

CPLR 7503: Participation in Selection of Arbitrator Constitutes Waiver of Objection to Items of Dispute Submitted

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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 arbitration⁷⁷ and serves as a warning to the practitioner to be extremely careful when handling a controversy that may be arbitrable.⁷⁸

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?