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

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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?222

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 7503231 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 provision235 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-

222 See 7B McKinney's CPLR 7503, supp. commentary at 136 (1965).
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).
232 Id. at 478, 518 N.Y.S.2d at 51-52.
233 DRL 171(3).
234 Ackerman v. Ackerman, 200 N.Y. 72, 93 N.E. 192 (1910).