

## CPLR 7501: State Not Insulated from Arbitration by Sovereign Immunity

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This decision clarifies the law in New York. Now there is a direct holding that where there is a wrongful attachment, legal services rendered, both in the trial court and on appeal, are recoverable as an element of damages provided inducement and causation are shown.

#### ARTICLE 75—ARBITRATION

*CPLR 7501: State not insulated from arbitration by sovereign immunity.*

In Section 8 of the Court of Claims Act, New York State has waived its sovereign immunity and, in Section 9, it has provided that the Court of Claims shall have exclusive jurisdiction of all suits involving tort and contract claims wherein the state is a defendant. However, this waiver of immunity only applies where the "claimant complies with the limitations of this article,"<sup>111</sup> and where there has been a direct waiver of sovereign immunity.<sup>112</sup>

Prior decisions have stated that where the party sued is an agency of the state, it was incumbent upon the courts to interpret the relationship between the agency and the state to determine whether the agency or authority was an "arm of the state."<sup>113</sup> For example, it has been held that the New York Thruway Authority was an "arm of the state," and that suit against it was forbidden in all state courts except the Court of Claims.<sup>114</sup> On the other hand, in *Braun v. State*,<sup>115</sup> the court held that the New York State Dormitory Authority was "a separate body politic, for whose tortious acts the State was not responsible";<sup>116</sup> and, therefore, a suit against the authority could be brought in another court of the state.

In *Dormitory Auth. v. Span Elec. Corp.*,<sup>117</sup> the Court of Appeals held that the doctrine of sovereign immunity did not

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<sup>111</sup> Cr. Cl. Act § 8.

<sup>112</sup> *Benz v. New York State Thruway Auth.*, 9 N.Y.2d 486, 489, 174 N.E.2d 727, 728, 215 N.Y.S.2d 47, 48 (1961).

<sup>113</sup> See, e.g., *Matter of Plumbing, Heating, Piping & Air Conditioning Contractors Ass'n, Inc. v. New York State Thruway Auth.*, 5 N.Y.2d 420, 158 N.E.2d 238, 185 N.Y.S.2d 534 (1959).

<sup>114</sup> *Easley v. New York State Thruway Auth.*, 1 N.Y.2d 374, 135 N.E.2d 572, 153 N.Y.S.2d 28 (1956). See N.Y. PUB. AUTH. LAW §§ 350-75.

<sup>115</sup> 203 Misc. 563, 117 N.Y.S.2d 601 (Ct. Cl. 1952). The enabling act which established the Dormitory Authority is found in N.Y. PUB. AUTH. LAW §§ 1675-90.

<sup>116</sup> *Braun v. State*, 203 Misc. 563, 564, 177 N.Y.S.2d 601, 602 (Ct. Cl. 1952). See also *Thompson Constr. Corp. v. Dormitory Auth.*, 48 Misc. 2d 296, 298, 264 N.Y.S.2d 842, 845 (Sup. Ct. Albany County 1965).

<sup>117</sup> 18 N.Y.2d 114, 218 N.E.2d 693, 271 N.Y.S.2d 983 (1966).

apply to the Dormitory Authority so as to prevent its being bound by the operation of a contract arbitration clause. The significance of this decision, however, is found in the Court's dictum that:

Assuming for the moment the validity of the Authority's argument that it is identified with the State, we hold that *the State itself is not insulated against the operation of an arbitration clause in a contract* because the power to contract implies the power to assent to the settlement of disputes by means of arbitration <sup>118</sup>

This part of the decision was criticized in the concurring opinion of Judge Bergan, wherein he stated that "it seems injudicious, as well as unnecessary" <sup>119</sup> for the Court to have considered this question. Relying upon the principles of sovereign immunity, Judge Bergan argued that under the majority holding a state officer could waive this immunity and subject the state to suit, without the "state" having given its consent. <sup>120</sup>

<sup>1</sup> The practitioner should note that, as a result of this decision, the state, its agencies and authorities, would appear to be bound by the provisions of Article 75 of the CPLR and by the relevant cases decided thereunder if arbitration clauses appear in the contract. It is possible that some procedural problems may arise because of the application of Article 75 to the state, <sup>121</sup> but we must await future decisions for their resolution.

#### ARTICLE 83 — DISBURSEMENTS AND ADDITIONAL ALLOWANCES

##### *CPLR 8303(a) Amendment.*

CPLR 8303(a) has been amended to allow additional costs to a party "whether or not costs have been awarded . . ." By this amendment some confusion has been eliminated, and the intention of the revisers has been clarified by a statement that a party may be eligible for additional allowances even though he is not the party who has been awarded costs.

In addition, CPLR 8303(a)(1) has been amended so that the provision is now expressly applicable only where the action is to foreclose a mortgage on *real* property. Thus, by this amendment, the inconsistency with CPLR 8302(a)(1) is removed, and the amended section now conforms with its predecessor—CPA

<sup>118</sup> *Dormitory Auth. v. Span Elec. Corp.*, 18 N.Y.2d 114, 118, 218 N.E.2d 693, 696; 271 N.Y.S.2d 983, 986 (1966). (Emphasis added.)

<sup>119</sup> *Id.* at 119, 218 N.E.2d at 696, 271 N.Y.S.2d at 987

<sup>120</sup> *Id.* at 120, 218 N.E.2d at 696, 271 N.Y.S.2d at 987.

<sup>121</sup> In his concurring opinion, Judge Bergan mentions that "the statutory mechanism for implementing an award by arbitrators, i.e., 'A judgment shall be entered' (CPLR 7514, Subd. [a]) would, in respect of the State, be a procedural futility." *Dormitory Auth. v. Span Elec. Corp.*, 18 N.Y.2d 114, 120, 218 N.E.2d 693, 697, 271 N.Y.S.2d 983, 987 (1966).