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Article 21

# CPLR 7501: Right to Jury Trial on Issue of Existence of Arbitration Agreement

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*CPLR 7501: Right to jury trial on issue of existence of arbitration agreement.*

The right to a jury trial on the issue of the existence of an agreement to arbitrate was explicitly recognized under CPA 1450 and 1458(2). Under the CPLR, there is no such provision for a jury trial, but the accepted view is that this omission did not evidence a legislative intent "to eliminate trial by jury if it is desirable or constitutionally required."[188] In *RLC Electronics, Inc. v. American Electronics Laboratories, Inc.*,[189] the Appellate Division, Second Department, reversed an order of the Supreme Court, Westchester County, and held that the appellant was entitled to a jury trial on the issue of the existence of an arbitration agreement.

*CPLR 7503: First Department recommends time limitation for proceeding with arbitration.*

*Glen Creations, Inc. v. Cotra Corp.*[190] highlighted a serious deficiency in CPLR 7503. In March, 1969, the Supreme Court, New York County, vacated a temporary stay of arbitration. For more than three years the respondent failed to initiate arbitration while the decision was being appealed. The Appellate Division, First Department, reversed and granted a stay, finding no evidence of an agreement to arbitrate. Importantly, both the majority and the dissent recommended that the Law Revision Commission propose that "an arbitration . . . be begun within such reasonable time as fixed by the Legislature from the date of notice of arbitration, or, where the right to arbitrate has been contested, the entry of the order denying a stay."[191]

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188 SECOND REP. 135-36. *See* Anthony Drugs of Bethpage, Inc. v. Drug & Hosp. Local 1199, 34 App. Div. 2d 788, 311 N.Y.S.2d 622 (2d Dep't 1970) (mem.); MVAIC v. Stein, 23 App. Div. 2d 526, 527, 255 N.Y.S.2d 483, 486 (4th Dep't 1965) (mem.); 7B MCKINNEY'S CPLR 7503, commentary at 488 (1963); 4 WK&M ¶ 4101.28; 22 CARMODY-WAIT 2d, § 141:74, at 829 (1968).

189 39 App. Div. 2d 757, 332 N.Y.S.2d 119 (2d Dep't 1972) (mem.). *Accord*, Anthony Drugs of Bethpage, Inc. v. Drug & Hosp. Local 1199, 34 App. Div. 2d 788, 311 N.Y.S.2d 622 (2d Dep't 1970) (mem.).

190 39 App. Div. 2d 866, 333 N.Y.S.2d 232 (1st Dep't 1972) (mem.) (3-2).

191 *Id.* at 867, 333 N.Y.S.2d at 234 (Steuer, J., dissenting). In the absence of a time limitation for arbitration, courts have sought to achieve equitable results by applying the doctrines of voluntary abandonment, waiver, and laches. *See, e.g.*, Zimmerman v. Cohen, 236 N.Y. 15, 139 N.E. 764 (1923) (answer setting up a defense and counterclaim held to be a waiver of the right to arbitration and an election to proceed by court action); Finkelstein v. Harris, 17 App. Div. 2d 137, 233 N.Y.S.2d 174 (1st Dep't 1962) (six-year failure to proceed deemed an abandonment); Buchanan v. Rogers, 9 App. Div. 2d 1010, 194 N.Y.S.2d 741 (3d Dep't 1959) (mem.) (bringing legal action constituted waiver of right to arbitration, and, furthermore, laches arising from inordinate delay barred enforcement of that right); Schussel v. Schussel, 63 N.Y.S.2d 380 (Sup. Ct. N.Y. County