

CPLR 7503(a): Error to Condition Order Granting Motion To Compel Arbitration upon Movant's Prompt Commencement of Arbitral Proceedings

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CPLR 7503(a): Error to condition order granting motion to compel arbitration upon movant's prompt commencement of arbitral proceedings.

Under CPA 1451, a party aggrieved by the failure of another to arbitrate could either move to stay an action then pending or move to compel arbitration. Presently, however, an application to compel arbitration is the aggrieved party's sole remedy.¹⁹⁵ Notwithstanding this change, can a party move to stay an action without taking the affirmative of compelling arbitration?¹⁹⁶ A recent case, *Adelphi Enterprises, Inc. v. Mirpa, Inc.*,¹⁹⁷ permits just such a procedure.

In *Adelphi* the defendant moved to stay an action brought for breach of contract. The lower court granted the motion but conditioned its order by adding that the plaintiff could move to vacate the stay if the defendant unreasonably delayed in proceeding to arbitration. Defendants notified the plaintiff that they had no dispute but were ready to defend any arbitration instituted by plaintiff. The plaintiff, however, moved successfully to vacate the stay of arbitration.

On appeal, the appellate division held that the lower court did not have the power to condition its order: the parties had provided by contract that arbitration would be the sole remedy; therefore, it would be error to permit an action at law.¹⁹⁸

Since the plaintiff has the grievance and it is he who originally chose an improper forum to settle the dispute, the appellate division was justified in staying the action without compelling the defendant to commence arbitration proceedings. Otherwise, a party who did not desire to arbitrate or who was enjoined from arbitration¹⁹⁹ could utilize a conditional order such as that issued by the lower court in *Adelphi* as a vehicle for bringing an action at law, thereby circumventing the clear, contractual intent of the parties.

¹⁹⁵ CPLR 7503(a). If an application to compel arbitration is granted, the order automatically stays any pending or subsequent action. *Id.* The advisory committee considered this method more efficient. SECOND REP. 136.

¹⁹⁶ The question arose in the context of whether this innovation would abrogate the ruling in *River Brand Rice Mills, Inc. v. Latrobe Brewing Co.*, 305 N.Y. 36, 110 N.E.2d 545 (1953). See 7B MCKINNEY'S CPLR 7503(c), *supp.* commentary at 124 (1965). In *River Brand*, the court granted a seller's motion to stay an action at law despite the fact that the buyer had already been permanently enjoined from proceeding to arbitration.

¹⁹⁷ 33 App. Div. 2d 1019, 307 N.Y.S.2d 978 (2d Dep't 1970).

¹⁹⁸ See *Matter of Exercycle Corp.* [Maratta], 9 N.Y.2d 329, 174 N.E.2d 463, 214 N.Y.S. 2d 353 (1961).

¹⁹⁹ See note 196 *supra*.