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Miscellaneous—Agreement to Arbitrate

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In the instant case[26] the Court of Appeals applied this rule of construction to find that the defendant, under his agreement with the plaintiff, must continue to pay a monthly license fee for the use of the plaintiff's radio equipment, even though he gave a formal notice to the plaintiff of his intent to terminate. The Court held that in spite of the notice of termination, as long as the defendant used the equipment, he had to pay the license fee, because the provision for the continuation of such fee controlled over the more general termination provision. Thus by the agreement, giving every word a proper meaning and effect, the defendant was obligated to pay such license fee and could not terminate that obligation merely by a formal notice.

The Court's holding appeared to be in harmony with the intention of the parties as determined by the agreement made between them. An opposite holding would have the effect of the Court's rewriting the contract and a court cannot make a new contract for the parties, under the guise of interpreting a writing.[27]

Agreement to Arbitrate

New York law requires that every submission to arbitration of an existing controversy is void unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent.[28] In the case of *Arbitration Between Writers Guild of A. E. and Prockter P.*,[29] the Court was called upon to construe the sufficiency of a memorandum which was initialed by the parties. The memorandum enumerated the questions to be resolved. There were no actual words of agreement to submit the questions to arbitration, nor was there any commitment to be bound by the decision of the arbitrators. No mention was made of the number of arbitrators, or who they were to be. It was also made clear that the parties did not intend to leave the selection of the arbitrators to the Supreme Court.[30]

The Court held the memorandum was not definite enough to constitute an agreement. In so far as arbitration is a substitute for resorting to judicial tribunals,[31] a party to a contract cannot be compelled to submit to arbitration unless he has clearly agreed in writing to do so.[32] Arbitration being a matter of contract between the parties thereto,[33] it appears that the majority rightfully applied the

26. *Muzak Corp. v. Hotel Taft Corp.*, 1 N. Y. 2d 42, 133 N. E. 2d 688 (1956).
27. *Heller v. Pope*, 250 N. Y. 132, 164 N. E. 881 (1928).
28. N. Y. Civ. Prac. Act §1449.
29. 1 N. Y. 2d 305, 135 N. E. 2d 204 (1956).
30. N. Y. Civ. Prac. Act §1452.
31. *Matter of Arthur Philip Exp. Corp.*, 275 App. Div. 102, 87 N. Y. S. 2d 665 (1st Dep't 1949).
32. *Matter of Lehman v. Ostrovsky*, 264 N. Y. 130, 190 N. E. 208 (1934).
33. *I. Miller and Sons v. United Office and Professional Workers Local 16 C. I. O.*, 195 Misc. 20, 88 N. Y. S. 2d 573 (Sup. Ct. 1949).

requisite rules of construction in finding the memorandum insufficient as an agreement to arbitrate.

Three dissenters felt that the writing was not only sufficient as a note or memorandum, but was a complete contract itself, subscribed to by all of the parties. The issue was a colse one. The decision should be a stern lesson to other lawyers in the field. A contract to be acceptable should contain all of the essential terms of the agreement. It should be clear and if possible contain no ambiguities. Least of all, the parties should be directed to sign their names in full.

Corporations—Stockholders' Agreements

At common law the stockholders of a corporation had the power to remove an officer for cause.[34] Normally a majority vote of the stockholders could accomplish this end.[35] However the certificate of incorporation may provide that a greater number than a majority shall be required for the transaction of any business in which the vote or consent of the stockholders is required or authorized.[36]

In the instant case,[37] a director of a corporation attempted to remove another director from office for alleged misconduct. He sought to do this by the medium of arbitration provided for in a contract to resolve differences between them by arbitration. The contract also required a unanimous vote of the stockholders to transact any business of the corporation.

The Court held the director could not be removed. All actions by the stockholders had to be unanimous. Thus neither of the directors could remove the other, since both were stockholders. The Court also stated that arbitration was improper here. To be the subject of arbitration, the controversy must be such that it is capable of being the subject of an action in a court of law.[38] The controversy here did not meet that standard.

Considering the circumstances, the decision was a correct one, though the writer cannot help but feel a certain confusion exists in this area of the law. When a contract of incorporation exists wherein it is stated that a unanimous vote of all the stockholders is necessary to transact any business of the corporation where stockholder's consent is required, it appears, the corporation is handicapped. Under such a provision, when a director, who is a stockholder, is guilty of misconduct, he cannot be removed, because he will not vote for his own removal, and the

34. *Matter of Koch*, 257 N. Y. 318, 178 N. E. 545 (1931).
35. See note 34, *Supra.*
36. N. Y. STOCK CORP. LAW §9(d).
37. *Arbitration Between Burkin and Katz*, 1 N. Y. 2d 570, 136 N. E. 2d 862 (1956).
38. N. Y. CIV. PRAC. ACT §1448; *Matter of Fletcher*, 237 N. Y. 440, 143 N. E. 248 (1924).