

# DRL § 215-c(a): Failure To File Notice of Commencement of Divorce Action Results in Termination of Temporary Alimony

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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<sup>177</sup> limits the court's inquiry to two issues: (1) the making of the agreement for arbitration; and (2) the failure to comply with it.<sup>178</sup> 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,"<sup>179</sup> 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*,<sup>180</sup> 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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<sup>177</sup> 9 U.S.C. §§ 1-14 (1964).

<sup>178</sup> See *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967).

<sup>179</sup> 9 U.S.C. § 2 (1964).

<sup>180</sup> 59 Misc. 2d 112, 298 N.Y.S.2d 327 (Sup. Ct. Westchester County 1969).

although the action had not been legally terminated, it had lost its legal vitality twenty-one days after the action had been commenced since the necessary notice had not been filed. Thus, both the temporary award and the divorce action were extinguished due to plaintiff's failure to comply with the statute. The court further declared that the filing requirements constitute a condition precedent to the invocation of provisional remedies otherwise available through the courts.

It is clear from the *Cooper* decision that the courts will expect strict compliance with the conciliation procedures contained in the DRL in an effort to make those provisions efficacious.