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Collateral Estoppel: The Preclusive Effect of Arbitration Awards

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fendant hospital's psychiatric ward. Thereafter, the assaulted visitor, joined by her husband, commenced an action in negligence. Plaintiffs alleged that the defendant had not properly supervised dangerous psychiatric patients, and sought information concerning the assailant patient's propensities in order to charge the defendant with prior knowledge. Defendant, by cross motion, challenged plaintiff's notice of discovery and inspection insofar as it related to the records on a non-party who had not been served with notice. The appellate court concluded that

> [p]laintiffs [were] entitled to all non-medical data pertaining to prior assaults or attempted assaults by the patient, including the time and place and surrounding circumstances, together with the date the information came within the knowledge of defendant. . . . [and the] length and number of times the patient was confined to the defendant's institution.[109]

This disposition is laudable. The fact that the requested records related to a non-party who had not been given notice of the action should not bar disclosure in these circumstances.[110] The defendant, in possession and control of these records, failed to show any prejudice to the non-party or any other reason for requiring that notice be given to the latter where CPLR 3120 does not mandate it.

ARTICLE 32 — ACCELERATED JUDGMENT

Collateral Estoppel: The preclusive effect of arbitration awards.

Arbitration, like litigation, may have the effect of res judicata. A proper proceeding will bar further litigation of the same cause of action between parties who participated in the arbitration,[111] as well as estop the relitigation of issues actually determined therein.[112] The

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[109] *Id.*, 325 N.Y.S.2d at 518.

[110] *See* Alamo v. New York, 51 Misc. 2d 950, 274 N.Y.S.2d 366 (Ct. Cl. 1966), wherein the state was directed to furnish at the examination before trial: (1) an assailant prisoner's history prior to and during his stays at specified state hospitals; (2) the length of his stays and the names and addresses of his doctors; and (3) "[a]ny nonmedical observations recorded in the hospitals[;]" and (4) "[o]bservations of his propensities not related to medical and psychiatric observations, inquiry or analysis concerning [the assailant's] propensities." *Id.* at 952, 274 N.Y.S.2d at 367-68.

[111] Garnett v. Kassover, 8 App. Div. 2d 631, 185 N.Y.S.2d 435 (2d Dep't 1959) (mem.); Abrams v. Macy Park Constr. Co., 282 App. Div. 922, 125 N.Y.S.2d 256 (1st Dep't 1953) (mem.); Campe Corp. v. Pacific Mills, 275 App. Div. 634, 92 N.Y.S.2d 347 (1st Dep't 1949) (per curiam); Springs Cotton Mills v. Buster Boy Suit Co., 275 App. Div. 196, 88 N.Y.S.2d 295 (1st Dep't), *aff'd*, 300 N.Y. 586, 89 N.E.2d 877 (1949) (mem.); Goldblatt v. Board of Educ., 52 Misc. 2d 238, 275 N.Y.S.2d 550 (N.Y.C. Civ. Ct. N.Y. County 1966), *aff'd*, 57 Misc. 2d 1089, 294 N.Y.S.2d 272 (App. T. 1st Dep't 1968) (per curiam).

[112] Schuykill Fuel Corp. v. B.&C. Nieberg Realty Corp., 250 N.Y. 304, 165 N.E. 456 (1929); At Home Wear, Inc. v. S.D. Sales Corp., 64 Misc. 2d 202, 314 N.Y.S.2d 654 (N.Y.C. Civ. Ct. N.Y. County 1970).

res judicata effect, however, can be asserted only against one who has had a full and fair opportunity to be heard; it will not bind a stranger to the proceeding.[113] In addition, judicial review is limited to questions of fraud and mistake and the decision of the arbitrator is conclusive as to questions of both law and fact.[114]

Rochester Coca-Cola Bottling Corp. v. Rios[115] involved the res judicata effect of arbitration arising out of an automobile collision between a private car and a Coca-Cola truck. In the first action, the owner-operator of the car sued the Coca-Cola corporation and its driver for personal injuries. The suit, which was commenced in the supreme court, was transferred to the city court and ultimately sent to arbitration in accordance with section 213(8) of the New York Judiciary Law.[116] The arbitration panel awarded the owner-operator, the present defendant, $750, thereby determining that he was free from negligence.[117]

In the present action before the Rochester City Court, the Coca-Cola corporation sued the defendant owner-operator for property damage. Defendant moved for dismissal and prayed for summary judgment on the ground that the former arbitration proceeding was res judicata.[118] The plaintiff-corporation argued that the issue of defendant's negligence was not litigated and therefore was without preclusive effect.[119] The court granted the defendant's motion. It reasoned that (1) since judgments of a court are conclusive between parties and (2) since the Judiciary Law permitted a judgment to be entered on an arbitration award,[120] "the legal and operative effect of such a judgment

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113 Madden v. Nolfo, 34 App. Div. 2d 827, 312 N.Y.S.2d 769 (2d Dep't), *appeal dismissed*, 27 N.Y.2d 741, 263 N.E.2d 389, 314 N.Y.S.2d 991 (1970) (mem.); Levin-Townsend Computer Corp. v. Holland, 29 App. Div. 2d 925, 289 N.Y.S.2d 12 (1st Dep't 1968) (per curiam); Solomon v. Forty-second St. Fotoshop, Inc., 72 N.Y.S.2d 639 (Sup. Ct. N.Y. County 1947).

Where there are special circumstances, however, the courts will not be bound by the arbitration award. *See, e.g.*, Mount St. Mary's Hosp. v. Catherwood, 26 N.Y.2d 493, 260 N.E.2d 508, 311 N.Y.S.2d 863, *reargument denied*, 27 N.Y.2d 737 (1970) (mem.), *discussed in The Quarterly Survey* 45 ST. JOHN'S L. REV. 536, 552 (1971) (where arbitration is not consensual but imposed by statute, the courts can review the proceeding for reasonableness and good faith in accordance with procedural and substantive due process).

114 *See* 7B MCKINNEY'S CPLR §§ 7501, 7511 (1963); Bay Ridge Medical Group v. Health Ins. Plan of Greater New York, 22 App. Div. 2d 807, 254 N.Y.S.2d 616 (2d Dep't 1964) (mem.).

115 68 Misc. 2d 520, 327 N.Y.S.2d 285 (Rochester City Ct. Monroe County 1971).

116 N.Y. JUDICIARY LAW § 213(8) (McKinney Supp. 1971). The law is implemented in 22 N.Y.C.R.R. § 28.1 *et seq.* (1970). Note that since the case was transferred, submission to arbitration could only be by stipulation of the parties. 22 N.Y.C.R.R. § 28.2(b) (1970).

117 68 Misc. 2d at 522, 327 N.Y.S.2d at 287.

118 CPLR 3211(a)(5), 3212.

119 68 Misc. 2d at 521, 327 N.Y.S.2d at 286.

120 N.Y. JUDICIARY LAW § 213(8) (McKinney Supp. 1971) provides, *inter alia*, that "[a]

resulting from an arbitration hearing and award is the same as that of a judgment reached following a trial by traditional court processes."[121]

The Rochester City Court is governed by the Uniform City Court Act (UCCA). UCCA section 1401 gives the same effect to city court judgments as to those of a state supreme court.[122] Thus, the city court judgment (although a vicarious one by way of arbitration) was properly given res judicata effect. Suppose, however, defendant owner-operator had asked for only $500 in a personal injury action in small claims court.[123] What result?

Under the rules governing small claims, the court could compel arbitration.[124] The scope of judicial review would be expanded[125] and the effect of the award would be severely restricted.[126] It is clear that by operation of UCCA section 1808, the arbitration award would not estop the plaintiff-corporation in subsequent litigation concerning the defendant's negligence.[127]

This result is not a direct consequence of the relatively small amount in controversy, but is due to the summary nature of the proceedings in small claims courts.[128] UCCA section 1808 is designed to guard against giving preclusive effect to a judgment based solely on the

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judgment may be entered upon the arbitration award." 22 N.Y.C.R.R. § 28.11(b) (1970) provides for trial de novo on timely demand. Plaintiff-corporation failed to make such demand.

121 68 Misc. 2d at 522, 327 N.Y.S.2d at 287-88.

122 UCCA § 1401 provides that

> [w]ithin the limits of its jurisdiction as defined in this act, the court shall have power to render any judgment that the supreme court might render in a like case.

123 The small claims side of the city court is governed by UCCA art. 18. UCCA § 1801 defines a small claim as one for $500 or less exclusive of interests and costs.

124 22 N.Y.C.R.R. § 28.2(a) (1970).

125 *See* Mount St. Mary's Hosp. v. Catherwood, 26 N.Y.2d 493, 260 N.E.2d 508, 311 N.Y.S.2d 863, *reargument denied*, 27 N.Y.2d 737 (1970) (mem.).

126 UCCA § 1808 provides that

> [a] judgment obtained under this article may be pleaded as res judicata only as to the amount involved in the particular action and shall not otherwise be deemed an adjudication of any fact at issue or found therein in any other action or court.

127 *See, e.g.*, Stern v. Hausberg, 22 App. Div. 2d 669, 253 N.Y.S.2d 447 (1st Dep't 1964) (per curiam); Supreme Burglar Alarm Corp. v. Mason, 204 Misc. 185, 122 N.Y.S.2d 398 (App. T. 1st Dep't 1953); Kroll v. Ippolipo, 184 Misc. 596, 54 N.Y.S.2d 743 (App. T. 1st Dep't 1945) (per curiam); Roland Meledandri Inc. v. Kirtz, No. 183301-67 (N.Y.C. Civ. Ct. N.Y. County 1967); Rosen v. Parking Garage, Inc., 40 Misc. 2d 178, 242 N.Y.S.2d 677 (N.Y.C. Civ. Ct. Bronx County 1963); Auster v. Princess Fabrics, Inc. 174 Misc. 1096, 22 N.Y.S.2d 686 (N.Y.C. Civ. Ct. Bronx County 1940).

128 UCCA § 1804 provides, *inter alia*, that small claim hearings shall be conducted "in such manner as to do substantial justice between the parties according to the *rules of substantive law* and *shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence . . .*" (emphasis supplied). *See* Zaritsky v. Thrifty 381 Stores, Inc., 67 Misc. 2d 149, 324 N.Y.S.2d 476 (App. T. 1st Dep't 1971) (per curiam); *compare* 22 N.Y.C.R.R. § 28.8 (1970), which provides that arbitration shall be conducted "with due regard to the law and established rules of evidence. . . ."

standards of "substantial justice."[129] But the conduct of the arbitration hearing would be the same in a small claims action as it was for the *Rochester* case. The only difference is that, whereas the arbitration panel normally consists of three attorneys, claims for $500 or less are before a single arbitrator.[130] The *Rochester* rationale would not give conclusive effect to such a proceeding. Even though the protection of a party's rights might be as great in a small claims arbitration, the effect of the award is equated to the judgment it replaces. As UCCA section 1808 limits the res judicata effect of small claims judgments, it should similarly limit the effect of substitute small claims arbitration.

ARTICLE 42 — TRIAL BY THE COURT

CPLR 4213(b): Decision of trial court must state the essential facts.

CPLR 4213(b) provides that the decision of the court in a non-jury trial "may be oral or in writing and shall state the facts it deems essential."[131] Trial court decisions inadequately supported by findings of fact are accorded one of three alternatives on appellate review: reversal and remand for trial de novo; remand for further or amended findings; and retention by the appellate court for its own findings of fact.[132] The disposition by the appellate court depends upon the degree of inadequacy of the findings of fact and the insufficiency of the record.[133]

In *Nutone Inc. v. Bouley Co.*,[134] the trial court, in sustaining a mechanic's lien for the plaintiff, neither made findings of fact nor established any record whatsoever. The appellate court reversed the decision and noted that issues were created which required factual determination as to whether the plaintiff had performed his contractual obligations with the defendant entitling the former to recover. The

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129 Supreme Burglar Alarm Corp. v. Mason, 204 Misc. 185, 186, 122 N.Y.S.2d 398, 399 (App. T. 1st Dep't 1953).

130 22 N.Y.C.R.R. § 28.2(a) (1970).

131 CPLR 4213(b); *see* 4 WK&M ¶ 4213.07.

132 4 WK&M ¶ 4213.09.

133 A new trial generally follows when the findings are unsupported by the facts and the record gives insufficient basis of essential facts found by the court. *E.g.*, Harris v. Doley, 22 App. Div. 2d 769, 253 N.Y.S.2d 645 (1st Dep't 1964); Driskell v. Alfano, 12 App. Div. 2d 973, 211 N.Y.S.2d 668 (2d Dep't 1961); Kundla v. Symans, 9 App. Div. 2d 1021, 194 N.Y.S.2d 251 (4th Dep't 1959). A remand to enable the trial court to formulate adequate findings follows where the proper decision was reached but the findings are inadequate. *E.g.*, Conklin v. State, 22 App. Div. 2d 481, 256 N.Y.S.2d 477 (3d Dep't 1965); Ahleim v. State, 21 App. Div. 2d 747, 250 N.Y.S.2d 242 (4th Dep't 1964). Occasionally, an appellate court will prepare findings of fact when the trial court record is sufficiently complete although the findings of fact are inadequate. *E.g.*, Mellon v. Street, 23 App. Div. 2d 210, 259 N.Y.S.2d 900 (3d Dep't 1965).

134 — App. Div. 2d —, 327 N.Y.S.2d 256 (4th Dep't 1971).