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CPLR 7503(a): Party Can Stay Action Without Initiating Arbitration

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ARTICLE 75 — ARBITRATION

CPLR 7503(a): Party can stay action without initiating arbitration.

Under CPLR 7503, a party aggrieved by another's failure to arbitrate can move, either in a pending action or in an independent special proceeding, to compel arbitration. Under CPA 1451, another remedy — a motion to stay the action — was provided for expressly, but the present statute merely states that granting a motion to compel arbitration automatically stays a pending suit. Did the revision in the law eliminate the remedy previously available to a party who wishes to stay an action without initiating arbitration proceedings?[228]

In *Board of Education v. Delle Cese*,[229] the Supreme Court, Oneida County, concluded that the stay is still available to such a party. Plaintiff had served his complaint after expiration of the time in which arbitration could have been instituted. Defendant S'Doia moved for summary judgment, on the ground that a stay was not available, and later for a stay. The court held that S'Doia was entitled to a stay but not to summary judgment.[230] It reasoned that the power to stay is either inherent in CPLR 7503[231] or available under CPLR 2201, which authorizes a court to "grant a stay of proceedings in a proper case . . . ." A mutual agreement to arbitrate, the court reasoned, is a proper case.[232]

DOMESTIC RELATIONS LAW

DRL 210: Time limit is merely a statute of limitations.

Prior to the Divorce Reform Act of 1966, a plaintiff could obtain a divorce in New York solely on the ground of adultery, if he commenced his action within five years from the date of discovery of the adultery.[233] This five-year requirement was held to be a statute of limitations.[234] However, under another provision[235] a plaintiff was obligated to disprove certain possible defenses, of which the elapse of five years from discovery was one, in the event the defendant de-

228 *See* 7B MCKINNEY'S CPLR 7503, supp. commentary at 136 (1965).

229 65 Misc. 2d 473, 318 N.Y.S.2d 46 (Sup. Ct. Oneida County 1971).

230 *See* 8 WK&M ¶ 7503.19. Under CPA 1451, summary judgment was improper, because a stay was the exclusive remedy. *E.g.*, American Reserve Ins. Co. v. China Ins. Co., 297 N.Y. 322, 79 N.E.2d 425 (1948).

231 65 Misc. 2d at 478, 318 N.Y.S.2d at 51, *citing* Adelphi Enterprises, Inc. v. Mirpa, Inc., 33 App. Div. 2d 1019, 307 N.Y.S.2d 978 (2d Dep't 1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 145, 172 (1970).

232 *Id.* at 478, 318 N.Y.S.2d at 51-52.

233 DRL 171(3).

234 Ackerman v. Ackerman, 200 N.Y. 72, 93 N.E. 192 (1910).

235 DRL 174, *repealed*, L. 1966, ch. 254, § 4.