St. John's Law Review

Volume 39, December 1964, Number 1 Article 67

Injunction Issued Barring the Prosecution of Foreign Action Brought in Violation of Agreement to Arbitrate in New York

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The court's interpretation of the statute may render uncertain the finality of arbitration proceedings. If a party were allowed to raise pre-arbitration questions at any time after the ten-day period allowed by statute, the opposing party could never rely on the conclusiveness of an arbitration award granted him. For example, in *Schafran & Finkel, Inc. v. Lowenstein & Sons, Inc.*,[283] after the entire arbitration controversy had been completed and an award rendered for defendant, the plaintiff was allowed to bring an independent equitable action to enjoin the confirmation of the award, even though plaintiff had received notice of the arbitration but had failed to take any action.[284] Moreover, the court's interpretation of CPLR 7503(c) may tend to subvert the main advantage of arbitration—the speed with which an arbitration controversy can be concluded.

Although in the instant case the equities favored permitting respondent to raise the invalidity of the arbitration agreement (his default was inadvertent) and while there is a strong public policy to have such legal questions as the validity of arbitration agreements determined by the courts, it cannot be said that the ten-day period allowed by CPLR 7503(c) for interposing such objections is unreasonable. That fact and the advantages of stable and speedy arbitration proceedings, should result in rejection of objections to the arbitration unless raised within the ten-day period. In any event, practitioners will be on perilous ground if they withhold their objections in simple reliance upon the instant case. They should act immediately after their client receives a notice of intention to arbitrate, regardless of the fact that the claimant's demand for arbitration appears wholly unfounded.

Injunction issued barring the prosecution of foreign action brought in violation of agreement to arbitrate in New York.

May a party be enjoined from bringing an action in a foreign jurisdiction in violation of an agreement to arbitrate disputes in New York?

In *H. M. Hamilton & Co. v. American Home Assur. Co.*,[285] plaintiff sought injunctive relief restraining defendants from further pursuing their legal action against plaintiff in the state of Georgia.

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[283] 280 N.Y. 164, 19 N.E.2d 1005 (1939); 16 N.Y.U.L. REV. 641 (1939).

[284] The court of appeals based the decision on the insufficiency of the notice to inform the plaintiff of the consequences of his failure to answer within the ten days. CPLR 7503(c) makes such information mandatory in the notice and it was contained in the notice in the instant case. However, even in the instant case the court indicated that the notice may have been insufficient too for failing to appraise respondent of the issues sought to be arbitrated. Application of Ledo Realty Corp., 43 Misc. 2d 380, 382, 251 N.Y.S.2d 99, 101 (Sup. Ct. 1964).

[285] 21 App. Div. 2d 500, 251 N.Y.S.2d 215 (1st Dep't 1964).

The plaintiff alleged that the contract between the parties called for arbitration of all disputes in New York. Defendants, on the other hand, contended that plaintiff should be denied relief since the defendants had already commenced their suit in Georgia and plaintiff had answered therein pleading the arbitration provision as a bar. In affirming the lower court the appellate division, first department, in a divided opinion, enjoined defendants from proceeding with the maintenance of their action in Georgia on the ground that their contract with plaintiff called for arbitration of all disputes in New York. The fact that plaintiff had answered in the Georgia suit did not prejudice its right to enforce arbitration, held the court, if the right to arbitration was promptly raised in that action and enforcement of the right seasonably undertaken. The right to arbitrate was seasonably raised in the Georgia suit; it was asserted as a defense in the answer; and plaintiff (defendant in Georgia) brought the instant injunction suit promptly.

The court pointed out that the general rule of comity often forbids the granting of an injunction to restrain a party from proceeding in a foreign suit which has already been commenced in a court of competent jurisdiction in a sister state. However, prior to the decision, the court of appeals under CPA § 1451 had granted a stay of extra-state *administrative* proceedings brought in violation of an agreement to arbitrate.[286] As the court in the instant case said: "The CPLR has not limited the doctrine of [that] decision" to administrative proceedings.[287]

In order to effectuate arbitration agreements and to give them meaning, contractual obligations to arbitrate must be enforced. If courts were unable to grant injunctions of the kind prayed for at bar, arbitration clauses and the provisions of Article 75 of the CPLR would be easily avoidable. An agreement to arbitrate could readily be frustrated by the prosecution of actions in another jurisdiction. The court, in enjoining the foreign action, has made it clear that once a party has agreed to arbitration as his sole remedy for any dispute arising out of a contract, the New York courts have the power to hold him to his contractual obligation. "Those who agree to arbitrate should be made to keep their solemn, written promise." [288]

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[286] Matter of Wolf Co., 9 N.Y.2d 356, 174 N.E.2d 478, 214 N.Y.S.2d 374 (1961); See 11 BUFFALO L. REV. 80 (1961).

[287] H. M. Hamilton & Co. v. American Home Assur. Co., 21 App. Div. 2d 500, 502, 251 N.Y.S.2d 215, 217 (1st Dep't 1964); see CPLR 7503(a).

[288] Matter of Grayson Robinson Stores, Inc. v. Iris Constr. Corp., 8 N.Y.2d 133, 138, 168 N.E.2d 377, 379, 202 N.Y.S.2d 303, 307 (1960).