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Arbitration—Arbitration Award of Specific Performance

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The Court of Appeals affirmed an order compelling defendant to submit to arbitration all three contracts holding that Section 1449 was sufficiently complied with.

The Court ruled, as they did here, that the second part of Section 1449 requires that the writing be signed, but the first part of the Section—the part that deals with a contract to arbitrate a controversy thereafter arising—need only be in writing and does not need to be signed.

ARBITRATION AWARD OF SPECIFIC PERFORMANCE

On a motion to confirm an arbitration award of specific performance,²⁴ the Court of Appeals, in *Grayson-Robinson Stores, Inc. v. Iris Construction Co.*,²⁵ was faced with the following situation: defendant repudiated its promise to build a store for plaintiff in a proposed nine million dollar shopping center, giving as cause plaintiff's inordinate delay in approving final plans for the structure. The delay was alleged to have caused investors to regard the project as a poor risk (plaintiff was the largest tenant), thus making it impossible for defendant to obtain mortgage financing. The dispute was submitted, under the terms of the contract, to the American Arbitration Association for resolution.²⁶ The arbitrators found that plaintiff had acted in good faith in regard to the approval of building plans and, therefore, that defendant had no basis for repudiation; that mortgage financing was available, even if more costly and, therefore, that defendant could not plead impossibility of performance. The findings resulted in an award ordering defendant to proceed with construction.

In affirming decisions of Special Term²⁷ and the Appellate Division²⁸ confirming the arbitration award of specific performance, the Court of Appeals held that, assuming the Court could overturn an arbitration award of specific performance on the basis that it would have discretion to overturn a similar decree of equity, this award is neither inconsistent with the relief available in equity or an overreaching of the arbitrators' power, and should, therefore, be confirmed.

The Civil Practice Act, Sections 1462 and 1462-a clearly label the grounds upon which the court may vacate an arbitration award. Section 1462(4) provides that the award may be vacated "Where the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject-matter was not made." Among the provisions this stands as the only one permitting an exercise of judicial discretion. The first question for the Court became, then, what is the measure of that discretion? Is it, as

24. N.Y. Civ. Prac. Act § 1461.

25. 8 N.Y.2d 133, 202 N.Y.S.2d 303 (1960).

26. The rules under which this body operates specifically provide that the arbitrators may grant specific performance as a remedy.

27. 9 Misc. 2d 796, 168 N.Y.S.2d 513 (Sup. Ct. 1958).

28. 7 A.D.2d 367, 183 N.Y.S.2d 695 (1st Dep't 1959).

the defendant contended, as broad as the discretion the Court would have in examining a decree of Equity? Or, are the courts, as plaintiff claimed, restricted in their scrutiny of arbitration awards by the limiting language of Section 1462 taken together with the purpose of the Arbitration Act as a whole;²⁹ that is, to relieve the chronic congestion of court calendars while at the same time giving the force of law to decisions which potential litigants have agreed to be bound by?

The majority, as it did in *In re Ruppert*³⁰ and in *In re Staklinski*,³¹ seems to have rejected the defendant's contention and found that the courts are under a duty to protect the integrity of arbitration awards when it can reasonably be said that the arbitrators have acted with discretion. In the *Ruppert* case the arbitrators enjoined a labor union from striking, the injunction remedy being provided for by American Arbitration Association rules. It was admitted by the plaintiff therein that an equity court could not have granted the same relief due to a statutory prohibition. The Court said, "Once we have held that this particular agreement . . . contemplates the inclusion of an injunction in such award, no ground remains for invalidating this award."³² In the *Staklinski* case the arbitrators awarded specific performance of an employment contract in favor of the employee. The Court, in affirming, said, "Whether a Court of Equity could issue a *specific performance* decree in a case like this is *beside the point*."³³ (emphasis supplied). In the present case the majority again has recognized that the decree may be thought one not likely to have emanated from a court of equity. But, they say, it is also true that an equity court could have, in its discretion, reached the same result. This last argument settles the question for the majority, for if the decree was within an equity court's discretion, no basis remains for vacating the award. However, the cases cited by the majority in support of this position do not deal with projects in any way approaching the enormity of the one here involved, and thus some doubt is cast on the conclusion that this is ". . . an ordinary building contract."³⁴

The dissent, while not expressing its opinion as to the proper standard for testing an arbitration award, differs from the majority view that this exercise of discretion was justified on the facts, or that courts of equity have enforced such contracts from the earliest days to the present time.

Against the plaintiff's assertion that the court will find no problem in enforcing the award—due to the presence of completed construction plans—is the bald fact that disputes will undoubtedly arise in a project of this size, and that the court will have to take time from already crowded dockets to

29. N.Y. Civ. Prac. Act, Art. 84.

30. 3 N.Y.2d 576, 170 N.Y.S.2d 785 (1958).

31. 6 N.Y.2d 159, 188 N.Y.S.2d 541 (1958).

32. *Supra* note 30 at 581, 170 N.Y.S.2d 788 (1958).

33. *Supra* note 31 at 163, 188 N.Y.S.2d 543 (1958).

34. *Supra* note 25 at 138, 202 N.Y.S.2d 307 (1960).

resolve them. Further, the grant of specific performance in such a situation is contrary to at least two well-established principles of Equity; namely, that the court will not grant such awards when they will prove to be futile, oppressive or inequitable³⁵ (defendant cannot get the mortgage financing and will not be able to comply without it), nor will specific performance be granted in contracts requiring continuous supervision over a long period of time³⁶ (plaintiff estimates that the project will take nine months to a year to complete). Finally, the question may be raised as to whether the award is "mutual, final, and definite" as is required by Section 1462. Plaintiff's store represents one-half the total cost of the project, and consequently, if defendant is compelled only to build one-half of the shopping center, it would appear that the award is open to some question on the basis of its finality.

Taking into consideration the necessity of preserving the sanctity of arbitration awards, this writer feels that the Court, in its desire to avoid trampling upon the intent of the Legislature and to a lesser extent, in its quest to insure a comity of decision, has sacrificed the sound and time-tested rules by which decrees of specific performance may be Judged good or bad. An opposite decision here could have meant that the court had found the decision of the arbitrators offensive in one of the respects set out in subdivision four, and, if this was the interpretation, no damage would be done the arbitration process. An opposite decision would not have signified a withdrawal from the position taken in the *Ruppert* and *Staklinski* cases. In those cases the question before the Court was whether the best interests of the litigants would be served by affirmance of the award. Here, the Court must also consider its own continuing interest in the proceedings.

If the line of decision from *Ruppert* to *Staklinski*, and now, to *Grayson*, indicates the development of a new dichotomy in the law, one may ask if it is necessary. If the purpose of arbitration is speedy justice, does this mean the court must tolerate gross inconsistencies between its own conception of justice and the intuitions of laymen in order to insure the efficacy of arbitration? This question is left unresolved in the present case.

ARBITRATION PROCEEDINGS INVOLVING PUBLIC ENTITY

Section 3813 of the Education Law provides that "No action or special proceeding . . . shall be prosecuted or maintained against any school district . . . unless it shall appear . . . that a written verified claim . . . was presented within three months after the accrual of such claim."

The issues presented in *Board of Education v. Heckler Electric Co.*³⁷ were: (1) whether this statute applied to the commencement of arbitration

35. *In re Feuer Transportation*, 295 N.Y. 87, 65 N.E.2d 178 (1946).

36. *Standard Fashion Co. v. Siegel-Copper Co.*, 157 N.Y. 60, 51 N.E. 408 (1898).

37. 7 N.Y.2d 476, 199 N.Y.S.2d 649 (1960).