

CPLR 8303(a): Amendment

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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 ¹¹⁸

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" ¹¹⁹ 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. ¹²⁰

¹ 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, ¹²¹ 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

¹¹⁸ *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.)

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

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

¹²¹ 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).

§ 1513—since no change in substance was intended by the draftsmen.

DOMESTIC RELATIONS LAW

Dom. Rel. Law § 240. Children can enforce their rights under separation agreement.

Under Section 240 of the Domestic Relations Law, the court must give direction for the custody, care, education, and maintenance of the children in any proceeding brought for separation. In *Forman v. Forman*,¹²² the wife breached a separation agreement, which provided for the support of the children, thus relieving the husband of his obligation under the agreement. However, in a subsequent action, the husband was ordered to pay the wife pursuant to the Uniform Support of Dependents Law¹²³ the amount the agreement had originally provided for. The children then sought a declaratory judgment embracing parts of the separation agreement which were purported to have been made for them as third-party beneficiaries.

As a general rule only the mother can enforce the agreement directly against the father.¹²⁴ However, in the instant case, the Court of Appeals held that where the mother's violation of the agreement makes her incapable of enforcing it on behalf of the infants, a procedural facility must be provided for the enforcement of the rights of the infants. Therefore, in such a case, children may enforce, as third-party beneficiaries, their rights under separation agreements.

NEW YORK CITY CIVIL COURT ACT

CCA § 212. Court can grant stay of execution in proceeding to recover possession of commercial realty.

In *Pepsi-Cola Metropolitan Bottling Co. v. Miller*,¹²⁵ the question was raised as to whether the Civil Court could grant a stay of execution in a proceeding to recover possession of commercial real property. Under Sections 751, 753, and 755 of the RPAPL, courts are given explicit power to grant stays with respect to residential property. However, there is no specific grant

¹²² 17 N.Y.2d 274, 217 N.E.2d 645, 270 N.Y.S.2d 586 (1966).

¹²³ N.Y. DOM. REL. LAW §§ 30-43. The purpose of this law is to secure support for dependents from persons legally responsible for their support.

¹²⁴ *Kendall v. Kendall*, 200 App. Div. 702, 193 N.Y. Supp. 658 (1st Dep't. 1922).

¹²⁵ 50 Misc. 2d 40, 269 N.Y.S.2d 471 (Civil Ct. Bronx County 1966).