording program. This program is available on the computers in the courtroom(s) where arbitrations are held. FTR uses microphones on the bench and at the counsel's table to make a digital recording that can easily be played back later. FTR is reasonably simple and intuitive to use; and the small-claims clerk can provide assistance with any issues arbitrators may have with the program. (A guide to FTR also appears in this *Manual's* Appendix of Civil Court Forms.[604])

Arbitrators serving as referees conducting inquests *must* use FTR and conduct all proceedings on the record.[605] Arbitrators conducting arbitrations are not required to use FTR. But as of July 2022, the policy of Civil Court, New York County, is that the best practice is to use FTR to record arbitrations.[606] If arbitrators choose to use FTR, they should inform the parties and witnesses that the arbitration is being recorded.

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[603] The small-claims clerk can supply these envelopes to the arbitrator.

[604] *See Appendix* section H, *infra* at 173.

[605] *See Pierre v Watson*, 2019 NY Slip Op 51366(U), at *1 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists Aug. 16, 2019) (reversing denial of motion to vacate and ordering new inquest because the absence of a "record of the testimony given at the inquest . . . precludes any effective appellate review of the matter").

[606] Some critics of the recording of arbitrations have questioned whether this policy is in tension with 22 NYCRR 208.41 (n) (3), governing small-claims arbitration, which provides that "no record of the proceeding before the arbitrator shall be kept."

3. Swearing in the Parties and Other Witnesses

Before hearing testimony, the arbitrator must swear in the parties and any other potential witnesses. If the parties have brought other people with them, the arbitrator should ascertain who, besides the parties, may testify, and swear them in as well.

Any form of oath or affirmation is satisfactory, as long as it is "calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs."[607] One typical method of swearing-in is to ask all potential witnesses collectively to stand and to raise their right hands (as should the arbitrator) and answer the following question: "Do you solemnly swear or affirm that the testimony you are about to give the Arbitrator of this Court shall be the truth, the whole truth, and nothing but the truth?" After administering the oath/affirmation, the arbitrator should ask non-party witnesses to leave the room until they are called to testify.

An arbitrator who harbors any doubt about whether a potential witness is mature enough to testify under oath or affirmation should determine whether the person is able to distinguish truth from falsity and to understand the nature and potential consequences of perjury.[608]

4. Pretrial Motions, and the Need to Avoid Deciding Them

Defendants' attorneys sometimes try to pressure arbitrators into entertaining motions to dismiss or for summary judgment. Arbitrators may not decide pretrial motions. The arbitrator should respond that pretrial motions are generally inappropriate in small-claims cases,[609] that the arbitrator will consider the arguments of the motion as part of the trial, and that the arbitrator's post-trial decision will address whether either party is entitled to judgment as a matter of law. If the attorney insists on being able

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[607] CPLR 3209 (b).

[608] *Cf.* Criminal Procedure Law 60.20 ("A child less than twelve years old may not testify under oath unless the court is satisfied that [the child] understands the nature of an oath.").

[609] But see subsection (I)(*I*)(5), *supra* at 55-56 (discussing limited circumstances in which judges may properly consider motions in small-claims actions).

to make the motion, the arbitrator should send the case back to the judge presiding.[610]

5. Hearing Testimony and Receiving Evidence

How an arbitrator should hear the testimony of the parties and other witnesses, and receive and review evidence that they submit, is not governed by hard-and-fast rules. It is instead a matter largely of experience, discretion, and common sense.

With respect to testimony, litigants appreciate telling their own story in their own words. An arbitrator may start by asking the claimant to explain what happened or explain why the claimant is suing the defendant for X dollars. Arbitrators should be patient and give claimants time to explain their case. That said, if a claimant unduly repeats matters or discusses irrelevancies, the arbitrator can expedite the proceeding and focus it on the relevant issues by asking such pertinent questions as "Did you receive a receipt?"; "Was your agreement in writing?"; and "Then what happened?" If the party or witness appears to be reading from a prepared statement, the arbitrator may encourage the witness to testify in her own words, and consult written materials only as necessary to refresh her recollection.

The arbitrator should also make sure to ask questions that elicit when a claimant's asserted cause of action accrued. Obtaining an answer on this issue ensures that, should the claimant prevail on a claim on which prejudgment interest must be awarded under CPLR 5001, the arbitrator has a proper basis to determine the amount of that interest.

After the claimant's case-in-chief is complete, the defendant may question the claimant, and may then offer the defendant's side of the story. The claimant may then also question the defendant.

It is in the arbitrator's discretion whether to permit the parties to reply (or even sur-reply) or to offer summations. In exercising this discretion, arbitrators may consider whether the parties appear to have offered all their evidence and arguments in their cases-in-chief, the overall caseload for that day (or night), and the degree to which the litigants are calm—or anxious.

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[610] If a party or the party's attorney insists on making a pretrial motion after the party had already consented to arbitration, the arbitrator should treat that insistence as implicitly revoking consent (at least pending the judge's determination on the motion).

An arbitrator should not let an agitated litigant continually interrupt the other side's case, such as by shouting "that's not true" after every sentence. The arbitrator should patiently but firmly direct the litigants to abstain from speaking until it is their turn to do so. The arbitrator can inform the litigants that the arbitrator will give both sides an equal opportunity to present their case; and that the arbitrator will not decide anything until hearing everything. If a litigant is combative, the arbitrator can ask a court officer to speak with the litigant to calm things down.

Self-represented litigants often fail to question one another productively, and instead merely repeat their own cases. Arbitrators should be willing to intervene during an unproductive cross-examination and ask questions directly.

Most rules of evidence do not apply; the only rules that do apply are privilege-related protections, the Dead Person's Statute, and a bar on testimony about conversations with a person with mental illness. Hearsay is admissible (though it may not be the only basis for a decision); similarly, sworn statements by a witness or litigant may be considered.[611] The weight to consider evidence offered by the parties is in the arbitrator's discretion as factfinder. Though evidentiary rules are generally inapplicable, the principles underlying those rules may aid arbitrators in determining how much weight to give the evidence offered by the parties. When in doubt, evidence should be accepted and taken for what it is worth.

Arbitrators should ask self-represented litigants, who may not realize the import of photographs, estimates, receipts, bills, contracts, and other paperwork, to show documents that the litigants have to the court and the other side. Arbitrators should also ask questions about such documents to determine whether the documents are relevant. If a document appears admissible, the arbitrator should ask whether the litigant wishes to introduce it into evidence. If a document is irrelevant, privileged, or otherwise inadmissible, the arbitrator should exclude it whether or not an objection has been raised, and explain why the document may not come into evidence. If a party offers physical evidence, the arbitrator must show it to all other parties and make sure that its owner takes it home.

Arbitrators should take notes of the proceeding. This is particularly important if arbitrators will be hearing multiple cases before preparing their decisions. Taking good notes ensures that arbitrators can recall the key facts of each case for their decisions—including who should prevail, what amount

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[611] *See generally* section (I)(J), *supra* at 63.

a prevailing claimant should be awarded, and when prejudgment interest (if any) began to accrue on an award.[612]

6. Settlements

An arbitrator may think it productive to raise with the parties the possibility of settling the case, rather than having the arbitrator decide it. Some arbitrators bring up settlement before hearing the evidence in the case; some may wait to hear much or all the evidence first.

Settlement has significant advantages. As the old saying has it, "settlement makes two friends; adjudication, one enemy." Settling will often resolve the dispute between the parties more amicably, and less painfully, than pushing the matter to a final decision. Reaching a settlement allows the parties to control their own destiny, rather than leaving the resolution of the case to an arbitrator whose decision is unappealable. And the arbitrator's outside perspective might enable the arbitrator to come up with a creative resolution that serves all parties' legitimate interests.[613]

That said, many cases should not settle; and many parties do not *wish* to settle. An arbitrator's putting too much effort into settlement could lead to the arbitrator's learning too much about each side's circumstances to render an impartial decision, or, for that matter, might cause the parties to believe that the arbitrator is biased toward one side or the other. Trying to settle the case might tempt the arbitrator to split the difference improperly between the two parties' positions, rather than rendering the appropriate determination given the evidence: Arbitrators (and judges) may not split the baby—they may only render the decision warranted by the facts and the law. And sometimes reaching a settlement will require too much of the arbitrator's time and effort, which could be better spent simply trying and deciding the action.

If the parties can agree on a dollar amount on which to settle (and any other material terms), the arbitrator should confirm that the parties realize that the settlement will have the same effect as a decision and judgment. The arbitrator will then fill in the stipulation-of-settlement form,

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[612] If the arbitrator has recorded arbitrations from that day on FTR, the arbitrator could conceivably also play back parts of the appropriate FTR recording.

[613] Settlements are particularly advantageous, for example, when liability and damages are clear, but the defendant is unable to make an immediate payment in full. With input from and consent by the parties, the arbitrator can structure a payout schedule.

remembering to check one of the two "option" boxes.[614] The first option allows the claimant to enter a judgment upon a default in payment. The second option allows the claimant to restore the case to the calendar upon a default in payment. The first option is fair and is consistent with general notions of settlement. The second provides significant consideration to the defendant but almost no consideration to claimant; it should be used only if the settlement has a condition, such as the return of clothing in new condition. The adjudicator should tell the parties that if the party that must satisfy the condition fails to do so, the opposing party may bring a motion by order to show cause asking to put the case back on the calendar.[615]

The first option (entry of judgment upon a default in payment) has two sub-options: entry of judgment in the sued-for amount or in the settlement amount. Arbitrators should clearly explain the ramifications of the two sub-options. Again, the former choice is the fairer one, but the arbitrator may not coerce a selection. The parties sign the form, receive copies, and move on with their lives. The arbitrator moves on to the next case.

7. Decisions After Arbitration Hearings

If the case does not settle, the arbitrator should finish taking evidence; thank the parties for their time and testimony; tell them that she will deliberate and reach a decision; and inform them that the court will mail each of them notice of the judgment within a few days. Arbitrators should reserve decision and not orally inform the parties of how they are going to rule.[616] All parties, witnesses, friends, and counsel should depart the arbitration at the same time so that there is no actual or apparent opportunity for any ex parte "last word."

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[614] A copy of the stipulation-of-settlement form appears in section G of this *Manual's* Appendix of Civil Court Forms, *infra* at 171.

[615] To bring on an order to show cause in Civil Court, a litigant can pick up a copy of the OSC form from the small-claims clerk's office, complete it with a clerk's help, and give it back to the clerk for a judge to consider and sign (or decline). The litigant is responsible for serving the OSC once the judge signs it; the clerk's office will provide the litigant with instructions on how to serve it. Those instructions are also available on the Civil Court's small-claims-forms webpage. (*See supra* at note 182.)

[616] Reserving decision in this way avoids attempts by litigants to reargue the case—or even, in more heated cases, the possibility of physical confrontations between the parties. If the parties appear to be on especially bad terms, the arbitrator should tell a court officer to make sure that the parties leave the courthouse separately.

The arbitrator should complete (and legibly sign) the "Report of Arbitrator—Referee" section of the case-decision form (circling "Arbitration" and "Arbitrator") and the notice-of-judgment form (circling "Trial"). The arbitrator should indicate which party prevails (or which parties prevail on which claims), and the amount of any monetary award with interest-accrual date.[617]

An arbitrator may not recall or vacate a decision once rendered. However, an arbitrator who needs to research the law may delay decision for a day or two.[618] The arbitrator must give the clerk the docket number before leaving and must return the necessary paperwork expeditiously.

A perennial source of discussion among judges, arbitrators, and commentators is the issue of what—if anything—arbitrators should write to explain their decisions beyond the information necessary to render judgment in each case.

On the one hand, having even a brief, handwritten explanation of the decision might help litigants better understand why their cases came out the way they did. An explanation might also reassure litigants (or, for that matter, the judge presiding), that the litigants' positions and arguments were heard, fairly considered, and reasonably decided by the arbitrator.

On the other hand, an arbitrator's setting down an explanation of a decision might lead a dissatisfied litigant to think, incorrectly, that the merits of the arbitrator's decision could be challenged on appeal (or through a motion to vacate). More fundamentally, issuance of the arbitrator's ruling might be delayed by preparing a decision—particularly if an arbitrator is tempted to write more than a few sentences of explanation. Delays are antithetical to small-claims litigation's basic purpose of providing swift, economical, and fair resolution of parties' disputes.

Ultimately, the question whether to explain an arbitral decision in addition to setting down the case's disposition is left to the good judgment of individual arbitrators. If arbitrators do choose to provide an explanation, though, it should be kept brief—no longer than a few sentences at most. Arbitral dispositions do not have precedential effect. Any arbitration decision should be written only for the parties, not for the legal community

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[617] *See* section I(O), *supra* at 79. If an arbitrator believes that a party may properly be granted damages in an amount greater than the ad damnum clause on the case-information form (such as when awarding multiple damages pursuant to statute), the arbitrator must have the judge presiding amend and initial the case-information form.

[618] An arbitrator who has a question about a relevant legal issue may also consult the judge presiding that day (or night).

at large. We would not suggest emulating the example of the arbitrator who submitted to the New York Law Journal a 2500-word decision about a $1500 dispute.[619]

After completing the decisions for all cases heard by the arbitrator on a given day, the arbitrator should return the casefiles for those actions, including the completed decision forms, the notice-of-judgment forms, and the parties' self-addressed envelopes, to the clerk.

8. Inquests

As discussed above,[620] if the claimant appears and the defendant does not, the court will order an inquest. Inquests may be conducted by the court or by a referee (including an arbitrator serving as a referee).

Because an inquest is not an arbitration, even if presided over by someone who is otherwise presiding over arbitrations that day, the claimant need not consent to the arbitrator-referee's conducting the inquest. Conversely, the claimant does not have the right to insist that the inquest be conducted by the judge, rather than by an arbitrator-referee.

The small-claims inquest concerns both liability *and* damages. An arbitrator-referee may properly determine, following an inquest, that the claim should be dismissed because defendant is not liable. Small-claims inquests differ in that respect from the typical default-judgment inquest. The statements-of-claim form that commences a small-claims action typically are not sworn to; they do not (and need not) contain factual allegations going to the defendant's liability.

An arbitrator acting as referee should ask the party or parties appearing at the inquest to prepare self-addressed envelopes for purposes of mailing them the post-inquest judgment. The referee should then swear in (or hear the affirmation of) the witnesses and take their testimony and evidence. The testimony must be recorded by FTR.[621] After the evidence and testimony has been submitted, the referee should reserve decision. When the claimant has left, the referee should fill out the "Report of Arbitrator—Referee" section of the decision form (circling "Inquest" and "Referee") and the notice-of-judgment form (circling "Inquest"). The referee should specify

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[619] *See Garcea v Trapani*, NYLJ, June 24, 2015, at 33 (Civ Ct, Bronx County) (arbitrator decision).

[620] *See* subsection (I)(*I*)(8), *supra* at 59.

[621] *See* subsection (3)(B)(2), *supra* at 138.

which party prevails, the amount, if any, to be awarded, and the interest-accrual date for a monetary award. Additionally, unlike arbitrations, an arbitrator acting as a referee *must* provide at least some explanation of the factual and legal basis for the referee's post-inquest disposition.[622]

After completing the case-decision and notice-of-judgment forms, the referee should return the casefile, including those forms, to the clerk for review by the judge presiding. Although judges rarely second-guess referees' recommendations, courts occasionally grant motions to vacate a judgment entered on the referee's recommendation.[623]

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[622] *See Shillingford v Saxe*, 2013 NY Slip Op 50266[U], at *1 (App Term, 1st Dept Feb. 21, 2013).

[623] *See Pasamanick v 104 Camera World, Inc.*, 116 Misc 2d 972, 974 (Civ Ct, NY County 1982).

CONCLUSION

Small-claims litigation in New York State, conceived of as a way for litigants in more modest cases to save time and expense, dates to 1934.[624] Small-claims arbitration in New York City goes back to 1954, when the presiding judge of the old New York City Municipal Court established evening court sessions using volunteer lawyer-arbitrators—the angels of the court—to ease caseloads and improve speed of adjudication.[625] These decades-old systems of adjudication serve a vital purpose in the New York justice system.

Small-claims cases do not involve much money, comparatively speaking. They are rarely newsworthy. They often do not present challenging or complex legal issues. But they concern real issues arising from the daily lives of the parties—for whom a dispute over a few thousand dollars is significant, or even life-altering. Small-claims cases therefore matter to their parties, who deserve to have their disputes heard fairly and decided promptly, in what might be the only time these litigants ever appear in court.

For the same reason, small-claims cases matter to the courts. Administering true justice in New York State requires New York courts to afford to all who come before them *equal* justice under law. Small Claims Court, and small-claims arbitration, serve the vital purpose of ensuring that all litigants, especially those lacking the resources to hire a lawyer, can get a full, impartial, and inexpensive hearing, followed promptly by a just decision in accordance with law. The judges and arbitrators who hear and decide small-claims cases today are joining—and continuing—the long and proud tradition of adjudicators serving the public in New York's People's Court.

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[624] *See 'Poor Man's Court' Busy on First Day: Doctors Sue for Their Fees, a Restaurant Patron Collects for Damaged Trousers*, NY Times, Mar. 1, 1934 at 1 col 3; Carl E. Alper, *Current Legislation, The Practice in the Small Claims Court of the City of New York*, 9 St. John's L Rev 247 (1934).

[625] *See Small Claims Manual (5th ed), supra* at note 320, at 120-121.

Appendix of Civil Court Forms

CIVIL COURT OF THE CITY OF NEW YORK
Instructions for Filing a Small Claims / Commercial Claims Action

JURISDICTION:

The maximum claim in the Small Claims / Commercial Claims Part is $10,000.00.
If you are a Claimant who lives OUTSIDE New York City, you must sue in the county where the Defendant either resides, has an office or a place of regular employment within New York City.

SMALL CLAIMS:

For Small Claims, use form CIV-SC-50 (Red Ink).
For each Small Claims action under $1,000, the fee is $15.00
For each Small Claims action between $1,000.01 and $10,000.00, the fee is $20.00
There is no additional postage fee for multiple Defendants.

COMMERCIAL CLAIMS:

For Commercial Claims, use form CIV-SC-70.
For each Commercial Claims action, up to $10,000.00, the fee is $25.00 plus postage.
For each Additional Defendant on the same Commercial Claim, only the postage fee is required.

In Commercial Claims, the Claimant can be a corporation, a partnership or an association. If you fit that criterion, you can only sue in Commercial Claims Court if the PRINCIPAL OFFICE of your business is located in New York State. If your corporation is located WITHIN New York State, but OUTSIDE New York City, the suit must be brought in the county where the Defendant resides, has an office to transact business or regular employment.

Please note that no more than 5 Commercial Claims actions per calendar month are permitted by law. Commercial Claims Claimants must complete the appropriate section on the back of the form and have it Notarized.

ALL CLAIMS:

Only one Claimant and one Defendant may be included on each form. If you are suing more than one Defendant, you must use a separate claim form for each Defendant. You may duplicate the forms, if necessary.

You must provide the full and correct NAME of the person or firm you are suing. The correct name of any business should be determined by checking with the County Clerk in the county where the business is registered.

You must provide the correct STREET ADDRESS of the person or firm you are suing. We cannot accept Post Office Box numbers for either the Claimant's address or the Defendant's address.

Date and Sign the front of the form.

PAYMENT OF FEES:

Fees can be paid by Bank Check, Tellers Check, Certified Check, attorney's check or by Money Order, made payable to "CLERK, CIVIL COURT."
No personal or company checks will be accepted. Please DO NOT SEND CASH BY MAIL,

FILING BY MAIL*:*

Send a) your completed and signed Claim form, b) payment of the fee, and c) a self-addressed 6" x 9" envelope with postage (3 ounces) to the Court. The date for your hearing will be approximately six weeks after we receive your Statement of Claim form. The Court will provide you with an "Instructions to Claimant" form which will include notice of your court date and time, plus a booklet which will thoroughly explain the Small/Commercial Claims procedure.

CIVIL COURT OF THE CITY OF NEW YORK

INSTRUCTIONS FOR FILING ACTIONS AGAINST
THE CITY OF NEW YORK,
THE STATE OF NEW YORK
THE UNITED STATES OF AMERICA

Actions against **CITY AGENCIES:**

In order to begin an action against New York City or one of its agencies or departments, you **must** give it notice. The City requires that you notify it of an injury or other claim **within 90 days** of the occurrence. When you notify the City of the occurrence, you will receive a "Notice of Claim." You may get further information by calling "311."

The City agencies listed immediately below are **"Mayoral Agencies."**

1. Office of the Comptroller
2. Office of the Mayor
3. Fire Department/Emergency Medical Service
4. Police Dept. (Including Housing/Transit)
5. Sanitation Department
6. Department of Buildings
7. Department of Corrections
8. Department of Finance (Sheriff's Office)
9. Department of Environmental Protection
10. Dept. of Parks and Recreation
11. Dept. Housing Preservation and Development (City owned buildings, not projects)
12. Dept of Social Services/Human Resources Administration
13. Department of General Services
14. Taxi and Limousine Commission (TLC)
15. Department of Transportation (Ferries, Highways, Parking Violations Bureau)
16. New York City Community Colleges (2-year colleges)

Actions against a **Mayoral Agency**: Obtain a Notice of Claim and a Claim Number from:

City of New York Comptroller, One Centre Street, New York, NY 10007

After you have notified the City of the claim and obtained a number, you must wait 30 days to allow the City time to review your claim and perhaps settle with you. After the waiting period, you may start an action in Court. However, the action must be started within one year and ninety days of the time of the loss, damage or injury for the above agencies. Even though the Claim Number comes from the Comptroller, the Defendant who is being sued is:

City of New York, Attn: Corporation Counsel, 100 Church St., 5th Fl., New York, NY 10007

Enter the Claim Number which you obtained, as well as any and all specific information regarding your claim on the application for a summons or claim.

For actions against the following **Non-Mayoral agencies**, file a Notice of Claim with the agency itself. The agency will provide a Claim Number, if required. You should indicate the Defendant on the court form as:

N.Y.C. Department of Education
52 Chambers Street, Room 320, B4
New York, New York 10007

N.Y.C. Health and Hospitals Corporation
Office of Legal Affairs, Claims Division
125 Worth Street, #527
New York, New York 10013

N.Y.C. Housing Authority, Law Dept.
90 Church Street, 11th Floor
New York, New York, 10007

S.I.R.T.O.A
60 Bay Street, 6th Floor
Staten Island, New York, 10301

M.T.A. Bridges and Tunnels
The Robert Moses Building
Randall's Island, New York 10035

N.Y.C. Transit Authority (MABSTOA)
130 Livingston Street
Brooklyn, New York 11201
(Claims to be filed in County of occurrence)

Please note this helpful hint. The word **"Department"** in the name of a **City** agency usually means that the Defendant who is being sued is the City of New York. When you see **"Authority," "Board"** or **"Corporation"** as part of the name of a governmental agency, it usually means that the Defendant who is being sued is that specific agency.

Actions against **STATE AGENCIES**, for example:

State Department of Motor Vehicles
State Department of Labor
State University of New York
State Insurance Fund
State Department of Commerce
State Insurance Department
City University (4-year colleges)

must be filed in the

Court of Claims of the State of New York
The Gov. Nelson Rockefeller Empire State Plaza, Box 7344
Capitol Station, Albany, NY 12224 Tel: 518-432-3411

Actions against **FEDERAL AGENCIES:**

For Bronx or New York Counties:
U.S. District Court, Pro Se Office
500 Pearl Street
New York, New York 10007

For Kings, Queens and Richmond Counties:
Federal Court House
225 Cadman Plaza East
Brooklyn, New York 11201

OTB may be sued in Civil Court, but not in Small Claims.

When suing any government agency two key words must be kept in mind - **timeliness** and **research**. A person must act quickly in complying with that agency's procedures and must thoroughly research the procedures involved. You may wish to seek the advice of counsel.

INSTRUCTIONS:
Place only **ONE** letter or number in each space and leave a blank space between words.

CIVIL COURT OF THE CITY OF NEW YORK
SMALL CLAIMS PART
STATEMENT OF CLAIM

(FOR OFFICE USE ONLY)

I. CLAIMANT'S INFORMATION

(Your)

LAST NAME _____

FIRST NAME _____ MIDDLE INITIAL ____

ADDRESS (NO P.O. BOX) _____

BOROUGH, CITY, TOWN OR VILL. _____ STATE ____ ZIP _____

OTHER INFO

[Doing Business As] [In Care Of] [Attention To] **Circle One**

PHONE NO. _____ EMAIL _____

II. DEFENDANT'S INFORMATION*

(Their)

LAST NAME (or Full Business Name) _____

FIRST NAME _____ MIDDLE INITIAL ____

ADDRESS (NO P.O. BOX) _____

BOROUGH CITY, TOWN OR VILL. _____ STATE **N | Y** ZIP _____

OTHER INFO

[Doing Business As] [In Care Of] [Attention To] **Circle One**

PHONE NO. _____ EMAIL _____

III. CLAIM

Amount Claimed: $ _____ (Maximum $10,000.00) Date of Occurrence or Transaction: _____

Place of occurrence, if Auto Accident _____

PRIMARY REASON FOR CLAIM (Check One):

Damage caused to:	☐ automobile	☐ other personal property	☐ real property	☐ person
Failure to provide:	☐ proper repairs	☐ proper services	☐ proper merchandise	☐ goods paid for
Failure to return:	☐ security	☐ property	☐ deposit	☐ money loaned
Failure to pay:	☐ salary	☐ for services rendered	☐ insurance claim	
	☐ rent	☐ commissions	☐ for goods sold and delivered	
Breach of.	☐ contract	☐ lease	☐ warranty	☐ agreement
Loss of:	☐ luggage	☐ property	☐ time from work	☐ use of property
Returned:	☐ check (bounced)	☐ check (stopped)		

Other: (Be brief) _____

IDENTIFYING NUMBER(S) - (Receipt #, Claim #, Account #, Policy #, Ticket #, License #, Plate #'(s)) _____

Today's Date _____ **Signature of Claimant or Agent** _____

CERT'D # _____

COA CODE _____

CLAIM AMT. $ _____

FEE

STANDARD FEE

☐ CLAIMANT V. DEFENDANT

NO FEE

☐ DEFENDANT V. THIRD PARTY

☐ CLAIMANT V. ADD'L DEFENDANT

POSTAGE ONLY

☐ WAGE CLAIM TO $300

LANGUAGE _____

DATE DATA ENTERED _____

DATE NOTICES MAILED _____

CASE TYPE:

MULTI DFT ☐ CTR/CLM ☐

3 PARTY ☐ CRS/CMPLT ☐

FIRST DATE _____

DAY COURT

☐ STATUTORY ☐ OTHER

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* DEFENDANT'S NAME: The **legal** name will be required in order to obtain an enforceable judgment. If the Defendant is a **business**, its full and correct **business name** should he obtained from the Office of the County Clerk in the county in which the business is located or check on the following website: **www.dos.state.ny.us**.

DEFENDANT'S ADDRESS: YOU must indicate the proper street address of the Defendant. A Post Office Box is not acceptable.

FREE CIVIL COURT FORM
No fee may be charged to fill in this form.
Form can be found at
http://www.nycourts.gov/courts/nyc/smallclaims/forms.shtml.

NOTE: If the Claim is a result of an automobile accident, the Claim must be OWNER against OWNER.

INSTRUCTIONS:
Place only **ONE** letter or number in each space and leave a blank space between words.

CIVIL COURT OF THE CITY OF NEW YORK
COMMERCIAL CLAIMS PART
STATEMENT OF CLAIM

(FOR OFFICE USE ONLY)

I. CLAIMANT'S INFORMATION

(Your)

BUSINESS NAME OTHER INFO (Doing Business As or In Care Of) _____ MIDDLE INITIAL ____

PRINCIPAL OFFICE ADDRESS _____

BOROUGH, CITY, TOWN OR VILL. _____ STATE NY ZIP _____

PHONE NO. _____ EMAIL _____

II. DEFENDANT'S INFORMATION*

(Their)

LAST NAME (or Full Business Name) _____

FIRST NAME _____

ADDRESS of Residence or Place of Business or Employment _____ MIDDLE INITIAL ____

BOROUGH CITY, TOWN OR VILL. _____ STATE NY ZIP _____

OTHER INFO [Doing Business As] [In Care Of] [Attention To] _____

PHONE NO. _____ EMAIL _____

III. CLAIM

Amount Claimed: $_____ (Maximum $10,000) Date of Occurrence or Transaction: _____

Briefly state your claim here: (Include Identifying Number(s) - Receipt #, Claim #, Account #, Policy #, Ticket #, License #)

_____ _____

Today's Date **Signature of Claimant or Agent**

YOU MUST COMPLETE ONE OF THE CERTIFICATIONS ON THE REVERSE SIDE

CERT'D # _____

COA CODE _____

CLAIM AMT. $ _____

FEE

STANDARD FEE PLUS POSTAGE

☐ CLAIMANT V. DEFENDANT

NO FEE; POSTAGE ONLY

☐ DEFENDANT V. THIRD PARTY
☐ CLAIMANT V. ADD'L DEFENDANT
☐ WAGE CLAIM TO $300

LANGUAGE _____

DATE DATA ENTERED _____

DATE NOTICES MAILED _____

CASE TYPE:

MULTI DFT ☐ CTR/CLM ☐
3 PARTY ☐ CRS/CMPLT ☐

FIRST DATE _____

DAY COURT

☐ STATUTORY ☐ OTHER

☐ CONSUMER TRANSACTION
☐ OTHER COMMERCIAL CLAIMS

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COMPLETE THIS SECTION FOR A COMMERCIAL CLAIM

***CERTIFICATION:** (NYCCCA 1803-A)

I hereby certify that no more than five (5) actions or proceedings (including the instant action or proceeding) pursuant to the commercial claims procedure have been initiated in the courts of this State during the present calendar month.

_____
Signature of Claimant

_____
Signature of Notary/Clerk/Judge

*Note: The Commercial Claim Part will Dismiss any case where the certification is not made.

COMPLETE THIS SECTION FOR COMMERCIAL CLAIM ARISING OUT OF A CONSUMER TRANSACTION

#CERTIFICATION (NYCCCA 1803-A)

I hereby certify that I have mailed a demand letter by ordinary first class mail to the party complained against, no less than ten (10) days and no more than one hundred eighty (180) days before I commenced this claim.

I hereby certify, based upon information and belief, that no more than five (5) actions or proceedings (including the instant action or proceeding) pursuant to the commercial claims procedure have been initiated in the courts of this State during the present calendar month.

_____
Signature of Claimant

_____
Signature of Notary/Clerk/Judge

#Note: The Commercial Claims Part will not allow your action to proceed if this certification is not made and properly completed.

Commercial Claim Arising Out of a Consumer Transaction

DEMAND LETTER

To: _____ Date:
Name of Defendant

_____

_____
Address

You have not paid a debt owed _____, which you incurred on _____, 20____. The amount remaining unpaid on this debt is $_____. Demand is hereby made that this money be paid. Unless payment of this amount is received by the undersigned no later than _____, 20___, a lawsuit will be brought against you in the Commercial Claims Part of the Court.

If a lawsuit is brought, you will be notified of the hearing date, and you will be entitled to appear at the hearing and present any defense you may have to this claim.

(If applicable) Our records show that you have made the following payment in partial satisfaction of this debt (fill in dates and amounts paid) _____.

A copy of the original debt instrument — your agreement to pay — is attached.
[The names and addresses of the parties to that original debt instrument are:

_____

_____

_____

(*to be completed if claimant was not a party to the original transaction*)].

_____

_____

_____
Typed or Printed Name and Address of Claimant

UCS-124 (Rev. 8/08)

CIVIL COURT OF THE CITY OF NEW YORK
Small Claims Part

See Address and Telephone Number on reverse.

INSTRUCTIONS FOR PERSONAL SERVICE OF NOTICE OF CLAIM AND SUMMONS TO APPEAR

This is in reference to your case, Index Number: SC_____ 19 ____

Although the case is scheduled for Trial on:_____,
the **Notice of Claim & Summons to Appear** which was mailed from our office was returned to the Court by the Post Office marked:

Unknown ☐ Unclaimed ☐ Moved ☐

In order to proceed with this case you must arrange to have personal service of the Notice of Claim & Summons to Appear made upon the respondent. To do so, please follow these instructions:

1) Have the **Notice of Claim & Summons to Appear** served PERSONALLY on the defendant. If the defendant is a corporation, service must be made upon an Officer or Managing Agent of the corporation, and the server must find out the name of the person served and the office that the person holds in the corporation.

2) You must *NOT* serve the **Notice of Claim & Summons to Appear** yourself, but anyone else over the age of 18 years (except a police officer) may serve it for you on any day except SUNDAY.

3) After the **Notice of Claim & Summons to Appear** is served, the enclosed **Affidavit of Service** must be filled out, notarized, and delivered or mailed to this office with sufficient time for it to arrive before the Scheduled Date for Trial indicated above.

4) If you are unable to effect personal service by _____ return the **Notice of Claim & Summons to Appear** to this office. The clerk will then reschedule the Date for Trial and extend the time for you to serve the **Notice of Claim & Summons to Appear**.

We are forwarding the **Notice of Claim & Summons to Appear** form pack to you together with a blank **Affidavit of Service** for you to use as instructed in paragraphs 1) through 4) above.

The Civil Court of the City of New York
Small Claims Part, County of New York
111 Centre Street
New York, New York 10013

(212) 374-5776

The Civil Court of the City of New York
Small Claims Part, County of New York
Room 807, A. C. Powell State Office Building
163 West 125 Street, Harlem
New York, New York 10027

(212) 678-6740

The Civil Court of the City of New York
Small Claims Part, County of Bronx
851 Grand Concourse
Bronx, New York 10451

(718) 590-3569

The Civil Court of the City of New York
Small Claims Part, County of Kings
141 Livingston Street
Brooklyn, New York 11201

(718) 643-7913

The Civil Court of the City of New York
Small Claims Part, County of Queens
120-55 Queens Boulevard
Kew Gardens, New York 11424

(718) 520-4741

The Civil Court of the City of New York
Small Claims Part, County of Richmond
927 Castleton Avenue
Staten Island, New York 10310

(718) 390-5421

Civil Court of the City of New York

COUNTY OF _____

Small Claims Part

Index No. SC _____ _____

_____

Claimant(s),

against

Defendant(s),

_____

AFFIDAVIT OF SERVICE

OF

NOTICE OF CLAIM

(Personal and Corporate)

State of New York, County of _____ ss:

_____, being duly sworn, deposes and says:
(Name of Server)

I am over 18 years of age and not a party to this action.

At _____ AM/PM, on _____ at _____
(Time) (Date) (Address)

in the County of _____, City of New York, I served the attached
(Name of County)

NOTICE OF CLAIM in this matter on:

A. ☐ _____, the said Defendant in person.
(Name of Defendant as shown above)

Description of Individual Served in Person:		
Sex:_____	Color of Skin:_____	Color of Hair:_____
Approximate Age:_____	Approximate Weight:_____	Approximate Height:_____

B. ☐ _____, by delivering the said NOTICE OF CLAIM to:
(Name of Defendant as shown above)

_____ who is
(Name of actual person with whom the NOTICE OF CLAIM was left)

known to me to be the _____ of the _____.
(Title / Relationship) (Corporation / Partnership / Named Defendant)

_____
(Signature of Deponent)

Sworn to before me this _____ day of _____, 19_____.

_____
(Notary Public or Court Employee and Title)

CIV-SC-12 (Rev. 9/90)

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF _____ : PART ____
- -

Plaintiff,

-against-

Defendant.
- -

NOTICE OF MOTION

Index No. _____

PLEASE TAKE NOTICE that upon the annexed affidavit of _____ sworn to on the ____ day of _____ 20____, and the exhibits annexed thereto, and upon all the prior pleadings and proceedings had herein, the ***PLAINTIFF/DEFENDANT*** (CIRCLE ONE) will move this Court located at _____ New York, Part _____, Room ____, on the _____, day of _____ 20____, at _____ o'clock, or as soon thereafter as can be heard for an Order:

_____

_____

_____

and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that (check the applicable box below):

☐ these papers have been served on you at least eight days before the motion is scheduled to be heard. You must serve your answering papers, if any, at least two days before such time. At least three days prior to the time at which the motion is noticed to be heard you may serve upon the moving party a notice of cross-motion demanding relief.

☐ these papers have been served on you at least sixteen days before the motion is scheduled to be heard. You must serve your answering papers and any notice of cross-motion with supporting papers, if any, at least seven days before such time. Reply or responding affidavits shall be served at least one day before such time.

Dated: _____ From: _____

_____

_____

CIV-GP-124-i

FREE CIVIL COURT FORM
No fee may be charged to fill in this form.
Form can be found at: http://www.nycourts.gov/courts/nyc/smallclaims/forms.shtml.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF _____: PART
- -

_____

Plaintiff,

AFFIDAVIT IN SUPPORT

-against-

Index No. _____

_____

Defendant.
- -

STATE OF NEW YORK
COUNTY OF _____ ss.:

_____, being duly sworn, hereby deposes and says:

WHEREFORE, THE UNDERSIGNED RESPECTFULLY REQUESTS THE WITHIN MOTION BE GRANTED.

_____

Signature

Sworn to before me this _____ day of _____ 20___

_____

Notary Public/Court Employee

CIV-GP-121-i

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF _____: PART
- -

_____

Plaintiff,

AFFIDAVIT
IN OPPOSITION

-against-

Index No. _____

_____

Defendant.
- -

STATE OF NEW YORK
COUNTY OF _____ ss.:

_____, being duly sworn, hereby deposes and says:

WHEREFORE, THE UNDERSIGNED RESPECTFULLY REQUESTS THE WITHIN MOTION BE DENIED.

_____

Signature

Sworn to before me this ____ day of _____ 20__

_____

Notary Public/Court Employee

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF _____: PART

Index No.:_____

_____
Petitioner,

AFFIDAVIT OF SERVICE BY MAIL

-against-

_____
Respondent.

STATE OF NEW YORK
COUNTY OF _____ ss:

_____ being duly sworn, deposes and says:

I am over 18 years of age and not a party to this action. On _____

I served _____

upon _____, the _____ in this proceeding, by mailing a true copy of the attached papers, enclosed and properly sealed in a postpaid envelope, which I deposited in an official depository under the exclusive care and custody of the United States Postal Services within the State of New York addressed to

_____ the _____

at: _____

Signature: _____

Sworn to before me this_____ day of _____ 20___

_____
Notary Public or Court Employee

CIV-GP- I I (March 200 1)-1

CIVIL COURT OF THE CITY OF NEW YORK

County of _____ Index Number: _____

_____ Part _____

SUBPOENA FOR RECORDS
(SUBPOENA DUCES TECUM)

Claimant(s)/Plaintiff(s)/Petitioner(s)

By _____
Name

-against-

_____
Address

_____

Defendant(s)/Respondent(s)

_____ _____

THE PEOPLE OF THE STATE OF NEW YORK

To: _____:

We Command that you or someone on your behalf provide and produce the following item(s):

_____

_____

_____

at _____ AM/PM, on _____
(Time) *(Date)*

at _____
(Address of Court)

☐ to the Records Section of this Court, located in Room _____.

☐ Hon. _____ in Part _____, Room _____,

Failure to comply with a subpoena may be punishable as contempt of court and/or make you liable for a penalty not exceeding $150.00 and damages sustained by the person on whose behalf the subpoena was issued (CPLR § 2308).

_____ _____ If required, So Ordered: _____
Date Chief Clerk, Civil Court Judge Civil/Housing Court

NOTE: You must serve a copy of this subpoena on each party who has appeared in the action so that it is received by him/her shortly after service on the witness and before the time that the books, papers, or other things must be produced (CPLR §§ 2103 and 2303). You must fill out an affidavit of service for each party served and for the witness, but you only have to pay a witness fee to the witness.

CIVIL COURT OF THE CITY OF NEW YORK

County of _____ Index No.:_____

Part _____

AFFIDAVIT OF SERVICE OF SUBPOENA FOR RECORDS

Claimant(s)/Plaintiff(s)/Petitioner(s)

-against-

Defendant(s)/Respondent(s)

_____

State of New York, County of _____ ss:

_____, being duly sworn, deposes and says:

(Name of person who served the papers)

I am over 18 years of age and not a party to this action. At _____ AM/PM, on _____

(Time) *(Date)*

at _____

(Address)

in the County of _____, City of New York, I served the within Subpoena for Records in this matter on _____ known to me to be the Witness by: 1. delivering and leaving with him/her personally a true copy thereof;

Description of Individual Served in Person

Gender:_____ Color of Skin:_____ Color of Hair:_____

Approximate Age:_____ Approximate Weight:_____ Approximate Height:_____

2. and paying him/her the sum of $_____ as fees for traveling to and from the place where s/he was required by the Subpoena to attend, and for one day's attendance.

(Amount paid)

Sworn to before me this _____ day of _____, 20___

_____ _____

Signature of Notary Public Signature of Server

General Instructions

Anyone NOT A PARTY to the action, who is over the age of 18 may serve the Subpoena.

1. Find the person to be served (the witness)
2. Give the person a copy of the subpoena and the witness fees.
3. Serve a copy of the subpoena on every other party who has appeared
4. Fill out an Affidavit of Service for each person served, including the witness
5. Give all the affidavits of service to the person on whose behalf the subpoena was served for further proceedings in case the witness does not comply with this subpoena.

CIVIL COURT OF THE CITY OF NEW YORK

County of _____

_____ Part _____

Index Number: _____

SUBPOENA TO TESTIFY

(SUBPOENA AD TESTIFICANDUM)

Claimant(s)/Plaintiff(s)/Petitioner(s)

-against-

Defendant(s)/Respondent(s)

_____

By _____
Name

_____
Address

_____

_____

THE PEOPLE OF THE STATE OF NEW YORK

To: _____:

We Command that you lay aside all business and excuses and appear and attend before

Hon. _____ in Part _____, Room _____

at _____ on _____ at _____ AM/PM,
Address of the Court *Date* *Time*

or such other times as this case may be adjourned [CPLR §2305(a)], to testify and give evidence in the action now pending in this Court, to be tried between the parties indicated above, on the part of _____.

Failure to comply with a subpoena may be punishable as contempt of court and/or make you liable for a penalty not exceeding $150.00 and damages sustained by the person on whose behalf the subpoena was issued (CPLR § 2308).

_____
Date

_____
Chief Clerk, Civil Court

If required: So Ordered

_____
Judge, Civil/Housing Court

CIV-GP-71(Front) (Revised 7/09)

Civil Court of the City of New York
County of _____ **Index Number_____**
Part

Claimant(s)/Plaintiff(s)/Petitioner(s)

-against-

Defendant(s)/Respondent(s)

AFFIDAVIT OF SERVICE OF A SUBPOENA TO TESTIFY

State of New York, County of _____ ss.:

_____, being duly sworn, deposes and says:
(Name of person who served the papers)

I am over 18 years of age and not a party to this action. At _____ AM/PM,
(Time)

on _____ at _____
(Date) *(Address)*

in the County of _____, City of New York, I served a Subpoena
(County)

in this matter on _____ whom I know to
(Name of the witness)

to be the person named in this subpoena by delivering and leaving with him/her personally a true copy of it and paying him/her the sum of $_____ for one day's attendance and fees for traveling to
(Amount of Fee)

the place where s/he was required by the Subpoena to attend, if required:

Description of Individual Served in Person

Gender:_____ Color of Skin: _____ Color of Hair:_____

Approximate Age:_____ Approximate Weight:_____ Approximate Height:_____

Sworn to before me this _____ day of _____, 20____

_____ _____
Signature of Notary Public Signature of Server

General Instructions

Anyone NOT A PARTY to the action who is over the age of 18 may serve the Subpoena.

1. Find the person to be served (the witness).
2. Give that person a copy of the Subpoena and the witness fee.
3. Give all the affidavits of service to the person on whose behalf this subpoena was served for further proceedings in case the witness does not comply with the subpoena.

FREE CIVIL COURT FORM
No fee may be charged to fill in this form
CIV-GP-71(Reverse) (Revised 7/09)

CIVIL COURT OF THE CITY OF NEW YORK **Index No. :**_____

County of _____

_____ **Hon.** _____

Plaintiff(s)/Petitioner(s)

against

Defendant(s)/Respondent(s)

AFFIDAVIT OF UNAVAILABILITY
and
REQUEST FOR ADJOURNMENT

AFFIDAVIT OF UNAVAILABILITY

☐ I, _____ am appearing for the defendant/respondent/tenant. My relationship to the defendant/respondent/tenant is _____.
(Example: relative/friend)

OR

☐ I, _____ the defendant or respondent/tenant in this action
(Defendant/*Respondent/tenant)*
am unavailable to appear in court due to the following:

_____

(Select the appropriate choice)

☐ The defendant/respondent is homebound due to:_____.

☐ The defendant/respondent is incarcerated in _____ facility.
The period of this incarceration ends on _____ .

☐ Other reason _____

_____.

Length of unavailability_____.

Sworn to before me this ____ day of _____, 20_____

_____ _____
Signature of Notary Public/Court Employee Signature of Deponent

---

If you are requesting a different court date, please complete the following:
REQUEST FOR ADJOURNMENT
This request does not guarantee an adjournment.

Please adjourn this action until _____, for the following reasons:

_____

_____

_____
Signature of Defendant/Respondent/Other

An adjournment may only be granted by the judge assigned on the scheduled date.

Civil Court of the City of New York
COUNTY OF

Part

Index No.

STIPULATION
OF SETTLEMENT

Plaintiff(s),

-against-

Defendant(s).

It is hereby stipulated and agreed by and between the parties that the above-referenced action is settled as follows:

Signature Date

Signature Date

Signature Date

Signature Date

CIV-GP-32-I (5105)

FTR (For The Record)
Audio Recording System
Courtroom User's Manual
2017

Prepared by:

Azeeza Tropea
Ronald Saa

Last Updated: 3/27/17

The Civil Court of the City of New York
FTR (For The Record) | Courtroom User's Guide

INTRODUCTION

The **FTR Reporter** replaces the Sony tape machine. It provides for the digital recording and playback of court proceedings. Through the use of the **Log Notes** section of the **FTR Recorder** application and bar code scanner, audio records will be annotated with the case index number, current date and time.

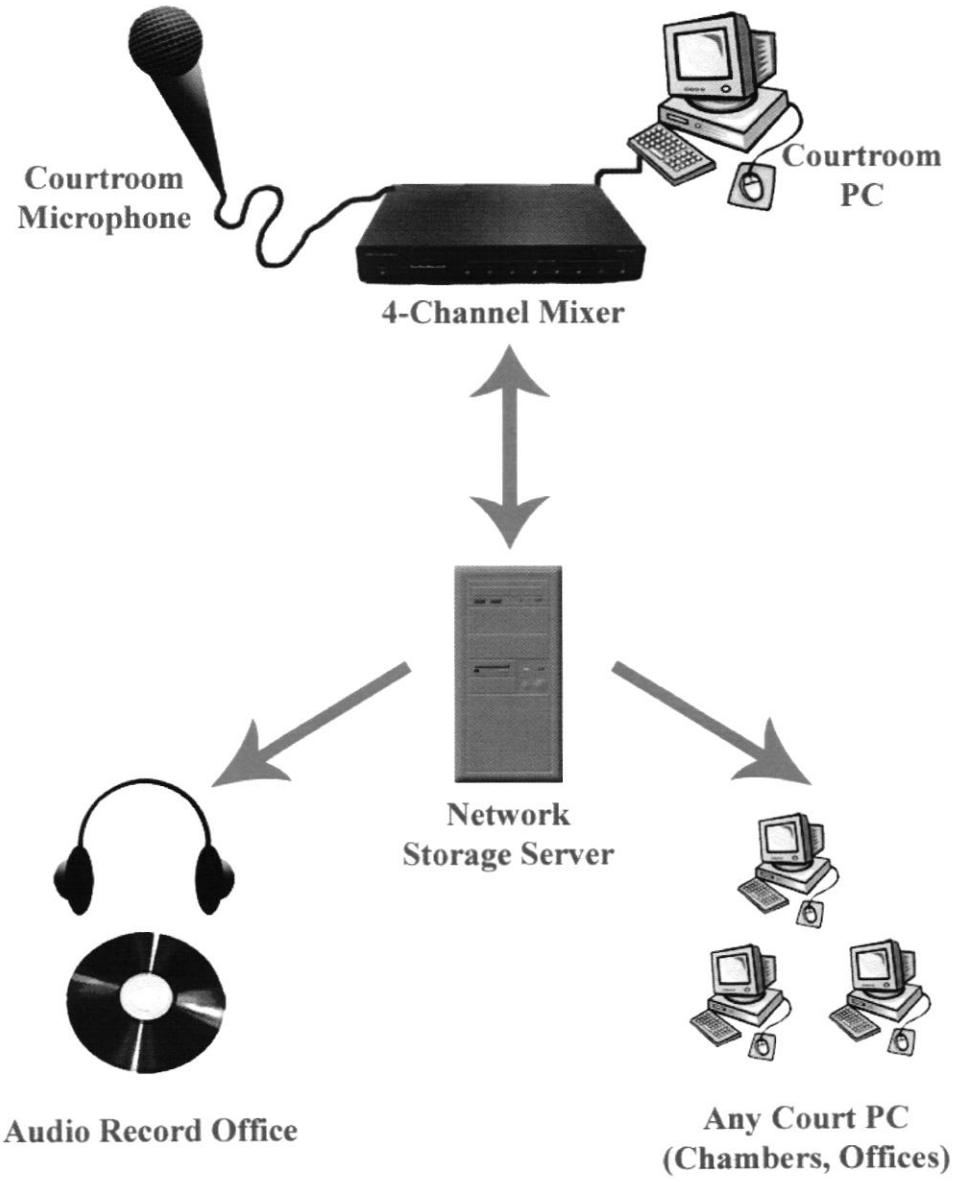
The system works like a tape recorder but tapes are not used. Courtroom microphones are connected to a 4-channel mixer and a PC. Audio is digitally recorded and sent over the network to a central storage server. Audio is readily accessible and can be played back from any court location. Requests for audio transcriptions, playback and copies will be handled centrally by the Audio Records Office based in New York County.

With your effort and cooperation, this versatile system will improve the quality of the court records while providing you with an improved in-courtroom, court audio record management tool.

TABLE OF CONTENTS

CHAPTER 1

SYSTEM OVERVIEW



Courtroom microphones are connected to a 4-channel mixer. The mixer is connected to the courtroom PC. Audio recording and playback is handled through the use of computer software located on the courtroom PC (FTR Reporter, START/STOP Dialog Screen and Log Notes applications).

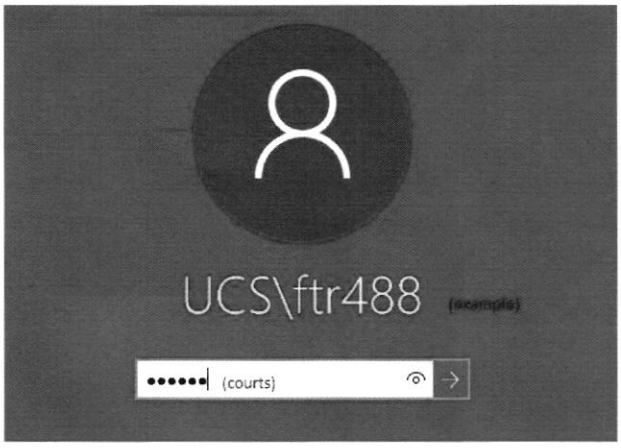
Audio is digitally recorded and tapes are no longer used. Digital audio is saved across the network to a central storage server. Audio is readily accessible from any court PC. A citywide Audio Records Office will handle requests for listening, copying and transcription purposes.

CHAPTER 2

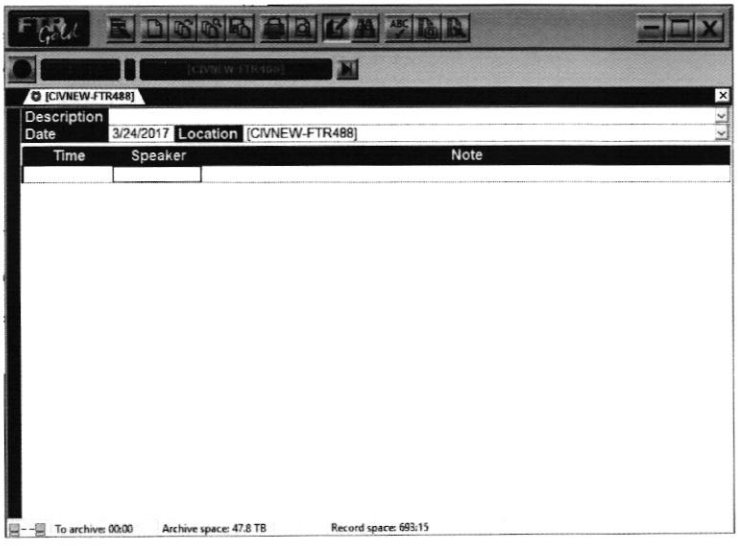
HOW TO BEGIN RECORDING

Going on the record

1) Log on to your workstation by entering your assigned username and password. Then click the Enter button on your keyboard.

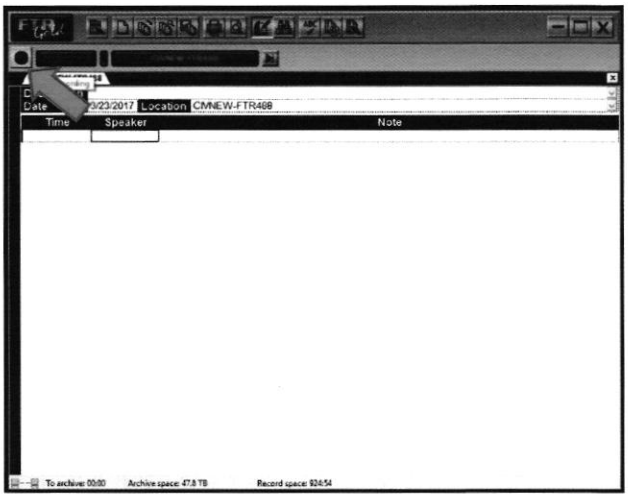


The **FTR Recorder** application will automatically load and appear on the screen.

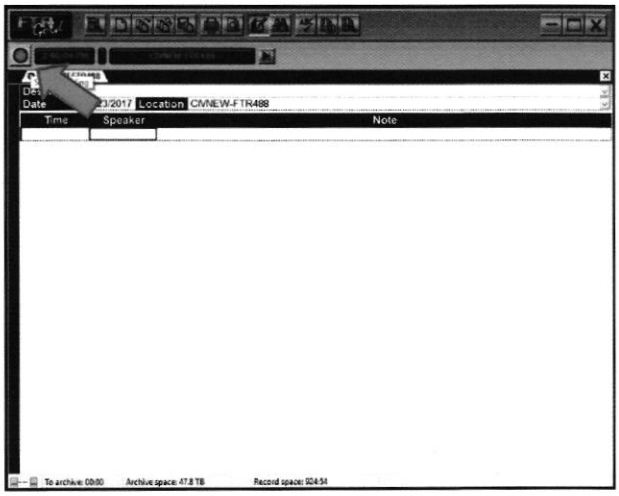


2) Begin audio recording by clicking the **Start/Stop** Recording button located on the

upper left of the **FTR Reporter** window.



The **Start/Stop** Recording symbol will become **RED**.

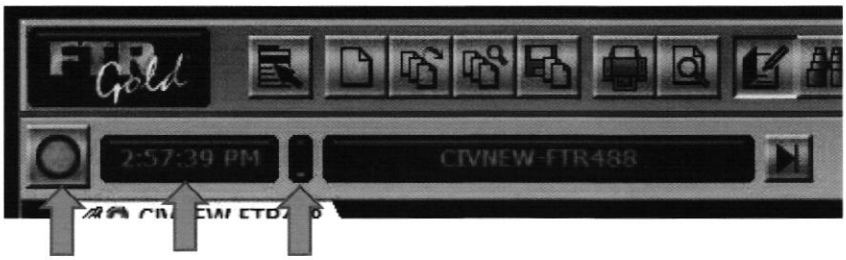


You are now recording audio until you press the same button in order to **STOP**.
After which, the symbol will then become **BLACK** once again.

The **SHOT CLOCK** will begin to display the current time. Time advances as audio is being recorded.

The **FTR Reporter** will be in recording mode, indicated by the

- **RED** Symbol
- Advancing Shot Clock
- Audio Level



3) Scan the appropriate **CASE TYPE** card.
This will program the scanner to log the correct **county** and **case type** prefix.
(e.g., NLT = New York Landlord & Tenant)

(Note: You should be scanning in the "Note" field.)

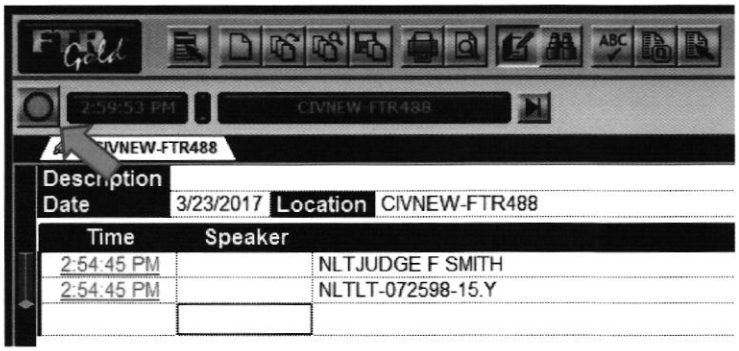
If hearing **Housing** cases, scan the **Housing Case Type** card.

If hearing **Civil** or **Small Claims** cases,
scan the **Civil Case Type** card.

You will hear a BEEP which confirms a successful scan.

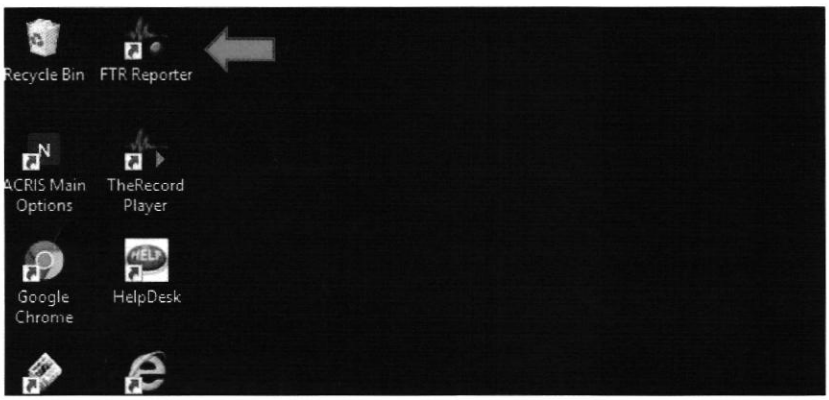
4) Scan your personalized **Judge ID Card**. This will create an annotation in Log Notes indicating yourself as the judge on record for this session. If you don't have your card, you may manually type your name into the Log Notes screen.

5) The system will continue to record until you click the **Start/Stop** Recording button located on the **FTR Recording** window.



Use the **Start/Stop** Recording button to go on and off the record.

Note: If you accidently close the application, you can open it by double-clicking on the **FTR Reporter** icon located on the desktop.



CHAPTER 3

HOW TO SCAN A CASE FILE

Creating an Index Number, Date & Time Annotation

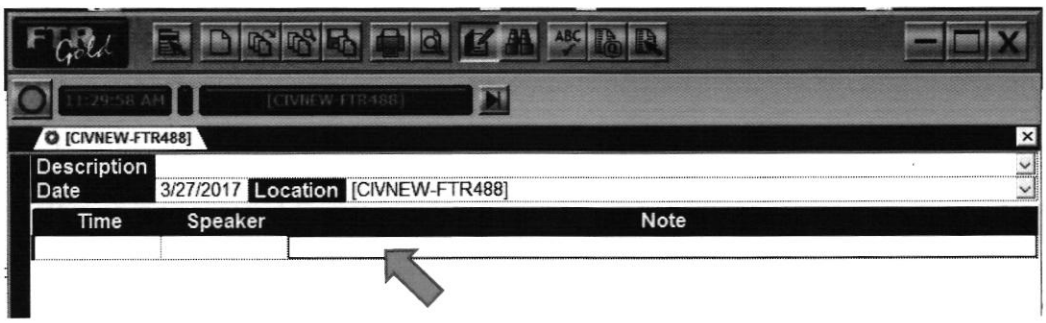
It is important that you scan the bar code from the case file jacket. Scanning automatically creates an annotation in the Log Notes section of the **FTR Reporter** program with the Case Index Number, Current Date and Current Time. This will allow for someone to search for case specific audio at a later date (e.g., for listening, copying and transcription purposes).

To scan a bar code from a case file jacket:

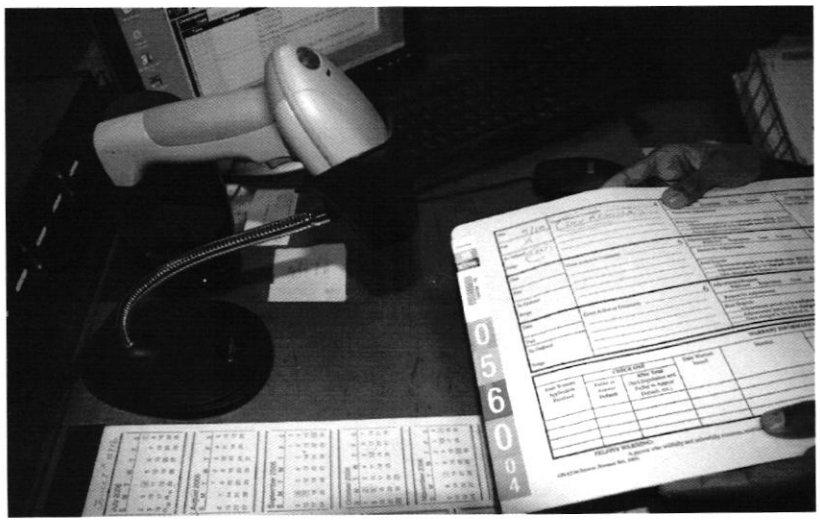
STOP: Before you proceed, make sure you are in **RECORDING MODE**.
To enter recording mode, click the **Start/Stop** button located on the FTR Recording window.

1) Make sure that the Log Notes section is active by left-clicking on any white area of the Log Notes screen. Please note that this step must also be taken after multitasking (using other programs) or viewing Log Notes from a prior day.

Before you scan, click on the next white "Note" field to make it <u>Active</u>.

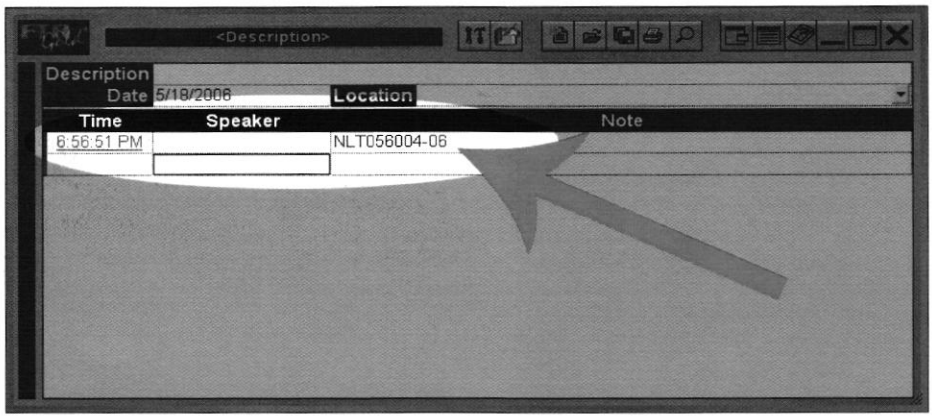


2) Hold the file jacket below the Bar Code Scanner and pass the bar code beneath the Red Laser:



You will hear a BEEP which confirms that the bar code has been scanned.

2) An annotation will automatically be created in the FTR Log Notes application (Log Sheet).
(Note: Enter under the "Note" field)

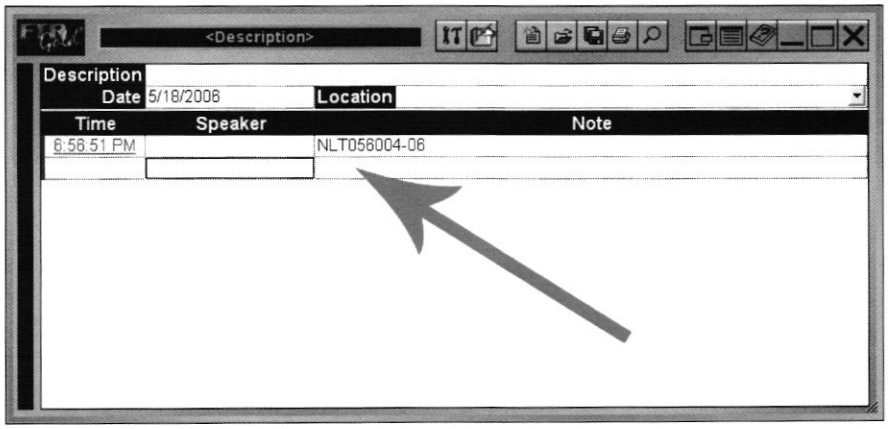


3) Continue to scan bar codes as each case is called (From Step 2).

The system continues to record audio until you press **STOP** on the **FTR Recording** window.

If there is no bar code available:
(e.g., Case jacket unavailable, older case that does not contain a bar code, or oversized boxed file)

1) With your mouse, left click into the next available empty "Note" field.



2) Type/Scan in the case Index Number.

3) Press the Enter key.

The current time is automatically filled in when you create a new annotation.

Note: You can also use the "Note" field to enter case related notes.
Be sure to press the 'Enter' key after each notation.

Keep in Mind:

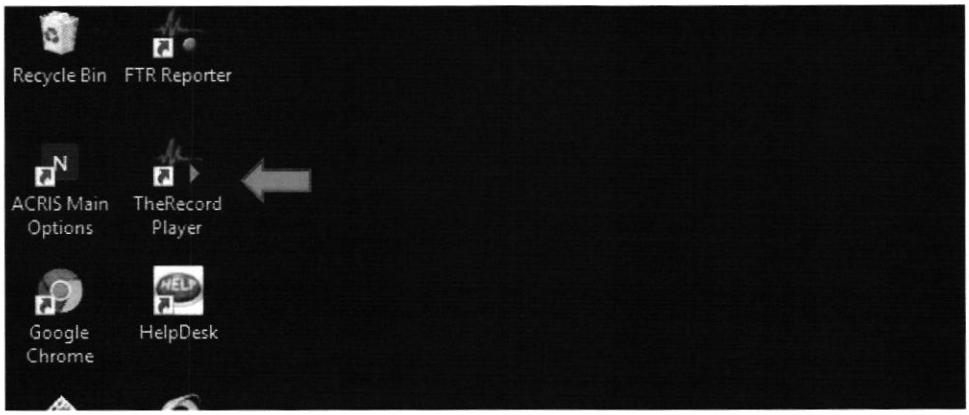
1) Each time you START or STOP recording, an annotation will be made to the log sheet indicating the time audio recording started or stopped.

2) Make sure you are recording audio before scanning a case file.

CHAPTER 4

HOW TO PLAY BACK AUDIO

Audio playback function is accessed through the **FTR Record Player** application. (aka **FTR Player**)



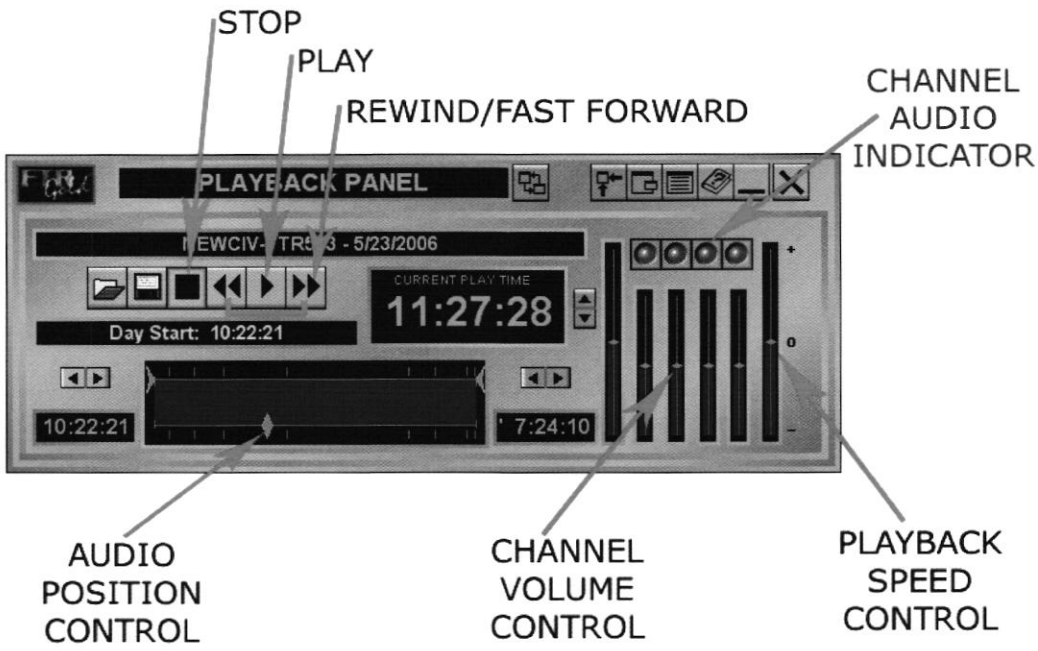
Open the FTR Record Player before proceeding.

In the **FTR Player**, you have access to the following basic controls:

- Play
- Stop
- Fast Forward/Rewind
- Audio Levels (General and Channel Specific volume control)
- Speed Control (Control of playback speed - Speed up or Slow Down)

Note: These controls do not affect the recording settings.

See illustration on the next page for playback controls.



PLAY - To begin playback

STOP - To stop playback

REWIND/FAST FORWARD - Move forward and back through audio.

AUDIO POSITION CONTROL - Click and hold to quickly slide backward and forward through audio.

CHANNEL VOLUME CONTROL - Click and hold to raise or lower the volume for a specific channel (4 channels in all - one for each courtroom microphone).

CHANNEL AUDIO INDICATOR - When flashing green, indicates audio is being picked up from that channel.

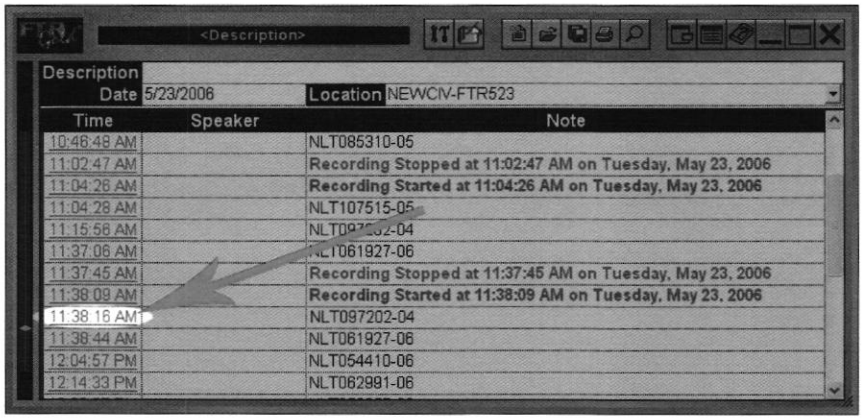
PLAYBACK SPEED CONTROL - Click and hold to speed up or slow down playback speed. Set to "0" for normal playback speed.

Simultaneous Recording And Playback Feature

The system has the capability to play back and record audio at the same time. This is useful in situations where a "read back" of court record is required. To utilize this feature while in Recording Panel Mode (and audio is recording), simply toggle from the "Recording Panel" to "Playback Panel." You do not need to stop recording audio. Use the playback controls to "read back" the desired court audio. Since you are still recording audio, any discussion about the "read back" will also become part of the audio record.

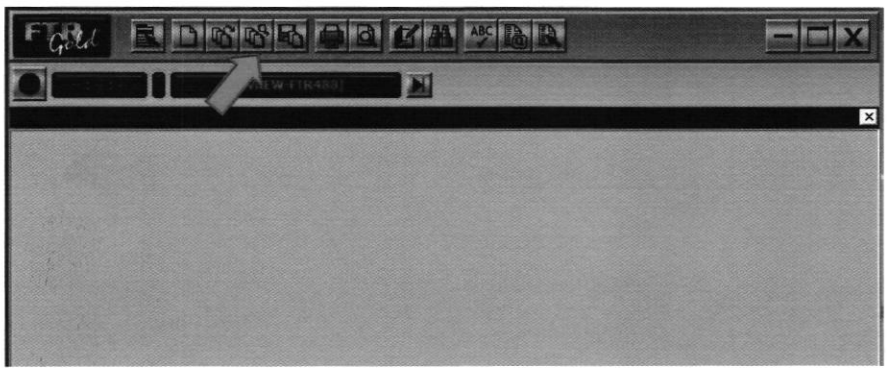
Working with an Open Log Sheet

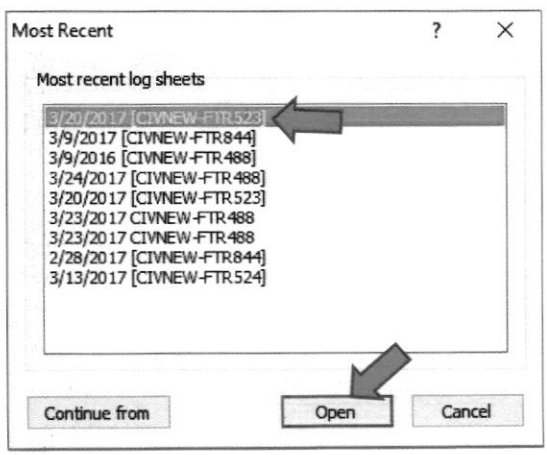
If you have an open Log Sheet, you can click on an annotated TIME and the related audio will automatically be queued up in the Playback Panel.



Playback Audio from a RECENT Day

If you want to playback audio from a recent day,
first click on the **Open Most Recently Used List** button icon located on the **FTR Player** window.





Click on the desired day.

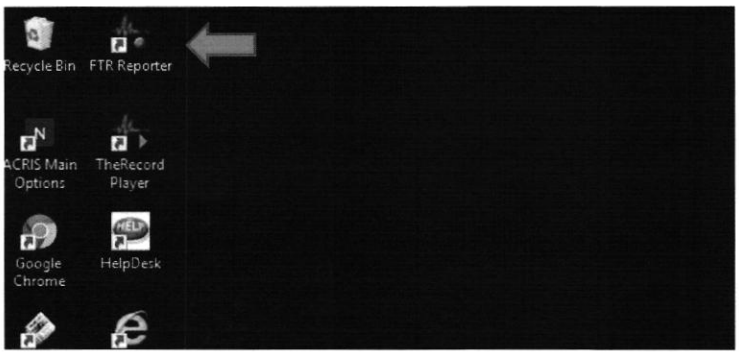
Click Open button.

CHAPTER 5

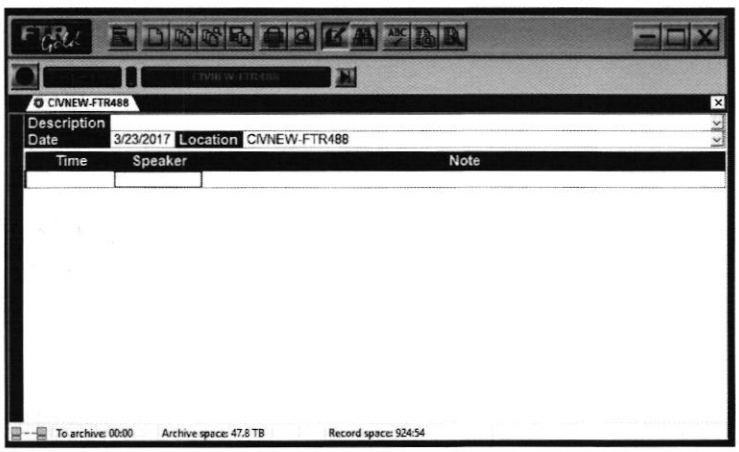
HOW TO SEARCH FOR AUDIO

Search by Case Index Number

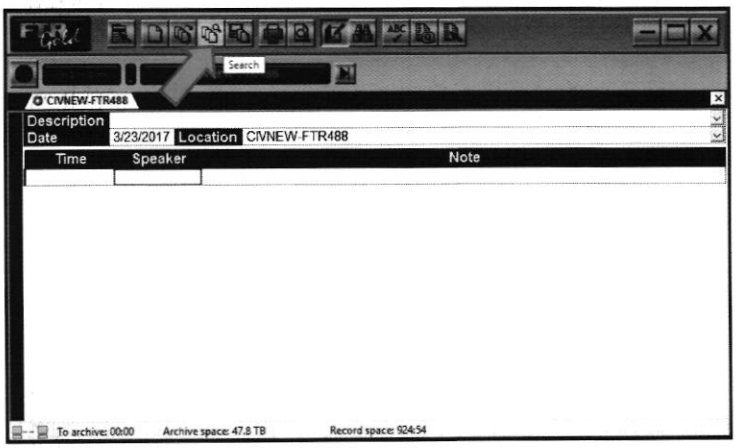
1) If the **FTR Reporter** is not already open, start the program by clicking on the icon located on the desktop.



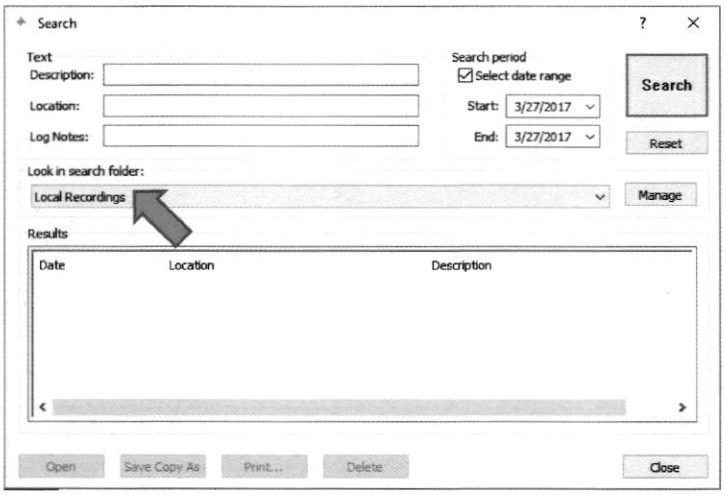
The **FTR Reporter** application should appear as shown below.



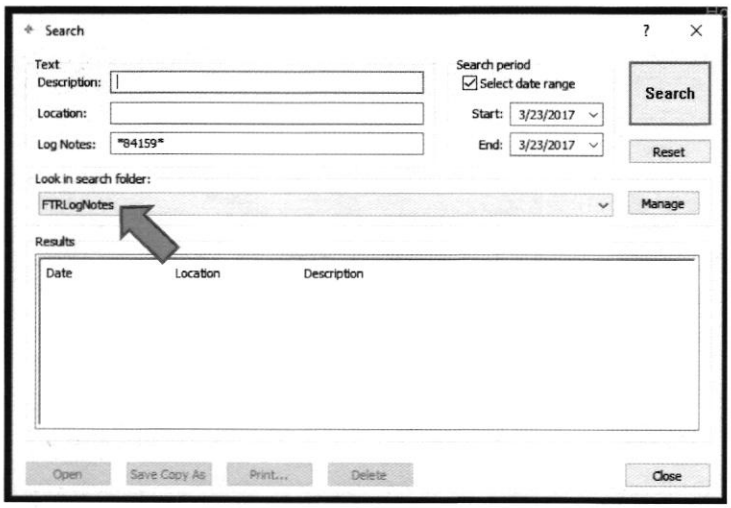
2) Click on the **"Search"** icon.



3A) Set search folder to "**Local Recordings**" to search previously recorded audio on that FTR computer.



3B) Set search folder to "**FTR LogNotes**" to search <u>from a wider range of previously recorded</u> audio, so **<u>the search time will take much longer</u>**.

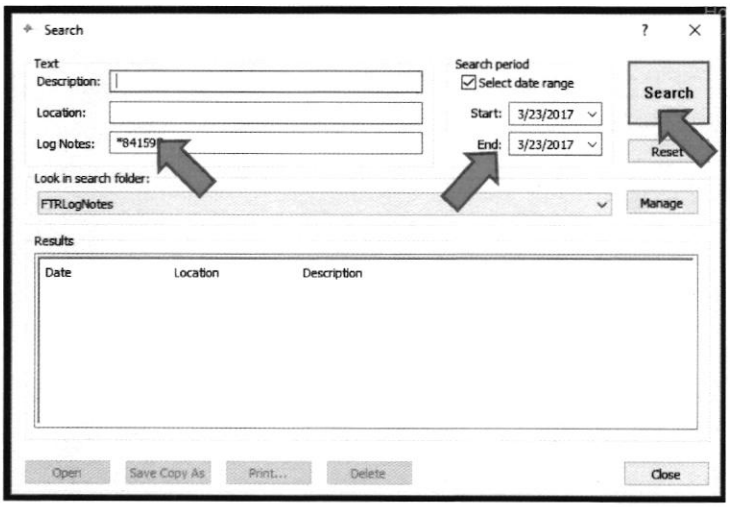


4) Click or press the Tab button to enter text in the **"Log Notes"** field.

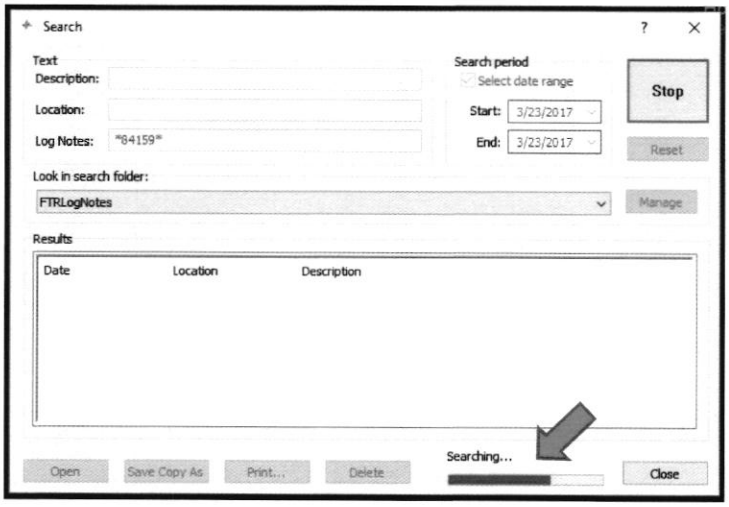
5) To search for a case by Index Number (Example: case number NLT104096-05), type the following in the **"Log Notes"** field: ***104096***

6) If you wish to search between a range of dates, check the **"Select date range"** box and choose a starting and ending date.

7) Click the **"Search"** button.

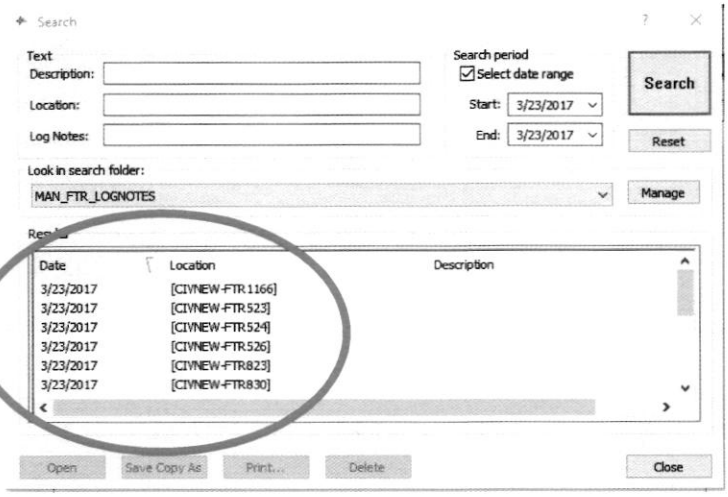


8) While the search is processing, you will see a message that reads **"Searching...":**

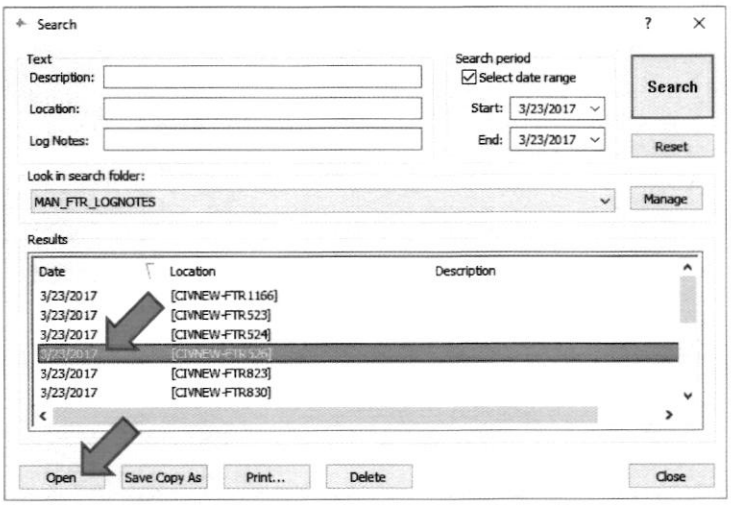


Note: To stop the search, click the **"Stop** " button located on the top right of Search box.

9) When the search is complete, the results are listed.

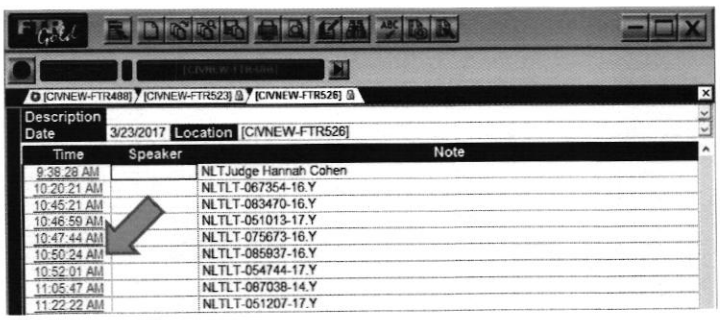


10) Click the desired item from the list of results and then click the **Open** button.
(In this example, the **3/23/2017 FTR526 result has been selected**)



11) The Log Sheet section containing the selected item will appear.

Click the start time **(In this case, 10:50:24 AM**) to bring up the associated audio for playback or exporting.



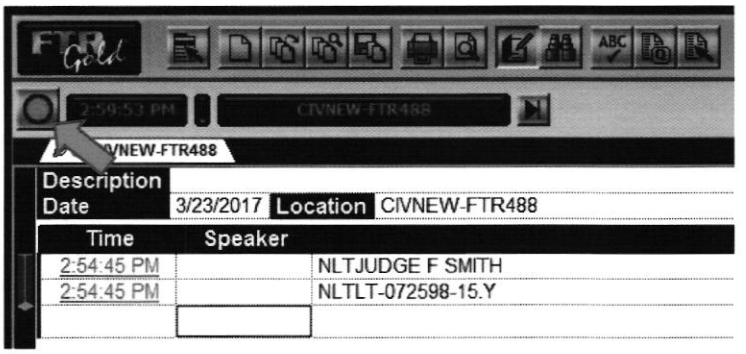
12) FTR Player will open. You can now play back audio. (See Chapter 4 - "How To Play Back Audio").

CHAPTER 6

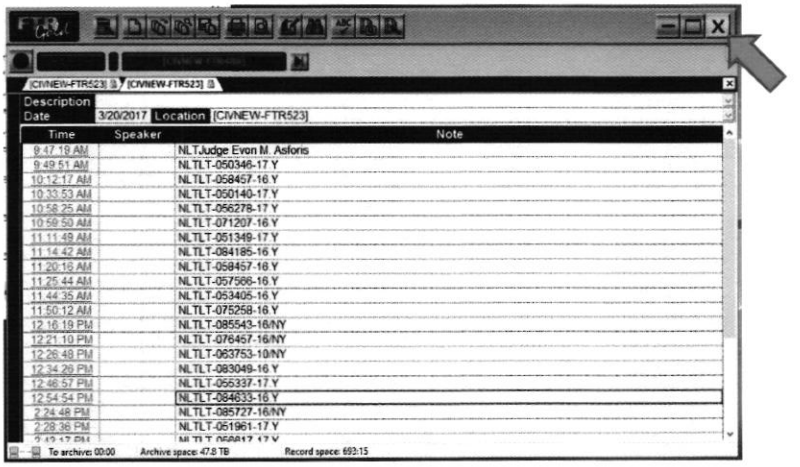
HOW TO END A DAY'S SESSION

Stop Recording and Close All Applications

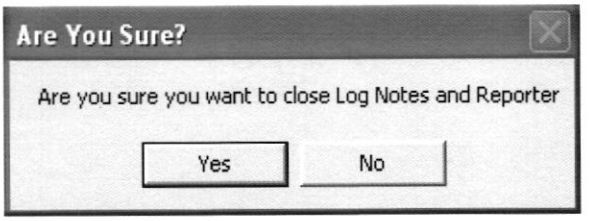
1) At the end of court business,
you can stop recording by clicking the **Start/Stop** button in the **FTR Recorder** window.



2) To close the **FTR Recorder** application,
click the **CLOSE** button located on the upper left corner of the window.



3) If it prompts you, "Are You Sure?", click YES to end your session for the day.

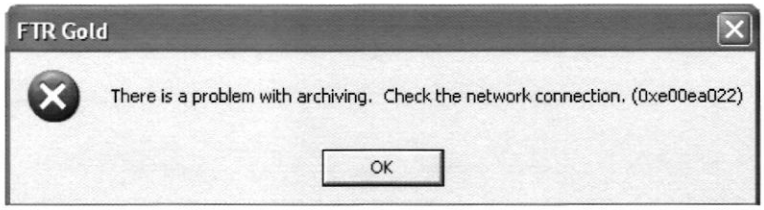


4) In a moment, the application will automatically close.
Audio is not recording and no further action is needed.

CHAPTER 7

TROUBLESHOOTING

Issue # 1: The following prompt appears when a network disruption occurs during recording:



Solution: Click "OK" and continue to record. Everything should continue to function properly.

Issue # 2: The following prompt appears when you begin recording manually:

Solution: This is just a notification. Click "OK" to continue with the recording. It is important to take the additional step of making the Log Notes window active again before you scan. To make Log Notes active, left-click with your mouse over any white area of the Log Notes screen.

CHAPTER 8

AUDIO RECORDS OFFICE AND TECHNICAL SUPPORT

Audio Records Office - Requests for playback, copies or transcriptions of court audio records and questions relating to the use of the FTR system.

Azeeza Tropea	Audio Records Coordinator	646-386-3337
	Audio Records Central Office	646-386-5735 646-386-5736

Local Computer Help Desk - Technical support for computers and equipment.

Kings	George Shaw Mary Muniz	347-404-9130 347-404-9129
Queens	Zuhair Syed Mimi Khaine	718-262-7173 718-262-7197
Harlem	Winston Wright	212-360-8748
Bronx Civil	Zuhair Syed	718-293-6185
Bronx Housing	Zuhair Syed	718-466-3122
Richmond	Mary Muniz	347-404-9010/9129
New York	Vincent Mak	646-386-5450

If you cannot be assisted by your Local Computer Help Desk, please contact the New York County Computer Help Desk at:

646-386-5450

Appendix A

LOG NOTES | QUICK TEXT

Use the following keyboard shortcuts to make "Quick Text" entries in the FTR Log Notes application - saving you time and typing!

Keyboard Shortcut	Quick Text Automatically Entered
F5	Called and sworn
F6	Examination begins
F7	Jury Empaneled
F8	Exhibit
SHIFT + F5	Called and affirmed
SHIFT + F6	Cross Examination begins
SHIFT + F7	In the absence of the jury
SHIFT + F8	Marked for identification
ALT + F5	Witness excused
ALT + F7	Jury excused

To enter any of the above "Quick Text":

- Click "Start" to start recording.
- Scan the bar code on the file jacket. If the bar code is unavailable, you may type in the case index number manually.
- In the "Speaker column" on the Log Notes screen, click in the empty cell next to the corresponding scanned index number. On your keyboard, press any of the above function keys.

Civil Court of the City of New York

COUNTY OF _____ Index Number S.C. _____

Small Claims/Commercial Claims Part

Claimant(s),

against

Defendant(s)

ARBITRATOR'S RECOLLECTION FORM

DECISION: After Trial/Inquest, the decision in the above action is as follows:

A. ☐ Judgment in favor of _____.

_____

_____

Judgment Award Amount	$_____	*When an Award has been granted,*
Interest	$_____	*information below the bold line and*
Disbursements	$_____	*on the reverse side* ***applies to all parties.***
TOTAL JUDGMENT	$_____	

B. ☐ Judgment in favor of Defendant. Claim Dismissed. No monetary award.

Information below the bold line and on the reverse side of this form ***does not apply*** *to Dismissed Claims*

_____ _____

Date Judge, Civil Court/Arbitrator

APPEAL: An Appeal may only be taken from an Order or a Judgment rendered by a Judge (not an Arbitrator), after a trial. An Appeal from this Judgment must be taken no later than the earliest of the following dates:

(i) thirty days after receipt in court of a copy of the judgment by the appealing party,

(ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or

(iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action.

☐ Bailment ☐ License

AUTOMOBILE

Accident Date: Place:

Make of Car: Model and Year:

Property Damage: $ Paid Cash: Paid Check: $ Total: $

CLEANING

☐ Dry Cleaning ☐ Tailoring ☐ Dyeing ☐ Storage

☐ Damaged Goods ☐ Loss of Property

HOUSING

☐ Rent Action ☐ Roommate ☐ Security Return ☐ Deposit Return

SERVICES ☐ Provide ☐ Install ☐ Repair

☐ Carpentry ☐ Electrical ☐ Plumbing ☐ Painting ☐ Auto

☐ Other

PROFESSIONAL

☐ Accounting ☐ Brokerage ☐ Dental Legal ☐ ☐ Medical

☐ Nursing ☐ Other _____

☐ **CLAIMANT SWORN**

Exhibits

Witnesses: ☐ Expert ☐ Other

☐ **DEFENDANT SWORN**

Exhibits

Witnesses ☐ Expert ☐ Other

Arbitrator's Trial Notes

Calendar Sequence #

(C) Nicholas C. Citarella
507 Louisiana Trail, Browns Mills, NJ 08015-5540 (201) 446-7674 ext:
(D) SIMPLY DOWN INC.
c/o ATTN: BARBARA FREEMAN, 400 EAST 55TH STREET, APT. 4 B, New York, NY 10022-5135 (917) 370-7530 ext:

SC-000264-22/NY

Filed: 02/15/2022
Trial Date: 08/11/2022
Prior Appearances: 0
Claim Amount: $2,983.91
Counterclaim Amount:

Parties Not Served: None

Cause(s) of Action: Monies Due for $2,983.91 with interest from 06/08/2019

Counterclaim Cause(s) of Action:

Calendar Remarks:

Decision/Order of Judge

Based upon: □ **Motion** □ **Trial** □ **Inquest** □ **Oral Application**

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

□ Judgment in favor of Defendant. Claim Dismissed. No monetary award.

_____

CIV-SC-90 (Revised September 2018)

Civil Court of the City of New York

COUNTY OF _____ Index Number S.C. _____

Small Claims/Commercial Claims Part

Claimant(s),

against

Defendant(s)

NOTICE OF JUDGMENT

DECISION: After Trial/Inquest, the decision in the above action is as follows:

A. ☐ **Judgment in favor of** _____.

_____

_____

Judgment Award Amount	$_____	*When an Award has been granted,*
Interest	$_____	*information below the bold line and*
Disbursements	$_____	*on the reverse side* ***applies to all parties.***
TOTAL JUDGMENT	$_____	

B. ☐ Judgment in favor of Defendant. Claim Dismissed. No monetary award.

Information below the bold line and on the reverse side of this form ***does not apply*** *to Dismissed Claims*

_____ _____

Date Judge, Civil Court/Arbitrator

APPEAL: An Appeal may only be taken from an Order or a Judgment rendered by a Judge (not an Arbitrator), after a trial. An Appeal from this Judgment must be taken no later than the earliest of the following dates:

(i) thirty days after receipt in court of a copy of the judgment by the appealing party,

(ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or

(iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action.

INFORMATION FOR THE JUDGMENT DEBTOR

(The party against whom a money judgment has been entered)

YOU HAVE A LEGAL OBLIGATION TO PAY THIS JUDGMENT TO THE JUDGMENT CREDITOR. YOU MUST PRESENT PROOF TO THE COURT UPON SATISFACTION OF THE JUDGMENT.

Your failure to pay the judgment may subject you to any one or any combination of the following:

a) garnishment of wage(s) and/or bank account(s).

b) lien, seizure and/or sale of real property and/or personal property, including automobile(s)

c) suspension of motor vehicle registration, and/or drivers license, if the underlying claim is based on judgment debtor's ownership or operation of a motor vehicle.

d) revocation, suspension, or denial of renewal of any applicable business license or permit..

e) investigation and prosecution by the State Attorney General for fraudulent or illegal business practices.

f) a penalty equal to three times the amount of the unsatisfied judgment plus attorney's fees, if there are unpaid claims.

If you did not appear in court on the day the Hearing was held, you are a defaulting party. A judgment may have been taken against you even though you were not in court. If that is so, you may come to the court and apply in writing to have the default judgment opened. You must give the Judge a reasonable excuse for your failure to appear in court and show that you have a meritorious defense. The Judge will review your request and may vacate the default judgment and give you another chance to go to court.

THE JUDGMENT IS VALID FOR A PERIOD OF 20 YEARS. IF THE JUDGMENT IS NOT COLLECTED UPON THE FIRST ATTEMPT, FURTHER ATTEMPTS TO COLLECT MAY BE MADE AT A LATER DATE.

("INFORMATION FOR THE JUDGMENT CREDITOR" is on the reverse side.)

INFORMATION FOR THE JUDGMENT CREDITOR

(the party in whose favor a money judgment award has been entered)

1. It is suggested that you contact the judgment debtor (the Party who owes you money) either directly or through that party's attorney if the party was represented by an attorney, and request payment. You have a right to payment. Upon satisfying the judgment, in accordance with CCA §1811(c), the judgment debtor shall present appropriate proof to the court.
2. a) If the judgment debtor fails to pay, contact (by phone or in person) either a New York City Marshal or the Sheriff in the county where the judgment debtor has property. If you do not know where the judgment debtor has *property*, then contact a New York City Marshal or the Sheriff in the county where the judgment debtor *resides*.*
   b) Be prepared to provide the City Marshal or the Sheriff with the following information:
      1) The SC # of your case, including the year, which appears at the top on the reverse side.
      2) The county in which the case was tried.
      3) Your name, address and telephone number.
      4) The name and address of the judgment debtor.
      5) The name and address of the judgment debtor's employer and the location of the judgment debtor's real property and/or personal property, including automobile(s). *(Information regarding employment or assets of the judgment debtor can be obtained through the use of an Information Subpoena. See 3b).*
   c) Fees paid by you, the judgment creditor, to the City Marshal or to the Sheriff in an attempt to collect the judgment will be added to the total judgment.
3. A judgment creditor is also entitled:
   a) to the issuance by the Clerk of a Restraining Notice. Proper service of the Restraining Notice will prohibit the receiving party from transferring any assets or interest belonging to the judgment debtor until the Sheriff or Marshal executes (collects) on the judgment.
   b) to the issuance by the Clerk, upon request and a nominal cost, of Information Subpoenas where a judgment remains unsatisfied.
   c) To place a lien against the judgment debtor's real property.
4. In addition to any other rights, a judgment creditor may also be entitled to:
   a) to recover an unpaid judgment through garnishment of wage(s) and/or bank account(s) and/or the sale of the judgment debtor's real property and/or personal property;
   b) to notify the Department of Motor vehicles of the unsatisfied judgment as a basis for the suspension of the judgment debtor's motor vehicle registration and/or driver's license if the underlying claim is based on the debtor's ownership or operation of a motor vehicle;
   c) to notify the appropriate state or local licensing authority of an unsatisfied judgment as a basis for possible revocation, suspension, or denial of renewal of a business license;
   d) to notify the State Attorney General if the judgment debtor is a business and appears to be engaged in fraudulent or illegal business practices; and;
   e) to begin an action against the judgment debtor for a penalty equal to three times the amount of the unsatisfied judgment and attorney's fees where the judgment debtor is a business and there are at least two other unsatisfied small claims judgments against that judgment debtor.

***To contact a City Marshal:**
Visit https://www1.nyc.gov/site/doi/offices/marshals-list.page

To contact a County Sheriff:
Visit http://nysheriffs.org/sheriffs

("Information for the Judgment Debtor" is on the reverse side.)

Civil Court of the City of New York

COUNTY OF _____

Part _____ Index No. _____

Claimant(s) / Plaintiff(s),

against

Defendant(s),

ORDER TO SHOW CAUSE

TO VACATE DEFAULT JUDGMENT AND

TO RESTORE TO THE CALENDAR

Upon the annexed affidavit of _____ (Defendant),

sworn to on _____ (Date), and upon all the papers and proceedings herein:

LET the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at:

The Civil Court of the City of New York
(Small Claims Part) (Commercial Claims Part) (Special Term, Part I)

Located at:

County of:

on: _____, at _____ AM/PM,

or as soon thereafter as counsel may be heard, why an Order should not be made:

VACATING the Judgment, restoring the case to the calendar, and/or granting such other and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the:

Claimant(s)/Plaintiff(s) or named attorney(s): (Judge to Initial)	Sheriff or Marshal: (Judge to Initial)
_____ by Personal Service by "In Hand Delivery"	_____ by Personal Service by "In Hand Delivery"
_____ by Certified Mail, R. R. R.	_____ by Certified Mail, R. R. R.
_____ by First Class Mail with official Post Office Certificate of Mailing	_____ by First Class Mail with official Post Office Certificate of Mailing

on or before _____, shall be deemed good and sufficient.

PROOF OF SUCH SERVICE may be filed in the Clerk's office before the return date of this Order to Show Cause, or with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

Attorney(s):

_____

_____

_____

Sheriff/Marshal:

_____

_____

_____

_____
Date

_____
Judge, Civil Court

CIV-GP-47 (Revised 9/92)

Civil Court of the City of New York
COUNTY OF_____

_____

Claimant(s)/Plaintiff(s).

against

Defendant(s),

_____

[PLEASE PRESS HARD]

Index No._____

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE
To Vacate a Judgment and to Restore to the Calendar

Address:_____

_____

State of New York, County of _____ ss.:

_____, being duly sworn, deposes and says:

Defendant's Initials

1. PARTY _____ a) I am the party named as defendant in the above entitled action.

2. SERVICE _____ a) **I have** been served with a summons and complaint in this action **[NOTE: If Small Claims skip #3, go to #4.]**
b) **I have not** been served, and my first notice of legal action was **[NOTE: If you complete any of #2b, skip #3, #4 & #5, go to #6].**
_____ a notice of Default Judgment mailed to me.
_____ a Restraining Notice on my bank account.
_____ a copy of an Income Execution served on _____.
_____ Other: _____.

3. APPEARANCE _____ a) **I did not** appear and answer in the Clerk's Office because: **[NOTE: If you complete #3a, skip to #6.]**
_____
b) **I did** appear and answer in the Clerk's Office
_____ and I received a date for trial.
_____ but the answer was entered late.
_____ Other: _____.

4. TRIAL On the Date of Trial before Judge/Arbitrator _____
_____ a stipulation (a written agreement) was made between claimant/plaintiff and defendant.
_____ a judgment was entered after the trial.
_____ a judgment was entered against me by default for my failure to appear.
_____ Other: _____.

5. EXCUSE My reason for not
_____ complying with the stipulation is_____
_____ following the order of the Court is _____
_____ appearing in court on the date scheduled for trial is_____
_____ Other: _____

6. DEFENSE I allege that I have a good defense because: _____
_____
_____

7. PRIOR _____ a) **I have not** had a previous Order to Show Cause regarding this index number.
_____ b) **I have** had a previous Order to Show Cause regarding this index number but I am making this further application because: _____
_____

8. _____ I request that the Judgment be vacated, that the case be restored to the calendar, and permission to serve these papers in person.

Sworn to before me this _____ day of _____, 20____ _____

(Signature of Defendant)

_____
(Signature of Court Employee and Title)

CIV-GP-17 (Revised 11/02)

Civil Court of the City of New York

County of _____ Index Number _____

Part _____

_____

Claimant(s)/Plaintiff(s)/Petitioner(s), NOTICE OF APPEAL

-against-

_____

Defendant(s)/Respondent(s)

PLEASE TAKE NOTICE that the Appellant, _____

hereby appeals to the Appellate Term of the Supreme Court, First/Second Department, from

Strike one

the Order/Judgment by the Hon. _____

Strike one

Judge of the Civil/Housing Court of the City of New York, entered in the office of the Clerk of

Strike one

said Court on _____, and from each and every part thereof.

Dated: _____ Appellant's Signature: _____

Appellant's Name: _____

To: Address: _____

_____ _____

_____

_____ Appellant's Phone: _____

CIV-GP-67A (Revised October, 2003)

Civil Court of the City of New York
COUNTY OF _____ Index No. _____
Part

_____

INFORMATION
SUBPOENA
To Judgment Debtor

Claimant(s)/Plaintiff(s)/Petitioner(s)

Vs

Defendant(s)/Respondent(s)

_____

_____
(Judgment Debtor)

_____
(Address)

_____
(City, State, Zip)

THE PEOPLE OF THE STATE OF NEW YORK

TO: _____, the person to be examined;

A judgment was entered in this court on _____, in favor of _____ and against _____ in the amount of $_____, together with interest, costs and disbursements for a total of $_____, of which $_____ remains due and unpaid.

Because you, the person to whom this subpoena is directed, either reside, are regularly employed, or have an office for the regular transaction of business in _____ County of the State of New York, you must answer, in writing under oath, separately and fully, each question in the questionnaire accompanying this subpoena, and you must return the answers, together with the original of the questions, within seven (7) days after you receipt of the questions and this subpoena to _____ at _____ .

FALSE SWEARING OR FAILURE TO COMPLY WITH THIS SUBPOENA IS PUNISHABLE AS A CONTEMPT OF COURT.

_____ _____
Date Chief Clerk, Civil Court

CIVIL COURT OF THE CITY OF NEW YORK
County of _____
Part _____

Index No. _____

QUESTIONS
In connection with an
INFORMATION SUBPOENA
regarding

Claimant(s)/Plaintiff(s)

vs

_____
(Judgment debtor)

_____
(Address)

Defendant(s)

_____
(City, State, Zip Code)

State of New York, County of _____ ss,:

_____, being duly sworn, deposes and says:
(Name of Deponent)

I am the _____ of _____ and acknowledge receipt of an
(Title) (Name of organization)

Information Subpoena naming _____ as Judgment Debtor.

The Answers below are based upon information contained in the records of the recipient.

1. Q. Please provide the Debtor's full name(s) as indicated in your records.
   A. _____
2. Q. Please set forth the last known home address and telephone number for the Debtor's residence, if different from the address above.
   A. _____
3. Q. Does the Judgment Debtor have an account with your organization and/or are you currently holding any deposits and/or security? If so, what is the account number, and what is/are the amount(s) on deposit?
   A. _____
4. Q. Do your records indicate that the Debtor is employed? If so, please list the name and address of the employer and the salary as indicated in your records.
   A. _____
5. Q. Did the Debtor list any bank references on his/her application? If so, set forth the name and address of said bank(s) and account number(s), if available.
   A. _____
6. Q. Do your records indicate the location of any other assets of the Debtor? if so, please give the location and description of any other assets.
   A. _____

The answers given to the above questions are true and complete to the best of my knowledge.

Sworn to before this _____ day of _____ 20__

_____ _____
Notary Public Signature (before a Notary Public)

WHEN COMPLETED, RETURN THE ORIGINAL COPY OF THIS FORM TO: _____
Judgment Creditor's Name

_____
Address

DO NOT RETURN THIS FORM TO THE CIVIL COURT

CIV-SC-61 (Revised 11/06)

FREE CIVIL COURT FORM
No fee may be charged to fill in this form.
Form can be found at: http://www.nycourts.gov/courts/nyc/smallclaims/forms.shtml.

CIVIL COURT OF THE CITY OF NEW YORK
County of _____
Part

Index No. _____

AFFIDAVIT OF SERVICE
OF AN
INFORMATION SUBPOENA

Claimant(s)/Plaintiff(s)

VS

_____
(Judgment debtor)

_____
(Address)

_____
(City, State, Zip Code)

Defendant(s)

State of New York, County of _____ ss.:

_____, being duly sworn, deposes and says:
Name of Deponent

I am over the age of 18 and not a party to this action. At _____, on _____,
Time Date
I served a copy of an Information Subpoena with Questions and a prepaid addressed return envelope on

_____

by mailing the papers in an envelope addressed to him/her at

_____

by Certified Mail Return Receipt Requested.

_____
Signature of Server

Sworn to before me
this _____ day of _____, 20 ___

_____
Signature of Notary

FREE CIVIL COURT FORM
No fee may be charged to fill in this form.
Form can be found at: http://www.nycourts.gov/courts/nyc/civil/forms.shtml.

CIVIL COURT OF THE CITY OF NEW YORK

INSTRUCTIONS FOR SERVICE OF AN INFORMATION SUBPOENA

RESTRICTIONS:

An information subpoena from the Civil Court of the City of New York may only be served within the State of New York. Please note that if the information subpoena is served outside of the City of New York, Westchester or Nassau counties and the person subpoenaed does not obey the information subpoena a Judge of the Civil Court may not have the power to punish that person for contempt.

An agency of the city, county or state government, or a public library, may only be subpoenaed with the written permission of a judge.

PROCEDURES:

1. Make a photocopy of the subpoena and two photocopies of the list of questions.

2. Place the photocopy of the subpoena, together with the original and one of the photocopies of the questions to be answered in an envelope addressed to the person from whom you desire information. Include a stamped self-addressed envelope for use by the deponent to return the answers to you.

3. Anyone NOT A PARTY TO THE ACTION who is over the age of 18 may "serve" the subpoena. To "serve" the subpoena, the person who is serving the papers must put the copy of the subpoena together with the questions and the stamped self-addressed envelope in an envelope, and mail it by Certified Mail, Return Receipt Requested, to the deponent.

4. After the papers are mailed, the server must fill out an affidavit of service, provided on the other side of this Instruction Sheet, have it notarized, and retain it for future use if necessary.

CIVIL COURT OF THE CITY OF NEW YORK

☐ A. INSTRUCTIONS FOR SERVICE OF A RESTRAINING NOTICE WHEN THE JUDGMENT DEBTOR IS NOT A NATURAL PERSON

1. Make a photocopy of the Restraining Notice.
2. Anyone NOT A PARTY TO THE ACTION who is over the age of 18 may "serve" the Restraining Notice. To "serve" the Restraining Notice, the person who is serving the papers must put the copy of the Restraining Notice in an envelope, and mail it by Certified Mail, Return Receipt Requested, to the person being served, or serve it in the same manner as a summons.
3. After the papers are served, the server must fill out an affidavit of service, have it notarized, and retain it with a copy of the Restraining Notice, for future use if necessary.

☐ B. INSTRUCTIONS FOR SERVICE OF A RESTRAINING NOTICE WHEN THE JUDGMENT DEBTOR IS A NATURAL PERSON

1. Make two photocopies of the Restraining Notice and Notice to Judgment Debtor.
2. Mail the Restraining Notice with the Notice to the Judgment Debtor to the judgment debtor.
3. Anyone NOT A PARTY TO THE ACTION who is over the age of 18 may "serve" the Restraining Notice. To "serve" the Restraining Notice, the person who is serving the papers must put the copy of the Restraining Notice in an envelope, and mail it by Certified Mail, Return Receipt Requested, to the person being served, or serve it in the same manner as a summons.
4. After the papers are served, the server must fill out an affidavit of service, provided on the Instruction Sheet, have it notarized, and retain it with a copy of the Restraining Notice, for future use if necessary.

☐ C. INSTRUCTIONS FOR SERVICE OF A RESTRAINING NOTICE ON A JUDGMENT DEBTOR'S BANK WHEN THE JUDGMENT DEBTOR IS A NATURAL PERSON

The Clerk will give you a Restraining Notice, an Exemption Notice and two Exemption Claim forms.

1. Fill out section "Address A" and "Address B" on the two Exemption Claim forms.
2. Make two photocopies of the Restraining Notice, and one copy of both the Exemption Notice and the Exemption Claim form.
3. Anyone NOT A PARTY TO THE ACTION who is over the age of 18 may "serve" the Restraining Notice. To "serve" the Restraining Notice, the person who is serving the papers must put the original and a copy of the Restraining Notice, and the original Exemption Notice and the two Exemption Claim forms with sections titled "Address A" and Address B" filled out in an envelope, and mail it by Certified Mail, Return Receipt Requested, to the bank, or serve it in the same manner as a summons.
4. After the papers are served, the server must fill out an affidavit of service, have it notarized, and retain it with a copy of the Restraining Notice, Exemption Notice and Exemption Claim forms for your records.

Civil Court of the City of New York
COUNTY OF _____ Index No. _____
Part
_____

RESTRAINING NOTICE

Claimant(s)/Plaintiff(s)/Petitioner(s)

Against

Defendant(s)/Respondent(s)

_____

_____ (Judgment Debtor)

_____ (Address)

_____ (City, State, Zip)

THE PEOPLE OF THE STATE OF NEW YORK

TO: _____, the person to be restrained;

A judgment was entered in this court on _____, in favor of _____ and against _____ in the amount of $_____, together with interest, costs and disbursements for a total of $_____, of which $_____ remains due and unpaid.

If you owe a debt to the judgment debtor, or are in possession or custody of property in which the judgment debtor has an interest, be advised that in accordance with Section 5222(b) of the Civil Practice Law and Rules you are hereby forbidden to make or permit any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt except as provided for in that Section. This notice also covers all property which may in the future come into your possession or custody in which the judgment debtor has an interest, and all debts which may come due in the future from you to the judgment debtor.

DISOBEDIENCE OF THIS RESTRAINING NOTICE IS PUNISHABLE AS A CONTEMPT OF COURT.

_____ _____
Date Chief Clerk, Civil Court

NOTICE TO JUDGMENT CREDITOR: A judgment creditor shall not serve more than two restraining notices per year upon a natural person's banking institution.

CIV-SC-59 (2/09)

CIVIL PRACTICE LAWS AND RULES

SECTION 5222(b) Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order has been satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter becoming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount on the judgment or order, the restraining notice is not effective as to the other property or money.

CIVIL COURT OF THE CITY OF NEW YORK
County of _____

Index Number _____

_____

Affidavit of Service
of
Restraining Notice

_____Claimant/Plaintiff,

-against-

_____Defendant.

_____
Judgment Debtor's Name

_____
Address

_____
City , State, Zip

_____

State of New York, County of _____ ss.:

.

_____, being duly sworn, deposes and says:
Name of Deponent

I am over the age of 18 and not a party to this action. At _____, on _____,
Time

Date

I served the following papers: *check the box next to the title(s) papers served*

☐ **A. Restraining Notice;**
☐ **B. Restraining Notice and Notice to Judgment Debtor, or**
☐ **C. Restraining Notice, Exemption Notice and two Exemption Claim forms with sections titled "Address A" and "Address B" filled out,**

on

_____

☐ **by mailing the papers in an envelope addressed to**

_____

by Certified Mail Return Receipt Requested.

OR

☐ **by delivering papers to _____**

at the following address: _____.

_____
Signature of Server

Sworn to before me
this _____ day of _____, 20 ___

_____
Signature of Notary

FREE CIVIL COURT

No fee may be charged to fill in this form.

CIV-SC-58 (Revised 1/09)

Form can be found at: http://www.nycourts.gov/courts/nyc/smallclaims/forms.shtml

CIVIL COURT, CITY Of NEW YORK
County of _____ Part _____

Index Number: _____

_____

Claimant(s)/Plaintiff(s)/Petitioner(s)

Against

Defendant(s)/Respondent(s)

_____

EXECUTION AGAINST INCOME/PROPERTY

_____
(Judgment Debtor)

_____
(Last Known Address)

_____
(City, State, Zip)

THE PEOPLE OF THE STATE OF NEW YORK

TO ANY SHERIFF OR MARSHAL OF THE CITY OF NEW YORK:

A judgment was entered in this court on _____, in favor of _____ and against _____ in the amount of $_____, together with interest, costs and disbursements for a total of $_____, of which $_____ remains due and unpaid.

YOU ARE HEREBY DIRECTED to levy and execute upon property in which the above named judgment debtor, who is not deceased, has an interest, or upon debts owed to the judgment debtor; and

YOU ARE FURTHER DIRECTED to collect installments of 10% but no more than the Federal limits (see I. LIMITATIONS ON THE AMOUNT THAT CAN BE WITHHELD on the reverse side) from each payment of income to the judgment debtor by the employer or garnishee. CPLR § 5231 and 15 United States Code § 1671 *et seq.*

_____ _____
Date Chief Clerk, Civil Court

TO THE JUDGMENT DEBTOR: Please take notice that you shall immediately begin payment of the indicated installments to the Sheriff or Marshal named below, and that should you default, this execution will be served upon the employer or garnishee indicated.

TO THE EMPLOYER: Name_____
Address_____

Please take notice that you are required by law to immediately withhold and pay over the indicated installments to the Sheriff or Marshal named below.

TO THE GARNISHEE: Name_____
Address_____

Please take notice that you are required by law to immediately pay over to the Sheriff or Marshal named below, all money or other property in your possession in which the above-named judgment debtor has an interest.

Delivered on _____20____, to ☐ Marshal _____
☐ The Sheriff of the City of New York,
County of _____

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

CIV-SC-30 Page one (01/09)

Pursuant to subdivision (l) of section fifty-two hundred five of the CPLR, two thousand five hundred dollars of an account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments, as defined in paragraph two of subdivision (l) of section fifty-two hundred five of the CPLR, is exempt from execution and the garnishee cannot levy upon or restrain two thousand five hundred dollars in such an account.

Pursuant to subdivision (i) of section fifty-two hundred twenty-two of the CPLR, an execution shall not apply to an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents.

THIS INCOME EXECUTION DIRECTS THE WITHHOLDING OF UP TO 10 PERCENT OF THE JUDGMENT DEBTOR'S *GROSS INCOME*. IN CERTAIN CASES, HOWEVER, STATE AND FEDERAL LAW DOES NOT PERMIT THE WITHHOLDING OF THE FULL 10% OF THE JUDGMENT DEBTORS'S *GROSS INCOME*. THE JUDGMENT DEBTOR IS REFERRED TO THE NEW YORK CIVIL PRACTICE LAW AND RULES §5231 AND 15 UNITED STATES CODE §1671, *ET SEQ*.

I. LIMITATIONS ON THE AMOUNT THAT CAN BE WITHHELD

A. AN INCOME EXECUTION FOR INSTALLMENTS FROM A JUDGMENT DEBTOR'S *GROSS INCOME* CANNOT EXCEED TEN PERCENT (10%) OF THE JUDGMENT DEBTOR'S *GROSS INCOME*.

B. IF THE JUDGMENT DEBTOR'S *WEEKLY DISPOSABLE EARNINGS* ARE EQUAL TO OR LESS THAN THE GREATER OF THIRTY (30) TIMES THE CURRENT FEDERAL MINIMUM WAGE (..... PER HOUR), OR (....). OR THIRTY TIMES THE CURRENT STATE MINIMUM WAGE (.... PER HOUR), OR (.....) NO DEDUCTION CAN BE MADE UNDER THE INCOME EXECUTION.

C. A JUDGMENT DEBTOR'S *WEEKLY DISPOSABLE EARNINGS* CANNOT BE REDUCED BY MORE THAN TWENTY FIVE PERCENT OF THE DISPOSABLE EARNINGS FOR THAT WEEK, OR, REDUCED BELOW THE AMOUNT BY WHICH THE DISPOSABLE EARNINGS FOR THAT WEEK EXCEEDS THE GREATER OF THE AMOUNT ARRIVED AT BY MULTIPLYING THIRTY (30) TIMES THE CURRENT FEDERAL MINIMUM WAGE (.... PER HOUR), OR (.....) OR THIRTY TIMES THE CURRENT STATE MINIMUM WAGE (... PER HOUR) OR (....) UNDER THE INCOME EXECUTION.

D. IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS EQUAL OR EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S *DISPOSABLE EARNINGS,* NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THE INCOME EXECUTION.

E. IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS ARE LESS THAN TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S *DISPOSABLE EARNINGS*, DEDUCTIONS MAY BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION. HOWEVER, THE AMOUNT ARRIVED AT BY ADDING THE DEDUCTIONS FROM EARNINGS MADE UNDER THE EXECUTION TO THE DEDUCTIONS MADE FROM EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES CANNOT EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S *DISPOSABLE EARNINGS.*

NOTE: NOTHING IN THIS NOTICE LIMITS THE PROPORTION OR AMOUNT WHICH MAY BE DEDUCTED UNDER ANY ORDER FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES.

II. EXPLANATION OF LIMITATIONS

DEFINITIONS:

DISPOSABLE EARNINGS - DISPOSABLE EARNINGS ARE THAT PART OF AN INDIVIDUAL'S EARNINGS LEFT AFTER DEDUCTING THOSE AMOUNTS THAT ARE REQUIRED BY LAW TO BE WITHHELD (FOR EXAMPLE TAXES, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE, BUT NOT DEDUCTIONS FOR UNION DUES, INSURANCE PLANS, ETC.)

GROSS INCOME - GROSS INCOME IS SALARY, WAGES OR OTHER INCOME, INCLUDING ANY AND ALL OVERTIME EARNINGS, COMMISSIONS, AND INCOME FROM TRUSTS, BEFORE ANY DEDUCTIONS ARE MADE FROM SUCH INCOME.

ILLUSTRATIONS REGARDING EARNINGS:

IF DISPOSABLE EARNINGS IS:	AMOUNT TO PAY OR DEDUCT FROM EARNINGS UNDER THIS INCOME EXECUTION IS:
(a) The greater of 30 times Federal Minimum wage (.....) Or 30 times State Minimum wage (.....) Or less	No payment or deduction allowed.
(b) More than the greater of 30 times Federal Minimum wage (.....) Or 30 times State Minimum wage (.....) and less than 40 times Federal Minimum wage (.....)	The lesser of the excess over the greater of 30 times the Federal Minimum wage (.....) Or 30 times the State Minimum wage (.....) in disposable earnings, or 10% of gross income.
(c) 40 times the federal minimum wage (.....) or more.	The lesser of 25% of disposable earnings or 10% of gross income.

III. NOTICE: YOU MAY BE ABLE TO CHALLENGE THIS INCOME EXECUTION THROUGH THE PROCEDURES PROVIDED IN CPLR § 5231 and CPLR § 5240.

If you think that the amount of your earnings being deducted under this income execution exceeds the amount permitted by state and federal law, you should act promptly because the money will be applied to the judgment. If you claim that the amount of your earnings being deducted under this income execution exceeds the amount permitted by state and federal law, you should contact your employer or other person paying your earnings. Further, YOU MAY CONSULT AN ATTORNEY INCLUDING LEGAL AID IF YOU QUALIFY. New York State law provides two procedures through which an income execution can be challenged:

CPLR § 5231 (g) Modification. At any time, the judgment debtor may make a motion to a court for an order modifying an income execution.

CPLR § 5240 Modification or protective order; supervision of enforcement. At any time, the judgment debtor may make a motion to a court for an order denying, limiting, conditioning, regulating, extending or modifying the use of any post-judgment enforcement procedure, including the use of income executions.

RETURN (FOR SHERIFF'S OR MARSHAL'S USE ONLY)

☐ Fully satisfied _____ 20_____ ☐ Partially satisfied _____ 20____ ☐ Unsatisfied

NOTICE TO THE JUDGMENT DEBTOR

Money or property belonging to you may have been taken or held in order to satisfy a judgment or order which has been entered against you. Read this carefully.

YOU MAY BE ABLE TO GET YOUR MONEY BACK

State and Federal Laws prevent certain money or property from being taken to satisfy judgments or orders. Such money or property is said to be "exempt." The following is a partial list of money which may be exempt:

1. Supplemental Security Income (SSI);
2. Social Security;
3. Public Assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers Compensation benefits;
8. Public or private pensions;
9. Veterans benefits;
10. Ninety percent of your wages or salary earned in the last sixty days;
11. Twenty-five hundred dollars of any bank account containing statutorily exempt payments that were deposited electronically or by direct deposit within the last forty-five days, including, but not limited to, your social security, supplemental security income, veterans benefits, public assistance, workers' compensation, unemployment insurance, public or private pensions, railroad retirement benefits, black lung benefits, or child support payments;
12. Railroad retirement; and
13. Black lung benefits.

If you think that any of your money that has been taken or held is exempt, you must act promptly because the money may be applied to the judgment or order. If you claim that any of your money that has been taken or held is exempt, you may contact the person sending this notice.

Also, YOU MAY CONSULT AN ATTORNEY, INCLUDING ANY FREE LEGAL SERVICES ORGANIZATION IF YOU QUALIFY. You can also go to court without an attorney to get your money back. Bring this notice with you when you go. You are allowed to try to prove to a judge that your money is exempt from collection under New York civil practice law and rules, sections fifty-two hundred twenty-two-a, fifty-two hundred thirty-nine and fifty-two hundred forty. If you do not have a lawyer, the clerk of the court may give you forms to help you prove your account contains exempt money that the creditor cannot collect. The law (New York Civil Practice Law and Rules, Article 4 and Sections 5239 and 5240) provides a procedure for determination of a claim to an exemption.

Civil Court of the City of New York

EXEMPTION NOTICE

as required by New York Law

YOUR BANK ACCOUNT IS RESTRAINED OR "FROZEN"

The attached Restraining Notice or notice of Levy by Execution has been issued against your bank account. You are receiving this notice because a creditor has obtained a money judgment against you, and one or more of your bank accounts has been restrained to pay the judgment. A money judgment is a court's decision that you owe money to a creditor. You should be aware that FUTURE DEPOSITS into your account(s) might also be restrained if you do not respond to this notice.

You may be able to "vacate" (remove) the judgment. If the judgment is vacated, your bank account will be released. Consult an attorney (including free legal services) or visit the court clerk for more information about how to do this.

Under state and federal law, certain types of funds cannot be taken from your bank account to pay for a judgment. Such money is said to be "exempt."

DOES YOUR BANK ACCOUNT CONTAIN ANY OF THE FOLLOWING TYPES OF FUNDS?

1. Social security;
2. Social security disability (SSD);
3. Supplemental security income (SSI);
4. Public assistance (welfare);
5. Income earned while receiving SSI or public assistance;
6. Veterans benefits;
7. Unemployment
8. Payments from pensions and retirement accounts;
9. Disability benefits;
10. Income earned in the last 60 days (90% of which is exempt);
11. Workers' compensation benefits;
12. Child support;
13. Spousal support or maintenance (alimony);
14. Railroad retirement; and/or
15. Black lung benefits.

If YES, you can claim that your money is exempt and cannot be taken.
To make the claim, you must

(a) complete the EXEMPTION CLAIM FORM attached;
(b) deliver or mail the form to the bank with the restrained or "frozen" account; and
(c) deliver or mail the form to the creditor or its attorney at the address listed on the form.

You must send the forms within 20 DAYS of the postmarked date on the envelope holding this notice. You may be able to get your account released faster if you send the creditor or its attorney written proof that your money is exempt. Proof can include an award letter form the government, an annual statement from your pension, pay stubs, copies of checks, bank records showing the last two months of account activity, or other papers showing that the money in your bank account is exempt. If you send the creditor's attorney proof that the money in your account is exempt, the attorney must release that money within seven days. You do not need an attorney to make an exemption claim using the form.

Civil Court of the City of New York
COUNTY OF _____ Index No. _____
Part _____

EXEMPTION CLAIM FORM

Plaintiff(s)/Petitioner(s)/Claimant(s)

Vs

Defendant(s)/Respondent(s)

_____

NAME AND ADDRESS OF JUDGMENT CREDITOR OR ATTORNEY
(To be completed by judgment creditor or attorney)
ADDRESS
A_____
_____

NAME ADDRESS OF FINANCIAL INSTITUTION
(To be completed by judgment creditor or attorney)
ADDRESS
B_____
_____

Directions: To claim that some or all of the funds in your account are exempt, complete both copies of this form, and make one copy for yourself. Mail or deliver one form to ADDRESS A and one form to ADDRESS B within twenty days of the date on the envelope holding this notice.
**If you have any documents, such as an award letter, an annual statement from your pension, paystubs, copies of checks or bank records showing the last two months of account activity, include copies of the documents with this form. Your account may be released more quickly.

I state that my account contains the following type (s) of funds (check all that apply) :

____ Social security
____ Social security disability (SSD)
____ Supplemental security income (SSI)
____ Public assistance
____ Wages while receiving SSI or public assistance
____ Veterans benefits
____ Unemployment insurance
____ Payments from pensions and retirement accounts
____ Disability benefits
____ Income earned in the last 60 days (90% of which is exempt)
____ Child support
____ Spousal support or maintenance (alimony)
____ Workers' compensation benefits
____ Railroad retirement; and/or black lung benefits
____ Other (describe exemption) :_____

I request that any correspondence to me regarding my claim be sent to the following address:

I certify under penalty of perjury that the statement above is true to the best of my knowledge and belief.

Date _____ _____

CIVIL COURT OF THE CITY OF NEW YORK **Index No._____**
COUNTY OF : PART

_____

Plaintiff

-against-

Defendant

NOTICE OF MOTION TO OBJECT TO A CLAIM OF EXEMPTION

_____

PLEASE TAKE NOTICE that upon the annexed affidavit of _____,

sworn to on the _____ day of _____, 20____, and the exhibits annexed thereto, and upon all the prior pleadings and proceedings had herein, the ***PLAINTIFF/PETITIONER/CLAIMANT*** (CIRCLE ONE) will move this Court located at _____, New York , Part _____, Room ____, on the _____, day of _____, 20____, at_____ o'clock, or as soon thereafter as can be heard for an Order stating that the funds in the judgment debtors account are nonexempt and, therefore, can be restrained and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that these papers have been served on you seven days before the motion is scheduled to be heard.

Dated: _____ From: _____
_____
_____

CIV-SC-31 (Created 2/09)

CIVIL COURT OF THE CITY OF NEW YORK

County of _____ Index No.:_____

Part _____

Plaintiff(s)/Petitioner(s)/Claimant(s)

-against-

Defendant(s)/Respondent(s)

AFFIDAVIT IN SUPPORT OF A MOTION TO OBJECT TO A CLAIM OF EXEMPTION

State of New York, County of _____ss:

_____being duly sworn, deposes and says:
[Print your name]

(INITIALS)

1. Party _____ I am the party named as (Plaintiff)(Petitioner)(Claimant) in the above entitled proceeding.

---

2. _____ I request that the Court issue an Order stating that funds in the account of the judgment debtor in _____ banking institution In the amount of $_____are nonexempt or grant such other relief as the Court may deem to be just and proper.

Request

---

3. _____ I have a good claim because:
(Please show the facts of why you believe that the funds are nonexempt)

_____
_____
_____

Claim

---

4. Prior _____ a) I have not made a previous motion regarding this claim of exemption.
b) I have made a previous motion regarding this claim of exemption because

_____
_____

Sworn to before me this _____ day of _____, 20___

_____
Signature of Court Employee and Title

(Sign Name)_____

(Print Name)_____

(Address)_____

_____
City, State, Zip Code Telephone Number

CIV-GP-32 Created 2/09 (4 ply)

CIVIL COURT OF THE CITY OF NEW YORK

County of _____ Index Number _____

_____

ACKNOWLEDGMENT
OF ASSIGNMENT OF
JUDGMENT
(CPLR Section 5019 (c))

vs

_____

_____, being duly sworn, deposes and says:

I am the _____ of this claim and reside at

_____.

A judgment was entered against _____, whose last known address is _____ on _____ in the amount of $ _____. To date $ _____ has been collected on this judgment.

I hereby assign all title, rights, and interest in this judgment and the right to enforce it to

_____

who resides at _____

A notice of this assignment has been served on _____, the judgment debtor, by mail addressed to his/her last known address.

_____

Sworn to before me this ___ day of _____, 20 ___ _____
(Print Name)

_____
Notary Public

CIV-SC-15 (8/06)

CIVIL COURT OF THE CITY OF NEW YORK **Index No. _____**
SMALL AND COMMERCIAL CLAIMS PART

Claimant(s)/Plaintiff(s)

- against -

Defendant(s)/Respondent(s)

AFFIDAVIT PURSUANT TO CCA § 1811 (d) UPON PAYMENT OF JUDGMENT

State of New York, County of_____ ss:

_____, being duly sworn, deposes and says:
(Name of Deponent)

I am the Judgment Debtor in the above captioned case.

In accordance with the requirements set forth in § 1811(d) of the Civil Court Act, I present proof to the court that I have satisfied the Judgment and request that the court indicate such in the records.

Submitted please find:

☐ Copy(ies) of canceled check(s)

☐ Copy(ies) of signed receipt(s)

☐ Copies of money order or tracer(s)

☐ Other (specify)

_____

_____

_____

_____ _____
Date Judgment Debtor

Sworn to me this ____ day of _____, 20___.

_____
Signature of Notary Public or Court Clerk

FEE SCHEDULE FOR SMALL CLAIMS (EFF. 8/30/21)

**** EXACT CHANGE REQUIRED ****

Small Claims up to $1,000	$ 15.00
Small Claims over $1,000 up to $10,000	20.00
Commerical/Consumer Claims	31.66 (see below)
Addl mailings or addl defendants for Commercial/Consumer	6.66
Third Party claims	6.66
Wage claim ($300 or less, wages only)	6.66
Counterclaims (with postage) If filed on date of hearing, counter claim may be only $5.00 (no postage)	5.53
Transcript of Judgment	15.00
Certificate of Disposition or Certified Copy	6.00
Information Subpoena	3.00
Exemplification (to file judgment in another State)	15.00 in room 225
Jury Demand	70.00
Notice of Appeal	30.00
Undertaking on Appeal (all undertakings to be paid by certified check or money order payable to "NYC Dept. Of Finance"	Full Amount of Judgment

Commercial Claims fees

1 Claim filed	$ 31.66	1 claim . . .	$ 31.66
2 Claims filed	$ 63.32	. . . with 2 Defendants	$ 38.32
3 Claims filed	$ 94.98	. . . with 3 Defendants	$ 44.98
4 Claims filed	$ 126.64	. . . with 4 Defendants	$ 51.64
5 Claims filed	$ 158.30	. . . with 5 Defendants	$ 58.30

Filing more than 3 claims at one time may result in your claims being scheduled for different dates

Civil Court of the City of New York

County of _____ Index Number _____

Part _____

In the Matter of the Application of

_____

to prosecute as a poor person against

_____

_____

AFFIDAVIT IN SUPPORT OF AN APPLICATION TO PROCEED AS A POOR PERSON AND TO WAIVE COURT FEES

State of New York, County of _____ ss:

_____, being duly sworn, deposes and says:

PRINT YOUR NAME

1. I am the party named as _____ in the above titled action.

2. 1 reside at _____

3. 1 seek to proceed in the above titled action.

4. 1 have a good and meritorious cause of action in that _____

_____

5. 1 request that an Order be granted:
   - ☐ waiving any and all statutory fees for the defense or prosecution of the action,
   - ☐ waiving the fee for the filing of a Notice of Appeal
   - ☐ other (Specify) _____

6. 1 make this application based on CPLR §1101. I do not have, nor am I able to obtain, the funds needed to pay the court fees. I will be unable to proceed unless the Order is granted.

7. 1 am/am not a recipient of Public Assistance from the Department of Social Services of the City of New York.

8. 1 have no income other than the sum of $_____ per _____ from

_____

9. 1 own no property of any kind except necessary personal wearing apparel and

_____

[Indicate other property and the value of such property]

10. No other person is beneficially interested in the recovery sought.

11. ☐ a) I have not made a previous application for this or similar relief.
    ☐ b) I have made previous application(s) for this or similar relief, but I am making this further application because

_____ .

Sign your name _____

Print your address

_____

_____

Telephone Number _____

Sworn to before me this____ day of_____20___

_____

Signature of Court Employee and Title

CIV-GP-15-i(Revised 5/04)

Civil Court of the City of New York

County of _____ Index Number _____

Part

Claimant/Plaintiff/Petitioner(s)

Defendant/Respondent(s)

EX PARTE ORDER

GRANTING LEAVE

TO PROCEED AS A POOR PERSON

AND TO WAIVE COURT FEES

Upon the annexed affidavit of _____

sworn to on _____, and it appearing that said applicant has a good and meritorious cause of action for _____ and that s/he is unable to pay the costs, fees and expenses necessary to proceed in this action, and that there is no other person beneficially interested in the recovery sought, it is hereby

ORDERED, that the applicant is permitted to proceed in this action as a poor person, and it is further

ORDERED, that where a formal complaint is necessary it is waived, and it is further

ORDERED, that: ___ any and all statutory fees for the defense or prosecution of this action are **waived**,

___ the statutory fee for filing a Notice of Appeal in this action is **waived**,

and it is further

ORDERED, that in the event of any recovery in favor of the applicant, the recovery shall be paid to the Clerk of the Court to await distribution pursuant to Court Order and that the Order of Distribution shall provide for the payment of the costs and fees which would have been paid had the applicant brought this cause of action other than as a poor person, and it is further

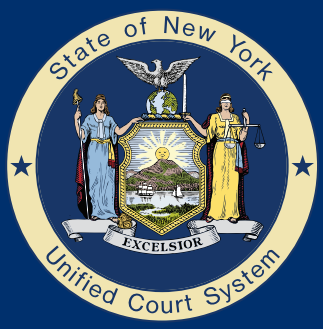
ORDERED, that service by the applicant of this Order and supporting papers upon the adversary party(ies), if any, and upon the Corporation Counsel of the City of New York at 100 Church Street, New York, NY 10007, by First Class mail with Certificate of Mailing shall be sufficient.

This ORDER is signed without prejudice to the Corporation Counsel's right to controvert poor person status.

_____ _____

Date Judge, Civil/Housing Court

CIV-GP-45 (Revised, March, 2009)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