

## CPLR 7501: Whether Dispute Is Covered by Arbitration Agreement Determined by the Court

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## ARTICLE 75 — ARBITRATION

CPLR 7501: *Whether dispute is covered by arbitration agreement determined by the court.*

The final sentence of CPLR 7501<sup>132</sup> was designed to abrogate the "Cutler-Hammer" doctrine which allowed the courts, when deciding to stay or compel arbitration, to pass upon the merits of the dispute.<sup>133</sup> Since the enactment of CPLR 7501, it has been suggested that there are only three questions which a court may ask in determining whether a right to arbitrate exists: (1) is there a dispute; (2) is there an agreement to arbitrate; (3) is there a refusal to arbitrate.<sup>134</sup>

In *Mohawk Maintenance Co. v. Drake*,<sup>135</sup> plaintiff-employer and defendant's union had entered into a contract which provided for arbitration of any dispute arising out of the agreement. A dispute arose between plaintiff and defendant, the subject of which was not part of the labor agreement. Plaintiff applied for an order enjoining defendant's union from proceeding with arbitration of the dispute. The supreme court, Queens County, held that while a court, under CPLR 7501, could no longer determine the bona fides of a dispute, the statute did not remove from the courts the right to determine as a matter of law whether the arbitration agreement was broad enough to encompass the dispute.<sup>136</sup>

The prime concern of the court was that no person be compelled to arbitrate a particular issue unless he had contractually agreed that it was to be arbitrable. However, the second question of the suggested three point formula, *i.e.*, is there an agreement to arbitrate, seems to contain by implication the question asked by the court in the instant case, that is, is the arbitration agreement broad enough to encompass the dispute.

<sup>132</sup> "In determining any matter arising under this article, the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute."

<sup>133</sup> See *Matter of International Ass'n of Machinists*, 271 App. Div. 917, 67 N.Y.S.2d 317 (1st Dep't), *aff'd*, 297 N.Y. 519, 74 N.E.2d 464 (1947); 8 WEINSTEIN, KORN & MILLER, *NEW YORK CIVIL PRACTICE* ¶ 7501.20 (1966).

<sup>134</sup> *Greene Steel & Wire Co. v. F. W. Hartmann & Co.*, 235 N.Y.S.2d 238 (Sup. Ct. Kings County 1962), *aff'd*, 20 App. Div. 2d 683, 247 N.Y.S.2d 1008 (2d Dep't), *appeal dismissed*, 14 N.Y.2d 688, 198 N.E.2d 914, 249 N.Y.S.2d 886 (1964).

<sup>135</sup> 53 Misc. 2d 272, 278 N.Y.S.2d 297 (Sup. Ct. Queens County 1967).

<sup>136</sup> 53 Misc. 2d at 275, 278 N.Y.S.2d at 300.