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Article 69

# CPLR 7503(): Mislabelling of Notice of Intention to Arbitrate Held Not Fatal: Non-Compliance with Time and Service Requirements for Stay Held Fatal

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the plaintiff. However, defendant was granted a hearing at which he was only permitted to contest bail. Upon formal re-application, a hearing was denied on the ground that the first hearing was sufficient.

The appellate division held that there was no hearing within the contemplation of the statute. The burden was upon the plaintiff to establish,[269] by a preponderance of the proof, that the extrinsic facts relied upon to procure the arrest actually existed.[270] The requirement of a full hearing was imposed to protect the unwary defendant.[271] It has been, as this case indicates, and will continue to be, strictly construed.

## ARTICLE 75 — ARBITRATION

### *CPLR 7503(c): Mislabelling of notice of intention to arbitrate held not fatal: non-compliance with time and service requirements for stay held fatal.*

In a recent case,[272] respondent served a "demand for arbitration" (CPLR 7503(a)) upon petitioner, when a "notice of intention to arbitrate" (CPLR 7503(c)) was appropriate. Eleven days thereafter, petitioner served, by ordinary mail, an application to stay arbitration. The supreme court held that the mislabelling by respondent was not fatal inasmuch as it contained all the essential elements of the appropriate notice.[273] It further held that petitioner was now precluded from litigating the issue of the existence of the contract because of non-compliance with the time and service requirements for stays of arbitration.[274] The statute, it seems, was construed in perfect accord with its plain intent.

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[269] See CPLR 6113(b).

[270] De Bierre v. Darvas, 22 App. Div. 2d 550, 553, 257 N.Y.S.2d 179, 181 (1st Dep't 1965). Although affidavits were sufficient to detain defendant under the CPA, this same standard of proof was employed. See Burns v. Newman, *supra* note 266, at 302, 83 N.Y.S.2d at 287.

[271] See THIRD REP. 325.

[272] Beverley Cocktail Lounge, Inc. v. Emerald Vending Machines, Inc., 45 Misc. 2d 376, 256 N.Y.S.2d 812 (Sup. Ct. Kings County 1965).

[273] CPLR 7503(c).

[274] An application to stay arbitration must be served within ten days after service of the notice of intention to arbitrate. Notice of such application must be "served in the same manner as a summons or by registered or certified mail, return receipt requested." CPLR 7503(c). It should be noted that the appropriate procedure for stays is outlined in CPLR 7503(c) (entitled "notice of intention to arbitrate") rather than in CPLR 7503(b) (entitled "application to stay arbitration"). It is then evident that when recourse is had to this area, the entire statute must be consulted.