

CPLR 7502(b): Federal Arbitration in the State Courts--Prima Paint, Erie & Rederi

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seeably, the employer who receives an income execution may soon bear the dual responsibility of protecting the rights of the judgment debtor as well as his own.

ARTICLE 75 — ARBITRATION

CPLR 7502(b): Federal arbitration in the state courts — Prima Paint, Erie & Rederi.

In *Prima Paint v. Flood & Conklin Manufacturing Co.*,¹³⁶ the United States Supreme Court held that in a federal court action the Federal Arbitration Act¹³⁷ is controlling if the contract in question involves interstate or maritime commerce. Because of the constant reference to the procedure to be followed by the federal courts in *Prima Paint*, there was some question as to whether state courts¹³⁸ were also bound to apply the federal arbitration statute in similar circumstances.¹³⁹ And, although it had been established that state law governed in the converse situation, *i.e.*, when an action involving an *intrastate* transaction was brought in the federal courts,¹⁴⁰ a definitive statement regarding the scope of *Prima Paint* in New York was lacking until the recent Court of Appeals decision in *Ludwig Mowinckels Rederi v. Dow Chemical Co.*¹⁴¹

The contract in *Rederi* contained a broad arbitration clause

Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969) and *Hanner v. DeMarcus*, 390 U.S. 736, 741-42 (1968) (dissenting opinion); see also *Sweeney, Abolition of Wage Garnishment*, 38 *FORDHAM L. REV.* 197 (1969); 162 *N.Y.L.J.* 7, July 11, 1969, at 1, col. 6.

¹³⁶ 388 U.S. 395 (1967).

¹³⁷ 9 U.S.C. §§ 1-14 (1964).

¹³⁸ The Federal Arbitration Act is unique in that an independent jurisdictional basis must be established before the federal courts can take cognizance of the dispute. Indeed, section 4 of the Act provides that "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate . . . may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28." Moreover, it has been established that the act itself does not afford federal question jurisdiction. *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 408 (2d Cir. 1959), *cert. dismissed*, 364 U.S. 801 (1960); *Krauss Bros. Lumber Co. v. Louis Bassert & Sons, Inc.*, 62 F.2d 1004 (2d Cir. 1933). Significantly, there was no doubt in *Rederi* that the federal courts could have entertained the proceeding since the very transaction which brought the conflict within the ambit of the federal arbitration statute also provided the federal courts with jurisdiction under 28 U.S.C. § 1331 (1964). Nevertheless, there may be numerous instances wherein the contract involves interstate commerce, but the action must be brought in the state court because requisite federal jurisdiction, *e.g.*, failure to meet the \$10,000 minimum under 28 U.S.C. § 1332 (1964), is lacking. Accordingly, the law that will be applied in the state courts has enormous practical consequences for the practitioner.

¹³⁹ See *Aksen, Prima Paint v. Flood & Conklin — What Does It Mean?*, 43 *ST. JOHN'S L. REV.* 1, 22-23 (1968); 7B *McKINNEY'S CPLR* 7501, *supp. commentary* at 99 (1968).

¹⁴⁰ *Bernhardt v. Polygraphic Co. of America*, 350 U.S. 198 (1956).

¹⁴¹ 25 *N.Y.2d* 576, 255 *N.E.2d* 774, 307 *N.Y.S.2d* 660, *cert. denied*, — *U.S.* — (1970).

whereby the parties agreed to submit all questions arising out of their agreement to arbitration in New York. In response to a demand for arbitration, the petitioner moved for a stay on the ground that the disputes were time-barred under the Federal Carriage of Goods by Sea Act,¹⁴² which the parties had incorporated in the contract. The lower courts ruled that federal law should apply since the underlying contract involved a maritime transaction. Accordingly, since under federal law the issue of a time limitation is one for the arbitrator to decide,¹⁴³ the petition to stay arbitration was denied.¹⁴⁴

On appeal, the petitioner argued that CPLR 7502(b), which permits the court to decide time-limitation questions, does not alter any federally created rights since arbitration is a mere procedural device. Nevertheless, the Court of Appeals reasoned that the underlying controversy involving a maritime transaction was solely federal in character and governed exclusively by federal substantive law.¹⁴⁵ Thus, regardless of whether the limitations objection be deemed procedural or substantive, the federal law must be applied since a contrary state law might significantly affect the outcome of the proceedings.¹⁴⁶ Moreover, the Court concluded that a contrary result would encourage forum shopping, undermine national uniformity in the interpretation of arbitration clauses, and permit individuals to circumvent the federal arbitration statute.¹⁴⁷

¹⁴² 46 U.S.C. §§ 1303(6), 1304, 1311 (1964).

¹⁴³ Compare 9 U.S.C. § 3 (1964) with CPLR 7502(b).

¹⁴⁴ Ludwig Mowinckels Rederi v. Dow Chem. Co., 31 App. Div. 2d 372, 297 N.Y.S.2d 1011 (1st Dep't 1969). See also *The Quarterly Survey*, 44 ST. JOHN'S L. REV. 313, 350-51 (1969).

¹⁴⁵ See *Prima Paint v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 405 (1968):

The question in this case . . . is not whether Congress may fashion federal substantive rules to govern . . . simple diversity cases. . . . Rather, the question is whether Congress may prescribe how federal courts are to conduct themselves with respect to subject matter which Congress plainly has power to legislate. And it is clear beyond dispute that the federal arbitration statute is based upon and confined to the incontestable federal foundations of "control over interstate commerce and over admiralty."

By fashioning the Federal Arbitration Act as substantive rather than procedural, the Supreme Court was able to circumvent the application of state law in *Prima Paint*, a result that would have been mandated by *Erie v. Tompkins*, 304 U.S. 64 (1938). See Note, *Federal Arbitration Act and Application of the "Separability Doctrine" in Federal Courts*, 1968 DUKE L. REV. 588, 607. However, this approach, in turn, may have raised converse *Erie* problems for the state courts. See Note, *The Federal Arbitration Act in State Courts: Converse Erie Problems*, 55 CORNELL L. REV. 623 (1970).

¹⁴⁶ Cf. *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945).

¹⁴⁷ Cf. *Hanna v. Plumer*, 380 U.S. 460, 468 (1965): "The 'outcome-determination' test . . . cannot be read without reference to the twin aims of the *Erie* rule: discouragement of forum shopping and avoidance of inequitable administration of the laws." See also C. WRIGHT, *LAW OF FEDERAL COURTS* 227-28 (2d ed. 1970).