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Arbitration—Stay of Proceedings Brought Before Federal Administrative Agency in Violation of Arbitration Agreement

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opinion. They will let the arbitrator decide after hearing all the evidence, whether respondents seek consequential damages, or whether their claim has merit.

The *DeLillo Const. Co. v. Lizza & Sons* case,[22] also relied upon by petitioner, dealt with a narrow arbitration clause such as the one found in the *Marchant* case and is therefore not applicable here where the clause was determined to be broad in its scope.

The dissent in the case at bar, relying on the majority's concluding statement,[23] believes that this decision would bar the court from hearing any motion to stay an award, claiming the statement makes the decision of the arbitrators "final and conclusive in any event." However, the majority explicitly stated that any determination "*in advance*" of arbitration would be inappropriate. (Emphasis added.)[24] This leads the writer to the conclusion that where the arbitration clause is broad enough, the court will allow any claim of damage to go to the arbitrator, reserving in the parties the availability of Article 84 of the New York Civil Practice Act to contest the legality of an award in an appropriate court of law. This is consistent with the wording and intent of the appropriate Sections of Article 84 (Sections 1462-1462-a). It may also ease the court's task of determining the validity of an award, because, when an action would be brought before them under these Sections, it would be after the arbitrator has heard all the evidence on both sides; and since he usually is someone familiar with the industry (if not a member of it) his decision would probably reflect the general attitude of that industry about such damages, thereby allowing the court to better achieve the intent of the parties when they entered into the agreement.

J. D.

STAY OF PROCEEDINGS BROUGHT BEFORE FEDERAL ADMINISTRATIVE AGENCY IN VIOLATION OF ARBITRATION AGREEMENT

In *S. M. Wolff Co. v. Tulkoff*,[25] the parties engaged in telephone conversations concerning the purchase of imported horseradish roots. The petitioners (brokers) thereafter mailed to respondents two "Bought Notes," covering the purchase in question, which contained broad arbitration clauses. Upon the arrival of the goods, they were accepted and paid for by respondents. Thereafter respondents lodged a preliminary complaint with the United States Department of Agriculture,[26] claiming that the shipments failed "to grade according to contract." After a hearing at which the parties failed to reach a settlement, respondents lodged a formal complaint with the Department of

22. 7 N.Y.2d 102, 195 N.Y.S.2d 825 (1959).
23. DeLaurentiis v. Cinematografica, Etc., supra note 1 at 510, 215 N.Y.S.2d at 64.
24. Ibid. See Matter of Transpacific Transp. Corp. (Sirena Shipping Co., S.A.), 9 A.D.2d 316, 321, 193 N.Y.S.2d 277, 283 (1st Dep't 1959).
25. 9 N.Y.2d 356, 214 N.Y.S.2d 374 (1961), reversing 11 A.D.2d 656, 203 N.Y.S.2d 1020 (1st Dep't 1960).
26. Perishable Agriculture Commodities Act, 7 U.S.C. § 499(f) (1958).

Agriculture. Petitioner, instead of answering this complaint, relied upon the arbitration provisions in the "Bought Notes" and filed a petition pursuant to Section 1451 of the Civil Practice Act to stay the proceedings presently before the Department of Agriculture.[27]

The novel question presented by this case is whether Section 1451 authorizes the courts of New York to stay proceedings which are pending before an administrative agency of the Federal Government. Respondents claim that they are not and contend that Section 1451 empowers the New York courts to stay only proceeding before New York tribunals. The Supreme Court agreed with this contention and denied the petitioners' motion.[28] The Court of Appeals, reversing both Special Term and the Appellate Division, held that the "broad, unqualified language and absence of limiting words" in Section 1451 gives the courts of this state the power to stay proceedings irregardless of where they were initiated, so long as the issues are referable to arbitration in New York.

In a recent case the Appellate Division affirmed a Special Term holding that Section 1451 empowers the New York courts to stay proceedings pending in the courts of other States where the contract provided for arbitration in New York.[29] This decision supports the Court of Appeals' holding in the present case.

This decision appears to this writer as a sound one in view of the language of Section 1451 and the traditional view that the court will try to achieve the intent of the parties when construing contracts. If the parties, of their own volition, have agreed to arbitrate in New York any disputes arising under any contract they may make, they have waived their rights to any other action. The Court, in the present decision, is merely giving effect to the expressed intent of the parties and enforcing the provisions of a valid agreement.

If the Court had not held this way, arbitration clauses and the provision of Article 84 of the New York Civil Practice Act would become meaningless words without force or power. The Court has, in effect, decided that once a party agrees to arbitration as the sole remedy for any disputes arising out of a contract, the New York courts have the power to hold him to his contractual obligation. If he desired recourse to any other remedy, in addition to arbitration, he could have easily provided for it in the contract; but since he has not, he will be bound by his obligation to arbitrate.

Before reversing the judgment below and granting the petitioner's motion,

27. N.Y. Civ. Prac § 1451:
If any action or proceeding be brought upon any issue otherwise referable to arbitration under a contract or submission described in section fourteen hundred forty-eight, the supreme court or the court in which such action or proceeding shall be brought, or a judge thereof, upon being satisfied that the issue involved in such action or proceeding is referable to arbitration . . ., shall stay all proceedings in the action or proceedings until such arbitration has been had in accordance with the terms of the contract or submission.

28. 24 Misc. 2d 71, 204 N.Y.S.2d 879 (Sup. Ct. 1960).

29. Demchick v. American Eutectic Welding Alloys S. Co., 22 Misc. 2d 920, 201 N.Y.S.2d 819 (Sup. Ct. 1960), aff'd, 11 A.D.2d 771, 204 N.Y.S.2d 889 (2d Dep't 1960).

the Court had to dispose of two other arguments which had been advanced by respondent but were not decided by the courts below. Respondent contends that the initial telephone conversation between himself and petitioner had "closed the deal" and that, therefore, he had made no contract to arbitrate the present dispute.[30] Respondent further contended that even if a valid contract to arbitrate existed, petitioner has waived his right to arbitrate by reason of both laches and his (petitioner) participation in the proceedings before the Department of Agriculture. The Court of Appeals felt that both issues present questions of fact which should be resolved at a further hearing to be held at Special Term. The judgment below is therefore reversed and the matter remanded to Special Term for further proceedings in accordance with this opinion.

J. D.

PETITIONER, BY PARTICIPATING IN ARBITRATION PROCEEDINGS, WAIVES RIGHT TO CLAIM THAT DISPUTE IS NOT ARBITRABLE

Petitioner, in *National Cash Register Co. v. Wilson*,[31] had entered into a collective bargaining agreement with respondent union, providing for, among other things, seniority rights among the employees. The agreement also contained a broad arbitration clause. Four years later, the union called an economic strike, which was settled by two supplemental agreements, extending the original collective bargaining agreement for one year and providing in essence that, except for a ten day period immediately following the strike settlement, workers were to be recalled in accordance with the seniority provisions of the existing collective bargaining agreement. Respondent, alleging that petitioner had violated these supplemental agreements by not applying seniority rights among all the employees—those who did not strike at all and those who had been recalled during the ten day period—but only among those who were still out because of the strike, sought arbitration pursuant to the arbitration clause in the original collective bargaining agreement. Petitioner, although objecting to arbitration on the ground that the dispute was not covered by the arbitration clause in the original collective bargaining agreement, fully participated in all proceedings. The arbitrators decided in favor of the union on the merits and petitioners contend that the arbitration clause of the main contract does not extend to disputes arising under the supplemental agreements. Although Special Term vacated the award on the above ground, the Appellate Division reversed and confirmed the award, holding that the arbitration clause applied to the supplemental agreements.[32] The Court of Appeals affirmed the Appellate Division, stating that the references in the original collective bargaining agreement to "any supplements to it" must be read as intending to give the arbitrators authority to pass on any dispute arising not only from the main agreement,

30. For a discussion of these issues, see student note on Matter of Exercycle Corp. (Maratta), appearing p. 75 supra.

31. 8 N.Y.2d 377, 208 N.Y.S.2d 951 (1960).

32. 7 A.D.2d 550, 184 N.Y.S.2d 957 (3d Dep't 1959).