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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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*Introduction**

This issue introduces a feature that is expected to become an annual and integral part of the *Survey*: the intensive analysis of the most significant decision reviewed during the year. Unfortunately, as evidenced by the tenor of the article on *Jonathan Logan, Inc. v. Stillwater Worsted Mills, Inc.*, the selected decision cannot always be lauded. Indeed, certain characteristics of *Logan* dictated a critical approach. Of particular moment is the fact that the decision appears to contravene the liberal construction of the CPLR mandated by the legislature and the prevailing notion that the arbitral process is very informal. In short, *Logan* reflects a dangerous judicial insensitivity to the exigencies of the practitioner. Hopefully, the recognition of *Logan's* shortcomings will eventually lead to a reevaluation by the Court of Appeals, or, in the alternative, to legislative relief.

Reported elsewhere in this issue, are progressive decisions dealing with the disclosure of a witness' name and the offensive use of a judgment to collaterally estop a common carrier from relitigating the issue of its negligence. And, the reader's attention is directed to the decision reported under article 6, section 19(f) of the state constitution: the conflict between the transfer provisions of the CPLR and those of the state constitution continues to present difficult questions of interpretation for the judiciary.

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* The following abbreviations will be used uniformly throughout the *Survey*:

New York Civil Practice Law and Rules ..... CPLR
New York Civil Practice Act ..... CPA
New York Rules of Civil Practice ..... RCP
New York City Civil Court Act ..... CCA
Uniform District Court Act ..... UDCA
Uniform City Court Act ..... UCCA
Real Property Actions and Proceedings Law ..... RPAPL
Domestic Relations Law ..... DRL
WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE (1969) ..... W. K. & M.
The Biannual Survey of New York Practice ..... *The Biannual Survey*
The Quarterly Survey of New York Practice ..... *The Quarterly Survey*

Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows.

1957 N.Y. LEG. DOC. No. 6(b) ..... FIRST REP.
1958 N.Y. LEG. DOC. No. 13 ..... SECOND REP.
1959 N.Y. LEG. DOC. 17 ..... THIRD REP.
1960 N.Y. LEG. DOC. No. 20 ..... FOURTH REP.
1961 FINAL REPORT OF THE ADVISORY COMMITTEE ON PRACTICE AND PROCEDURE ..... FINAL REP.

Also valuable are the two joint reports of the Senate Finance and Assembly Ways and Means Committees:

1961 N.Y. LEG. DOC. No. 15 ..... FIFTH REP.
1962 N.Y. LEG. DOC. No. 8 ..... SIXTH REP.

The *Survey* sets forth in each installment those cases which are deemed to make the most significant contribution to New York's procedural law. Due to limitations of space, however, many other less important, but, nevertheless, significant cases cannot be included. While few cases are exhaustively discussed, it is hoped that the *Survey* accomplishes its basic purpose, *viz.*, to key the practitioner to significant developments in the procedural law of New York.

The Table of Contents is designed to direct the reader to those specific areas of procedural law which may be of importance to him. The various sections of the CPLR which are specifically treated in the cases are listed under their respective titles.

PREFATORY NOTE

CPLR 7503(c): Ten-day period within which to apply for a stay of arbitration construed as a statute of limitations.

The advantages of "arbitral preclusion" as a protection against the unwarranted interruption of arbitration are obvious; certain "threshold questions"[1] properly should be decided before proceedings before the arbitrator have been commenced. However, where a ten-day preclusionary provision is construed as a statute of limitations,[2] thereby foreclosing judicial review of such questions under *all* circumstances, the "justifications" proffered in its defense should be carefully examined.

Under CPA 1459, arbitration was denominated a special proceeding to be initiated by service of a notice of intention to arbitrate.[3] The party so served was precluded from asserting that a valid agreement to arbitrate had not been made or complied with, unless notice of an application to stay arbitration was served within ten days.[4] As an incident to a special proceeding, such applications were justifiably

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1 Under CPLR 7503(c) the threshold questions are:
(1) whether a valid agreement to arbitrate was made;
(2) whether it was complied with;
(3) whether the claim sought to be arbitrated is barred by the statute of limitations.
See 7B MCKINNEY'S CPLR 7503, commentary 488 (1963).

2 Jonathan Logan, Inc. v. Stillwater Worsted Mills, Inc., 24 N.Y.2d 208, 249 N.E.2d 477, 301 N.Y.S.2d 636 (1969), *aff'g* 31 App. Div. 2d 208, 295 N.Y.S.2d 853 (1st Dep't 1968).

3 Katz v. Burkin, 1 Misc. 2d 67, 146 N.Y.S.2d 332 (App. T. 2d Dep't 1955); 7B MCKINNEY'S CPLR 7503, supp. commentary 110 (1967); S. TRIPP, A. GUIDE TO MOTION PRACTICE § 199 (rev. ed. 1949); 8 W. K. & M. ¶ 7502.04.

Although there appears to be a dispute as to when this special proceeding was commenced under the CPA, courts frequently held that it was neither by a motion to compel arbitration nor a motion to stay arbitration, but instead, by service of a notice of intention to arbitrate. Falls, *Arbitration Under the Civil Practice Law and Rules in New York*, 9 N.Y.L.F. 335 (1963).

4 CPA 1458(2).