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Article 35

CPLR 7502: Federal Arbitration Act Is Controlling in Petition for a Stay of Arbitration in Maritime Actions

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selection of arbitrators, opined the court, the consolidation would be prejudicial since the non-participating party would be precluded from exercising its full rights under the arbitration agreement.

It is difficult to take issue with the reasoning of the court, which, standing alone, is supported by sufficient precedent to warrant denial of Met's petition.[169] However, the court added:

> [S]ince the enactment of the CPLR, arbitrations are no longer considered special proceedings (CPLR 7502) thus depriving the courts of the statutory power, formerly authorized under the Civil Practices [sic] Act, to consolidate arbitrations of controversies. . . . Just as arbitrations are no longer subject to consolidation, because they are neither actions nor special proceedings, they surely are also exempt from such procedural regulation by the courts . . . , as third party practice (CPLR 1007) or joinder of parties (CPLR 1001).[170]

It would seem that the court erred in reaching this conclusion. As support for its lack of power to consolidate arbitrations under the CPLR, the court relied upon the appellate division opinion in *In re Chariot Textiles Corp.*[171] However, prior to the instant decision, the Court of Appeals had reversed the *Chariot* case,[172] adopting the appellate division dissent[173] which held that the courts may still order consolidations under CPLR 7502. The practitioner should therefore avoid placing reliance upon the *Met Food* dictum.[174]

CPLR 7502: Federal Arbitration Act is controlling in petition for a stay of arbitration in maritime action.

In *Ludwig Mowinckels Rederi v. Dow Chemical Co.*,[175] the Appellate Division, First Department, was petitioned to stay an arbitration demanded in connection with a contract for furnishing tankers for the carriage of chemicals. The contract contained an arbitration agreement and a provision incorporating certain sections of the Carriage of Goods by Sea Act,[176] thereby providing for the discharge of

169 *See, e.g., In re* Symphony Fabrics Corp., 16 App. Div. 2d 473, 229 N.Y.S.2d 200 (1st Dep't 1962), *aff'd*, 12 N.Y.2d 409, 190 N.E.2d 418, 240 N.Y.S.2d 23 (1963).

170 59 Misc. 2d at 501, 299 N.Y.S.2d at 699.

171 21 App. Div. 2d 762, 250 N.Y.S.2d 493 (1st Dep't 1964).

172 18 N.Y.2d 793, 221 N.E.2d 913, 275 N.Y.S.2d 382 (1966). *See The Quarterly Survey of New York Practice*, 43 ST. JOHN'S L. REV. 686, 704-05 (1969).

173 21 App. Div. 2d at 763, 250 N.Y.S.2d at 494 (dissenting opinion).

174 *See In re* Vigo Steamship Corp., 32 App. Div. 2d 10, 299 N.Y.S.2d 200 (1st Dep't 1969), where the court reached a result similar to that in *Met Food* by denying consolidation because substantial prejudice might occur. However, the *Vigo* court recognized that such consolidations might otherwise be proper.

175 31 App. Div. 2d 372, 297 N.Y.S.2d 1011 (1st Dep't 1969).

176 46 U.S.C. §§ 1303(6), 1304 & 1311 (1964).

liability unless suit was brought within one year of delivery of the goods. Claims were asserted after the one year limitation, and arbitration of those claims was sought.

Under CPLR 7502(b), one may apply to stay arbitration if the claims sought to be arbitrated have been barred by limitation of time. This device allows the court to pass on the purported time limitation. However, the Federal Arbitration Act[177] limits the court's inquiry to two issues: (1) the making of the agreement for arbitration; and (2) the failure to comply with it.[178] Therefore, under federal law, the issue of time limitation would properly be decided in arbitration. The court was thus faced with the choice of applying either federal or state law to determine whether arbitration should proceed.

The court held that the agreement and the provision for arbitration constituted maritime contracts. Accordingly, the Federal Arbitration Act, which applies to "any maritime transaction or . . . a transaction involving commerce,"[179] was applicable. The petition to stay arbitration was denied, and the issue of the time limitation was therefore properly determinable in arbitration.

Domestic Relations Law

DRL § 215-c(a): Failure to file notice of commencement of divorce action results in termination of temporary alimony.

Pursuant to DRL § 215-c(a), a plaintiff must file notice of commencement of a divorce action with an appropriate conciliation bureau within twenty-one days after the commencement of such action. If this requirement is not met, the statute provides that the action shall be deemed to be discontinued.

In *Cooper v. Cooper*,[180] the effects of the failure to comply with this provision were examined. Plaintiff-wife had been awarded temporary alimony in her divorce action. However, she had neglected to file the requisite notice, and her motion to permit a late filing was denied. The court deemed the action discontinued and granted plaintiff leave to file her action for divorce anew. Defendant thereafter discontinued his temporary alimony payments, and plaintiff sought to punish him for contempt in the instant action, contending that the award remained effective even though the action had been discontinued.

The court summarily rejected plaintiff's contention stating that,

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177 9 U.S.C. §§ 1-14 (1964).
178 *See* Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 404 (1967).
179 9 U.S.C. § 2 (1964).
180 59 Misc. 2d 112, 298 N.Y.S.2d 327 (Sup. Ct. Westchester County 1969).