

## CPLR 3014: CPLR 3024(a) Motion Held Applicable

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## ARTICLE 12 — INFANTS AND INCOMPETENTS

*CPLR 1210(e): Amendment.*

This section provides that upon the appointment of a general guardian of an infant's person or property, the guardian will file a certified copy of his appointment with the clerk of the surrogate's court of the county in which he has been appointed.

ARTICLE 20 — MISTAKES, DEFECTS, IRREGULARITIES AND  
EXTENSIONS OF TIME*CPLR 2003: Amendment.*

This section, which gives the court power to set aside a sale made pursuant to a judgment or order, has been amended so as not to be applicable to judicial sales made pursuant to Article 9 of the Uniform Commercial Code, the article dealing with secured transactions.

Section 9-501(1) of the UCC permits a secured creditor, after default, either to sell the collateral himself or to reduce his claim to a judgment and sale. Section 9-504(4) of the UCC provides that the purchaser at such sale takes a good title despite the failure of the creditor to comply with all relevant provisions of the UCC or the requirements of "any judicial proceeding." Thus, there was a possible conflict with UCC policy respecting sales under secured transactions and the CPLR's policy in judicial sales generally. The amendment seeks to avoid such a conflict.

## ARTICLE 26 — PROPERTY PAID INTO COURT

*CPLR 2604: Amendment.*

This amendment drops specific mention of certain tables and instead includes them only by reference to RPAPL Article 4.

## ARTICLE 30 — REMEDIES AND PLEADINGS

*CPLR 3014: CPLR 3024(a) motion held applicable.*

Recently, the first and second departments of the appellate division conflicted over the appealability of an order based on CPLR 3014 to separately state and number the claims alleged in a cause of action. While there is no specific authority in the CPLR for this precise corrective pleading motion,<sup>43</sup> CPLR 3024(a) provides that an order may issue where a party moves for a more definite statement because the pleading is vague or ambiguous.

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<sup>43</sup> See 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3014.09 (1965); 7B MCKINNEY'S CPLR 3014, commentary 78 (1965).

Whether one should move under CPLR 3014 or under CPLR 3024(a) may be of importance in determining a party's right to appeal. Orders issued under a motion for a more definite statement (CPLR 3024(a)) are not appealable as of right (CPLR 5701(b)(2)). Permission to appeal is needed.<sup>44</sup> Therefore, if a motion based on the provisions of CPLR 3014 is treated as if made under CPLR 3024(a), it is not appealable as of right. However, if the 3014 motion is treated independently, then the motion may be deemed to affect a substantial right, from which appeal may be taken as of right under CPLR 5701(a)(2)(v).

The second department, in *Consolidated Airborne Sys., Inc. v. Silverman*,<sup>45</sup> declined to dismiss an appeal from an order denying defendant's motion to require the plaintiff to separately state and number his several causes of action. The court stated that this motion is made under CPLR 3014 and not under CPLR 3024.

In direct conflict with this decision is *Weicker v. Weicker*,<sup>46</sup> where the first department stated that motions made under CPLR 3014 are not specifically authorized but that motions may be made under CPLR 3024(a) for a more definite statement which would have the same practical effect as a motion to separately state and number.<sup>47</sup> Therefore, appeals from orders on motions to state and number separately must be treated as if the motions were made under CPLR 3024(a). Since a 3024(a) motion is only appealable by permission, and since in *Weicker* plaintiff had not obtained such permission, the court dismissed the appeal.

It would seem that since there is a marked similarity between CPLR 3014 and CPLR 3024(a) as to the practical effect of each motion, the courts should treat an appeal under either in the same manner. Since, by statute, appeals of CPLR 3024 motions are by permission only, appeals of motions under 3014 should be treated the same.<sup>48</sup>

#### *CPLR 3019(c) and (d): Amendment.*

The legislature has repealed CPLR 3019(c) and (d) and has redesignated former subdivisions (e) and (f) as subdivisions (c)

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<sup>44</sup> CPLR 5701(c).

<sup>45</sup> 23 App. Div. 2d 695, 257 N.Y.S.2d 827 (2d Dep't 1965). See *The Biannual Survey of New York Practice*, 40 ST. JOHN'S L. REV. 122, 152 (1965).

<sup>46</sup> 26 App. Div. 2d 39, 270 N.Y.S.2d 640 (1st Dep't 1966).

<sup>47</sup> *Id.* at 40, 270 N.Y.S.2d at 641.

<sup>48</sup> It could also be argued that CPLR 3014 merely particularizes the various ways in which a pleading may be "vague or ambiguous" under CPLR 3024(a), and that, therefore, a motion made pursuant to the former is not a thing unto itself, but must be subject to the legislative limitations on the latter.