St. John's Law Review

Volume 47, October 1972, Number 1 Article 35

CPLR 7503(a): Statute Applied in Conjunction with Waiver Doctrine Precludes All Remedies in Arbitrable Controversy

St. John's Law Review

York County, initially noted "that claimant is neither assisted by any presumption of noninsurance nor is he burdened by any contrary presumption of insurance."[170] The court further held that the claimant must establish the noninsured status of the other vehicle by a fair preponderance of the evidence, and that, in the instant case, the claimant's presentation was strengthened by the failure of MVAIC to in any way controvert his evidence.

Aetna Insurance Co. v. Logue[171] is the most recent decision to attempt to reconcile the need for an expeditious resolution of the issues with the strict construction placed on the arbitration statute in *Rosenbaum*. The court proposed reasonable guidelines to determine when a genuine factual issue calling for resolution under CPLR 7503(a) exists:

> Arbitration should be stayed and at least an evidentiary hearing ordered where:
>
> (a) claimant does not present some reasonably persuasive evidence of noninsurance (or other basis for invoking the arbitration clause); or
>
> (b) claimant has failed diligently to try to ascertain the facts, within the practical limitations of the situation, or to follow up some reasonable indication of insured status; or
>
> (c) the insurance company presents some evidence that the offending vehicle is insured.
>
> Arbitration should be directed, without ordering an evidentiary hearing, in the converse situation. . . .[172]

The *Logue* guidelines would end a confusing and inconsistent approach to an increasingly serious problem, reduce court congestion, and encourage faster and fairer settlements.

CPLR 7503(a): Statute applied in conjunction with waiver doctrine precludes all remedies in arbitrable controversy.

An agreement which calls for an exclusive remedy in arbitration binds all parties to the extent that no judicial remedy may be sought which would affect this contractual right. CPLR 7503(a) supplies a means of enforcing such an agreement by providing for a stay of a judicial action involving an issue arbitrable under its terms.

In *Sowalskie v. Cohoes Housing Authority, Inc.*,[173] the defendant sought a stay under CPLR 7503 on the basis of the parties' agreement to settle all disputes by arbitration. Additionally, the defendant argued that by commencing an action to foreclose a mechanic's lien, the plain-

170 *Id.* at 786, 286 N.Y.S.2d at 778.
171 68 Misc. 2d 841, 328 N.Y.S.2d 569 (Sup. Ct. N.Y. County 1972).
172 *Id.* at 846-47, 328 N.Y.S.2d at 575-76.
173 69 Misc. 2d 665, 330 N.Y.S.2d 481 (Sup. Ct. Albany County 1968).

tiff, as a matter of law, had waived his right to proceed in arbitration under the agreement.[174] The plaintiff opposed the motion on the grounds that the relief requested by the defendant was inconsistent and would deprive him of all remedies.[175] The Supreme Court, Albany County, relying on case law and CPLR 2201 and 7503(a), held for the defendant.[176]

The *Sowalskie* case is apparently an anomaly. Subsequently, in *A. Burgart, Inc. v. Foster-Lipkins Corp.*,[177] it was held that commencing an action to foreclose a mechanic's lien does not constitute a waiver of the right of arbitration. Pointedly, the purpose of a stay of court action is to force the parties to proceed to arbitration and thereby settle their dispute.

CPLR 7503(c): Party estopped from objecting to time and method of service of application to stay arbitration.

CPLR 7503(c) prescribes the procedure by which a party may move to compel arbitration and the procedure that must be followed by the opposing party if he wishes to stay arbitration. The latter requires a party who has received a notice of intention to arbitrate which includes a statement requiring any objection to be made within ten days to act within ten days to stay arbitration or "be so precluded."

Prior to the Court of Appeals' interpretative ruling in *Knickerbocker Insurance Co. v. Gilbert*,[178] there was much confusion regarding the method of computing this ten-day period. In *Knickerbocker*, the Court held that an application to stay arbitration posted on the tenth day after receipt of a notice of intention to arbitrate was timely.[179] In

---

174 *Id.* at 666, 330 N.Y.S.2d at 482.

175 *Id.*

176 *Id.* at 666-67, 330 N.Y.S.2d at 483. CPLR 2201 merely provides: "Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." Moreover, the cases cited by the court to support its denial of all relief to the plaintiff, River Brand Rice Mills v. Latrobe Brewing Co., 305 N.Y. 36, 110 N.E.2d 545 (1953), and Application of Duke Laboratories, 9 Misc. 2d 779, 168 N.Y.S.2d 998 (Sup. Ct. N.Y. County 1957), involved stays of judicial proceedings granted after the time to demand arbitration had expired. As noted by the Court of Appeals, denial of all relief is preferable to permitting a party to wait until the contractual time limit for arbitration has expired before commencing an action at law on a claim which he agreed to arbitrate. *See* River Brand Rice Mills v. Latrobe Brewing Co., 305 N.Y. 36, 41, 110 N.E.2d 545, 547 (1953).

177 63 Misc. 2d 930, 313 N.Y.S.2d 831 (Sup. Ct. Monroe County 1970) (mem.), *aff'd mem.*, 38 App. Div. 2d 779, 328 N.Y.S.2d 856 (4th Dep't 1972), *aff'd mem.*, 30 N.Y.2d 901, 287 N.E.2d 269, 335 N.Y.S.2d 562 (1972). The *Burgart* court held that the plaintiff had a right to continue the lien which he had a statutory right to file without waiving arbitration, under N.Y. LIEN LAW § 35 (McKinney 1966).

178 28 N.Y.2d 57, 268 N.E.2d 758, 320 N.Y.S.2d 12 (1971), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 536, 550 (1971).

179 *Id.* at 64, 268 N.E.2d at 762, 320 N.Y.S.2d at 16.