

CPLR 602: Court Permits Consolidation of Tripartite Arbitrations

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CPLR 602: Court permits consolidation of tripartite arbitrations.

Since arbitration is no longer deemed a special proceeding,³⁸ it was speculated that courts would refuse to extend the benefits of CPLR 602, which permits the consolidation of actions involving a common question of law or fact, thereto.³⁹ Nevertheless, in *Chariot Textiles Corp. v. Wannalancit Textile Corp.*,⁴⁰ the Court of Appeals adopted the viewpoint that the application to consolidate transmutes the arbitrations into special proceedings which, then, could be consolidated. Recently, the question arose as to whether tripartite arbitrations could also be consolidated.

In *Vigo Steamship Corp. v. Marship Corp.*,⁴¹ Vigo Corp. (Vigo) had leased a ship owned by Marship Corp. (Marship) and subleased it to Frederick Snare Corp. (Snare). During a voyage by the latter, the ship was damaged and separate arbitration proceedings ensued between Marship and Vigo, and Vigo and Snare. Recognizing that common questions of law and fact were involved, the Court of Appeals ordered that the arbitrations be consolidated.

It should be emphasized that this decision could not have been reached were it not for the ingenuity of Vigo's counsel. For, in tripartite arbitration, each party nominates one arbitrator who in turn selects a third. Thus, under ordinary circumstances, consolidation would be definitionally impossible since four rather than three arbitrators would be chosen. However, counsel for Vigo overcame this obstacle by agreeing to abide by Marship's selection of an arbitrator, thereby preserving the structure of the three-man board: two partial arbitrators and a neutral one.

CPLR 1007: Impleader allowed despite allegations of active negligence in complaint where bill of particulars indicates that defendant was only passively negligent.

One area in which the CPLR is particularly fraught with substantive rather than procedural problems is that of third-party practice.⁴² For, the right to institute a third-party action under CPLR 1007 is contingent upon the obligation of the third-party defendant to indemnify the named defendant.⁴³ This, in turn, often hinges on a determination of whether the defendant's alleged negligence was

³⁸ Compare CPA 1459 with CPLR 7502.

³⁹ See 7B MCKINNEY'S CPLR 7502, supp. commentary at 117 (1964); 8 WK&M ¶ 7502.04.

⁴⁰ 18 N.Y.2d 793, 221 N.E.2d 913, 275 N.Y.S.2d 382 (1962).

⁴¹ 26 N.Y.2d 157, 257 N.E.2d 624, 309 N.Y.S.2d 165 (1970).

⁴² See 2 WK&M ¶ 1007.02.

⁴³ *Putvin v. Buffalo Elec. Co.*, 5 N.Y.2d 447, 158 N.E.2d 691, 186 N.Y.S.2d 15 (1959).