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CPLR 7503(a): Service of an Application To Compel Arbitration upon an Attorney by Mail Is Proper if an Action Is Already Pending

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CPLR 7503(a): Service of an application to compel arbitration upon an attorney by mail is proper if an action is already pending.

In *Olsen & Chapman Construction Co. v. Village of Cazenovia*,[200] a contractor sought a declaratory judgment as to whether certain items constituted additional work under the terms of his contract. The defendant thereupon moved to compel arbitration by mailing an order to show cause to the plaintiff's attorney. Since the application to compel arbitration was made within a pending action, the court ruled that this mode of service[201] was proper.

Inasmuch as arbitration is no longer deemed a special proceeding,[202] a great deal of confusion surrounds the service of the first application arising out of the arbitrable controversy.[203] Indeed, this initiatory-interlocutory papers distinction has received continuous attention in the *Survey*.[204] If an action is not pending when the first application is made, jurisdiction over the defendant must be acquired. Hence, exacting compliance with the service requirements of the CPLR[205] is mandated.[206] However, when an action has already been commenced, the first application is classified a motion.[207] Therefore, as illustrated by *Olsen*, resort to the rules governing the service of motion papers is undoubtedly proper.[208]

CPLR 7503(c): Ten-day statute of limitations is satisfied by posting papers by certified mail on tenth day after receipt of a notice of intention to arbitrate.

Under CPLR 7503(c), the recipient of a properly drafted notice of intention to arbitrate[209] must apply to stay arbitration within ten

200 33 App. Div. 2d 929, 306 N.Y.S.2d 560 (3d Dep't 1970).

201 Service of an order to show cause in lieu of a notice of motion is authorized by CPLR 2214. Service by mail upon an attorney is authorized by CPLR 2103.

202 *Compare* CPA 1458 *with* CPLR 7502(a).

203 CPLR 7502(a) provides: "A special proceeding shall be used to bring before a court the first application arising out of an arbitrable controversy which is not made by motion in a pending action."

204 *See, e.g., The Quarterly Survey*, 44 ST. JOHN'S L. REV. 760, 158, 157 (1969); *The Quarterly Survey*, 43 ST. JOHN'S L. REV. 532, 344, 70 (1968).

205 CPLR 304

206 *See, e.g.*, Graffagnino v. MVAIC, 48 Misc. 2d 441, 264 N.Y.S.2d 483 (Sup. Ct. N.Y. County 1963).

207 CPLR 7502(a).

208 In addition to service by mail upon an attorney, the three-day extension authorized by CPLR 2103(b) would be available.

209 The notice of intention to arbitrate must contain the name and address of the claimant and must specify the agreement pursuant to which arbitration is sought. Also, notice must be given the recipient that unless an application is made within ten days after such service, he will be precluded from raising the "threshold" questions. CPLR 7503(c).