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Article 30

CPLR 7501: Arbitration Stayed Without Prejudice Where Notice of Intention To Arbitrate Did Not Specify the Nature of the Controversy

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> 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.

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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).

In *Lease Plan Fleet Corp. v. Johnson Transportation, Inc.*,[213] the parties entered into a leasing agreement which provided for arbitration of all controversies pertaining to the agreement. Thereafter, defendant served a notice of intention to arbitrate which merely referred to "a controversy arising out of an equipment lease contract" and specified the date of the contract.[214] Plaintiff contended that this notice was defective in that it failed to state the specific nature of the dispute.[215] The Supreme Court, Monroe County, agreed with the plaintiff and enjoined the defendant from proceeding with arbitration, with leave to serve a new notice properly describing the controversy to be arbitrated.[216]

Whether a dispute is covered by an arbitration agreement is an issue determinable by a court.[217] "[A] court must always inquire, when a party wants to invoke its aid to force a reluctant party to the arbitration table, whether the parties have agreed to arbitrate the particular dispute."[218] Clearly, specification of the dispute is essential to determination of whether it is arbitrable. No person should be compelled to arbitrate a particular issue unless he has contractually agreed that it was to be arbitrable.

CPLR 7511(b)(1)(iii): Letter agreement on submissions held not to limit the scope of a general arbitration clause, thereby permitting an award for consequential damages.

CPLR 7511 enumerates the various grounds upon which an arbitration award may be vacated. The broadest ground is a claim under CPLR 7511(b)(1)(iii) that the arbitrator has exceeded his power.[219] Decisional law has interpreted this basis for vacatur to mean that an arbitrator exceeds his power "only if [he gives] a completely irrational construction of the provisions in dispute and in effect [makes] a new contract for the parties."[220] The scope of the arbitrator's power has

213 67 Misc. 2d 822, 324 N.Y.S.2d 928 (Sup. Ct. Monroe County 1971) (mem.).

214 *Id.*, 324 N.Y.S.2d at 929.

215 *Id.*

216 *Id.* at 823, 324 N.Y.S.2d at 930, *citing* Nager Elec. Co. v. Weisman Constr. Corp., 29 App. Div. 2d 939, 289 N.Y.S.2d 473 (1st Dep't 1968) (mem.).

217 Mohawk Maintenance Co. v. Drake, 53 Misc. 2d 272, 278 N.Y.S.2d 297 (Sup. Ct. Queens County 1967), *discussed in The Quarterly Survey*, 42 ST. JOHN'S L. REV. 283, 310 (1967).

218 United Steel Workers v. American Mfg. Co., 363 U.S. 564, 570-71 (1960), *quoted in In re* Carey, 11 N.Y.2d 452, 456, 184 N.E.2d 298, 300, 230 N.Y.2d 703, 705 (1962) (per curiam).

219 It is well settled that arbitrators must act within any limits imposed by the arbitration agreement which is the foundation of their authority and jurisdiction. 8 WK&M ¶ 7511.18.

220 National Cash Register Co. v. Wilson, 8 N.Y.2d 377, 383, 171 N.E.2d 302, 305, 208 N.Y.S.2d 951, 955 (1960) (emphasizing the immense power of interpretation given to the aribtrator).