St. John's Law Review

Volume 46, May 1972, Number 4 Article 29

CPLR 7501: Arbitration Clauses Construed

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation

St. John's Law Review (1972) "CPLR 7501: Arbitration Clauses Construed," *St. John's Law Review*: Vol. 46 : No. 4 , Article 29.
Available at: https://scholarship.law.stjohns.edu/lawreview/vol46/iss4/29

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

It should not be inferred that the trial court's opinion would not have been valid if management had sought the order of replevin. That is the type of action which would circumvent the intention of the Legislature in adopting section 807 of the Labor Law.[204] No such circumvention is accomplished by allowing a non-party to the dispute to obtain an order of seizure.

ARTICLE 75 — ARBITRATION

CPLR 7501: Arbitration clauses construed.

Because of the very nature of the arbitral process, those contractual stipulations which give rise to the arbitration cannot be overemphasized. In innumerable situations which have had profound effects upon the development of "arbitration law," the paramount question has been the meaning of the arbitration clause, with the result that the breadth of the arbitration clause is proportionate to the scope of judicial inquiry. Although New York has abandoned the "bona fide" dispute rule,[205] the anterior question remains: Is "the party seeking arbitration making a claim which on its face is governed by the contract[?]"[206]

Two recent New York decisions have dealt with this threshold question and, in the process, have underscored the significance of the arbitration clause itself.

In *Steinberg v. Steinberg*,[207] the plaintiffs submitted a demand which, *inter alia*, stated that the defendants had wrongfully instituted a prior arbitration proceeding, but the court correctly noted that

> the tortious use of the arbitral process or other tort committed in connection with the maintenance of the prior arbitration proceed-

[204] The provisions of the statute indicate that it does not encompass action by a non-party to the dispute. For example, subsection (4) states that

> [n]o injunctive relief shall be granted to any plaintiff . . . who has failed to allege and prove that he has made every reasonable effort to settle such dispute. . . .

N.Y. LABOR LAW § 807(4) (McKinney 1965). An individual who is not involved in the dispute certainly would not be expected to take such action. *Cf.* Dinny & Robbins, Inc. v. Davis, 290 N.Y. 101, 48 N.E.2d 280, *cert. denied*, 319 U.S. 774, *rehearing denied*, 320 U.S. 811 (1943); Coward Shoe, Inc. v. Retail Shoe Salemen's Union Local 1115F, 177 Misc. 708, 31 N.Y.S.2d 781 (Sup. Ct. N.Y. County 1941).

[205] The *Cutler-Hammer* doctrine provided that a *judicial* determination that the dispute in question was viable was a prerequisite to compelling arbitration. Roundly criticized, this doctrine has been vitiated by the last line of CPLR 7501: "[T]he court shall not consider whether the claim with respect to which the arbitration is sought is tenable, or otherwise pass upon the merits of the dispute."

[206] United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960). *See also* Dairymen's League Coop. Ass'n v. Conrad, 18 App. Div. 2d 321, 239 N.Y.S.2d 241 (4th Dep't 1963).

[207] 38 App. Div. 2d 57, 327 N.Y.S.2d 245 (1st Dep't 1971).

> ing is not embraced within the proper intendment of the arbitration clauses.[208]

Of course, if the arbitration clause expressly provides for such claims, they will be allowed; but absent an express inclusion, the arbitral process would be an unending one if such claims were permitted. If the plaintiff were successful in bringing to arbitration such a dispute, there would be little doubt that another proceeding would subsequently be initiated by the prior defendant on the same grounds.

The second decision, *Hull Dye & Print Works, Inc. v. Riegel Textile Corp.*,[209] involved an arbitration clause which stated, in part, that

> [a]ny controversy arising under or in relation to the contract or any modification thereof may be settled by arbitration or by suit in any court having jurisdiction, as the Mill [Hull] shall direct.[210]

On the basis of the clause, Riegel attempted to compel arbitration. The court noted, however, that the phraseology employed in the arbitration clause clearly indicated that only Hull was to have the option of proceeding to arbitration or instituting litigation:

> The clause . . . is not a contract for arbitration of controversies but rather a grant to Hull of a unilateral right to arbitrate. Neither party is required to arbitrate.[211]

As noted at the outset, both *Steinberg* and *Hull* demonstrate the importance of the arbitration clause itself. They should serve as reminders to the practitioner that careful analysis of the wording employed in the clauses will often be outcome-determinative.

CPLR 7501: Arbitration stayed without prejudice where notice of intention to arbitrate did not specify the nature of the controversy.

CPLR 7501 provides for the specific enforcement of an agreement to arbitrate "without regard to the justiciable character of the controversy," thus precluding the court from passing upon the merits of the dispute. An application to compel arbitration may be opposed on only three grounds: (1) absence of a valid agreement to arbitrate; (2) noncompliance with an agreement; (3) tolling of the state of limitations.[212] Unless one of the above grounds is established, arbitration must be ordered.

---

208 *Id.* at 59, 327 N.Y.S.2d at 248.

209 37 App. Div. 2d 946, 325 N.Y.S.2d 782 (1st Dep't 1971) (per curiam).

210 *Id.* at 946, 325 N.Y.S.2d at 783.

211 *Id.*

212 H. WACHTELL, NEW YORK PRACTICE UNDER THE CPLR 370 (3d ed. 1970). *See* Greene Steel & Wire Co. v. F.W. Hartmann & Co., 235 N.Y.S.2d 238 (Sup. Ct. Kings County 1962), *aff'd*, 20 App. Div. 2d 683, 247 N.Y.S.2d 1008 (2d Dep't), *appeal dismissed*, 14 N.Y.2d 688, 198 N.E.2d 914, 249 N.Y.S.2d 886 (1964).