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Arbitration—Petitioner, by Participating in Arbitration Proceedings, Waives Right to Claim That Dispute Is Not Arbitrable

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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).

but also from any supplement to it. Moreover, the Court held that petitioner, by participating in the arbitration proceedings, had waived any right to contend that the agreement did not provide for arbitration.

Section 1458 (1) of the Civil Practice Act clearly provides that an applicant, after having participated in the arbitration proceedings, can only challenge the award on certain enumerated grounds.[33] He cannot, however, contend that the dispute is not arbitrable. This appears to be based upon the proposition that once a party has ratified a contract, through his acceptance of its provisions, he cannot thereafter claim that the contract does not exist or that its provisions are invalid. Petitioner's motion to vacate, therefore, must be limited to one of the grounds enumerated in Section 1462(1)-(4) of the Civil Practice Act.[34]

Although Section 1462 (4) provides that an award may be vacated when the arbitrators exceed their power, the Court holds that the latter objection is applicable only where it can be said that the arbitrators have given "a completely irrational construction to the provisions in dispute and, in effect, made a new contract for the parties."[35] The agreement in dispute, although susceptible of different interpretations was reasonably interpreted by the arbitrators. Therefore, it cannot be said that the arbitrators have exceeded their power within the meaning of Section 1462 of the Civil Practice Act.

J. D.

ARBITRABLE ISSUE PRESENT AS TO CONTENT AND MEANING OF GENERAL RELEASE

On January 4, 1952, the parties, in *Bronston v. Glassman*,[36] entered into a written agreement whereby respondent undertook and agreed to render certain personal managerial and related services to petitioner in return for compensation. The agreement, which by its terms was to run to December 31, 1961, contained a broad arbitration clause. On May 29, 1959, a further agreement[37] was entered into between the parties hereto, *their wives* and *certain corporations*, which provided in essence for the exchange of general releases

33. N.Y. Civ. Prac. Act § 1458(1):
A party who has participated in the selection of the arbitrators or in any of the proceedings had before them may object to the confirmation of the award only on one or more of the grounds specified in subdivisions one, two, three and four of section fourteen hundred sixty-two. . . .

34. Subdivisions 1 through 4 of Section 1462 provide for the vacation of an arbitration award only where it has been shown that there was: 1) fraud in procuring the award; 2) partiality or corruption of the arbitrators; 3) misconduct of arbitrators; 4) or that arbitrators exceeded their powers.

35. National Cash Register v. Wilson, supra note 31 at 383, 208 N.Y.S.2d at 955.

36. 10 N.Y. 2d 158, 218 N.Y.S.2d 645 (1961).

37. The settlement agreement of May 29, 1959, contained the following provision: Except for the rights and obligations contained in this agreement, all other claims which any of the parties hereto may have against any other party hereto are released and forgiven and each of the parties hereto will deliver to each other parties hereto duly executed, standard form general releases excepting only rights under this agreement. Bronston v. Glassman, 13 A.D.2d 486, 488, 212 N.Y.S.2d 239, 241 (1st Dep't 1961).