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shareholders.[24]

The Court of Appeals reversed.[25] It was satisfied that neither the law nor the terms of the contract obligated the defendant to persuade the corporation to approve the assignment. It also said that there was no question of the right of the corporation to exclude the plaintiff, since this action was not based upon a New York statute which prohibits discrimination in co-operative housing.[26]

This case indicates that the duty to use reasonable efforts in seeking approval in third-party approval contracts may be minimal in New York if such appears to be the parties' intention. Moreover, the effect of this case is limited by its procedural setting. The instant case arose on a motion for a temporary injunction, which would issue only if the plaintiff established a cause of action for specific performance. Even if there was no reasonable effort on the part of the lessee to seek approval, the Court could not issue the injunction, because plaintiff's remedy would be an action at law for damages. Even by court order an assignment would be ineffectual if the corporation did not approve. In light of this procedural setting, and because the tenor of the contract indicated that no obligation to seek approval was intended, this decision is of minor importance.

STAY OF LEGAL PROCEEDINGS WHERE CONTRACT CALLS FOR ARBITRATION

Section 1450 of the Civil Practice Act[27] provides that the court, upon application of one of the parties, shall order parties to proceed to arbitration if their contract is established and has provided for that remedy.

Where the contract provides for arbitration the courts relegate to the exclusive jurisdiction of arbitration all acts of the parties subsequent to the making of the contract,[28] even if the contract was terminated before its completion by breach[29] or otherwise.[30] No waiver of the right to arbitrate occurs when a party moves for dismissal of a court action brought by the other party,[31] unless the party assents to the court's jurisdiction and fails to assert

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24. The Appellate Division considered an attempt by the defendant to seek approval by this method, while the case was before it, as immaterial since the issues were formed at trial.

25. *Supra* note 22.

26. See, for example N.Y. CIVIL RIGHTS LAW § 18-a(2), which provides: "The practice of discrimination because of race, color, religion, national origin or ancestry in any publicly assisted housing accommodations is hereby declared to be against public policy."

27. N.Y. CIV. PRAC. ACT § 1450 provides: A party aggrieved by failure . . . of another to perform under a contract . . . providing for arbitration . . . may petition . . . for an order directing that such arbitration proceed in manner provided for in such contract. . . . Upon being satisfied that there is no substantial issue as to the making of the contract . . . or the failure to comply therewith, the court hearing such application shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract.

28. In re Lipman, 289 N.Y. 76, 43 N.E.2d 817 (1942).

29. In re Potoker, 2 N.Y.2d 553, 161 N.Y.S.2d 609 (1957).

30. Arbitration between Baker and Bd. of Educ., 309 N.Y. 551, 132 N.E.2d 837 (1956).

31. Haupt v. Rose, 265 N.Y. 108, 191 N.E. 853 (1934).

his arbitration right in his answer or otherwise.[32]

In *Terminal Auxiliar Mari v. Winkler Cr. Corp.*[33] defendant terminated its contract with plaintiff due to the latter's supposed breach of the contract. The contract broadly provided for arbitration of any dispute arising under it. Plaintiff, believing that defendant breached the contract, brought a court action and defendant, a foreign corporation, agreed to fully submit to the court's jurisdiction, such submission to be "without prejudice to the . . . remedies . . . available to the parties," and to "pertain . . . only to the matter of the jurisdiction of this court and to the posting of security." Shortly thereafter, defendant sought an order directing arbitration and staying plaintiff's action. Plaintiff opposed the motion, contending that: (1) no arbitrable issue existed since defendant had terminated the charter contract, and (2) defendant waived his right to arbitration by submitting to the court's jurisdiction.

In upholding the granting of the motion by the trial court, the Court concluded that since the dispute arose under and subsequent to the charter agreement, the contract's broad arbitration clause brought it within the authority of Section 1450. They reasoned that to hold otherwise would be to nullify the broad purpose of the statute, since most issues between parties stem from supposed breaches by one party or the other. Therefore, the termination of the contract did not extinguish the parties' right to arbitrate claims accruing prior thereto. The Court further held that although the defendant had submitted to the court's jurisdiction, the agreed upon stipulation with the plaintiff clearly evinced defendant's preservation of its right to compel arbitration.

CONSTRUCTION OF WORDS OF THE PARTIES

In *Hempstead Theatre Corp. v. Metropolitan Playhouses Inc.*, plaintiff corporation leased its theatres to Metropolitan, Inc., which in turn sublet to defendant.[34] The rent to be paid was a fixed minimum plus a graduated percentage of gross receipts. The lease stated that these receipts should include, among others, "all box office receipts, excluding taxes on admissions and all income derived from . . . concessions." The only question involved is whether the "income" received from the candy concession is to be gross receipts, or gross receipts less the cost of candy and refreshments sold? Plaintiff brought this action for rental due, claiming the former interpretation. The Supreme Court entered judgment for plaintiff, as did the Appellate Division, but the Court of Appeals reversed in favor of defendants.

Each clause of a contract must be given its intended purpose in the promotion of the primary and dominant purpose of the contract.[35] As to what the rent should be, the lease stated when referring to the box office that

32. Zimmerman v. Cohen, 236 N.Y. 15, 139 N.E. 764 (1923).
33. 6 N.Y.2d 294, 189 N.Y.S.2d 655 (1959).
34. Hempstead Theatre Corporation v. Metropolitan Playhouses Inc., 6 N.Y.2d 311, 189 N.Y.S.2d 837 (1959).
35. Empire Properties Corporation v. Manufacturers Trust Co., 288 N.Y. 242, 43 N.E.2d 25 (1942).