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CPLR 7501: Court May Order Consolidation of Arbitrations

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execution is issued too close to the termination of the judgment lien has recourse, therefore, only to the express statutory alternatives:[66] he may issue execution upon the judgment lien allowing at least eight weeks for the termination thereof; pursuant to section 5203(b) he may move for an extension of the lien for the time necessary to complete advertisement and sale in accordance with section 5236; or he may file notice of levy *after* the expiration of the judgment lien.

ARTICLE 75 — ARBITRATION

CPLR 7501: Court may order consolidation of arbitrations.

Under the CPA, arbitration of a controversy was itself a special proceeding.[67] Consolidation could be directed pursuant to CPA 96 which generally empowered the courts to consolidate special proceedings. As a result of CPLR 7502, which eliminated the concept that arbitration itself is a special proceeding, a question has arisen as to whether courts can order consolidation of arbitrations with a common party upon the application of such party. Since there is no "action" pending, may the court order consolidation?

In *Matter of Chariot Textiles Corp.*,[68] the appellate division, first department, held that a court could not order consolidation. It adopted the view that no motion to consolidate could be made because there would be no action pending at the time.[69]

The dissent took the position that the courts had not been divested of the power to order consolidation by virtue of 7502. In its view, Chariot's application to the court for consolidation "transmuted each of the arbitrations into a special proceeding since it was 'used to bring before a court the first application arising out of an arbitrable controversy. . . .'"[70] Support for this view was found in CPLR 7501, which provides that "[a] written agreement

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[66] Apparently the levy lien under CPA 512 could be resorted to while the judgment lien was still in effect. *See* 7B MCKINNEY'S CPLR 5235, legislative studies and reports 188 (1963). As at common law, judgments were not liens against property, conformity to the statutory requisites is ordinarily essential to the effectuation of a valid lien. For a full discussion see 9 CARMODY—WAIT 2D CYCLOPEDIA OF NEW YORK PRACTICE § 63:114 (1966).

[67] *See* CPA § 1459.

[68] 21 App. Div. 2d 762, 250 N.Y.S.2d 493 (1st Dep't 1964).

[69] *See also* 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶7502.04-.05 (1968), espousing the view that under CPLR 7502 the statutory basis has been removed and therefore the courts must either find a new rationale or abandon the practice of consolidating arbitrations.

[70] 21 App. Div. 2d at 763, 250 N.Y.S.2d at 495 (dissenting opinion) (citing CPLR 7502(a)).

to submit any controversy . . . to arbitration is enforceable . . . and confers jurisdiction on the courts of the state to enforce it. . . ." Such jurisdiction clearly "imports power to regulate the method of enforcement." [71]

The Court of Appeals,[72] relying upon the dissenting opinion in the appellate division, reversed, thereby resolving the conflict.

CPLR 7503: Participation in selection of arbitrator constitutes waiver of objection to items of dispute submitted.

In *Microtran Co., Inc. v. Edelstein*,[73] Microtran petitioned to stay arbitration in accordance with CPLR 7503(b). In 1959, Microtran entered into an agreement with its stockholders for the purchase of their stock. The agreement contained a broad arbitration clause.[74] In 1963, the stockholders entered into an agreement, relative to existing insurance policies on their lives, making the proceeds from the policies available to the company for purchase of the stock. Microtran demanded arbitration claiming its right to purchase stock and the defendant interposed a counter-demand to arbitrate the disposition of the life insurance policies when the stock interest is terminated before death. In overruling the contention that the counter-demand was not arbitrable, the court held that it was ". . . so directly related to the matters in controversy between the parties as to be arbitrable under the arbitration clause contained in the 1959 agreement." [75] Furthermore, the court concluded that the company could not seek a stay of arbitration when it had participated in the selection of an arbitrator,[76] without challenging any of the items of the counter-demand.

Microtran is illustrative of a judicial disposition to foster the practice of arbitration [77] and serves as a warning to the practitioner to be extremely careful when handling a controversy that may be arbitrable.[78]

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[71] *Id.*

[72] Matter of Chariot Textiles Corp., 18 N.Y.2d 793, 221 N.E.2d 913, 275 N.Y.S.2d 382 (1966) (mem.).

[73] 30 App. Div. 2d 938, 293 N.Y.S.2d 936 (1st Dep't 1968).

[74] ". . . any controversy or claim arising out of or relating to this agreement or the breach thereof, or to the relationship between the parties hereto." *Id.* at 938-39, 293 N.Y.S.2d at 937.

[75] *Id.* at 938-39, 293 N.Y.S.2d at 937.

[76] *See generally* 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 7503.23 (1963).

[77] *See generally* National Cash Register Co. v. Wilson, 8 N.Y.2d 377, 171 N.E.2d 302, 208 N.Y.S.2d 951; *The Quarterly Survey of New York Practice*, 39 ST. JOHN'S L. REV. 239 (1964).

[78] Under CPLR 7503 a party served with a notice of intention to arbitrate has ten days to apply for a stay of arbitration. If *X* serves *Y* with a notice of intention to arbitrate and *Y* serves *X* with a counter-demand, should *X*'s time to apply for a stay begin to run upon service of the notice of intention to arbitrate or upon service of the counter-demand?