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Miscellaneous—Arbitration

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owned by the decedent debtor and his family. Notice of the sale was given to the family and to their attorney and was also published in two newspapers of general circulation on two successive days. Such notice however provided only a minimum of information, barely identifying the securities.[43] The Court, applying the equitable obligations of good faith which is required regardless of the powers conferred on the pledgee by contract, held that the published notice of sale was so inadequate as to render the sale itself entirely void.

In any situation of this nature, the requirement of detailed notice will vary, depending on the notoriety of the stock in question. Where stocks are listed on the large Exchanges and are recognized at sight by the probable customers, a minimum amount of information will serve to describe them.[44] The same clearly is not true of stock in little-known family corporations. The New York cases are consistent in imposing on the pledgee duties arising from the trust relation to protect the collateral.[45] While the parties may modify that relationship by contract, the paramount requirement of good faith remains intact. In the principal case, there was every justification for holding that the pledgee had failed to fulfill his equitable obligations.

Arbitration

Often parties to a general contract incorporate or insert in the contract or in a separate instrument an agreement to arbitrate some or all of the disputes which may thereafter arise under the contract. Whether a specified dispute should be submitted to arbitration or not depends upon the words and interpretation of the arbitration clause and a determination of whether it provides for arbitration in this specified instance.[46]

In the instant case[47] the Court was called upon to decide two issues: Whether an arbitrable dispute existed and whether or not the plaintiff could demand

43. The only reference and description of the stock was contained in an announcement of a public auction, which included other goods, and read as follows: "5 shs. Sherman Investing Corp. (N.Y.); 3 shs. Kiamie Holding Corp. (N.Y.); 3 shs. Haviland Holding Corp. (N.Y.); 100 shs. LaDana Holding Corp. (N.Y.)".

44. *Wheeler v. Newbould,* 16 N.Y. 392 (1857).

45. *Wheeler v. Newbould, supra,* note 44; *Gillet v. Bank of Am.* 160 N.Y. 549, 55 N.E. 292 (1899); *Toplitz v. Bouer,* 161 N.Y. 325, 55 N.E. 1059 (1900); *First Trust & Deposit Co. v. Potter,* 155 Misc. 106, 278 N.Y. Supp. 847 (Sup. Ct. 1935); *Cole v. Manufacturer's Trust Co.,* 164 Misc. 741, 299 N.Y. Supp. 418 (Sup. Ct. 1937); *Perkins v. Meyer,* 302 N.Y. 139, 96 N.E. 2d 744 (1951).

46. *Rice v. Reilly,* 203 Misc. 1033, 118 N.Y.S. 2d 75 (Sup. Ct. 1952); *Application of Roselle Fabrics,* 108 N.Y.S. 2d 921 *aff'd mem.,* 113 N.Y.S. 2d 280 (1st Dep't 1952).

47. *Arbitration Between Baker and Board of Education,* 309 N.Y. 551, 132 N.E. 2d 837 (1956).

arbitration. The plaintiff was an architect and brought this proceeding for arbitration of a dispute which arose when the board of education paid a contractor without a certificate approving the payment, which was his duty.

There was little problem in deciding that the dispute was within the arbitration clause. By its terms and language[48] the clause was broad enough and so general that any bona fide dispute would come within its breadth.[49] Having once decided this, the issue of whether or not a partner is entitled to arbitration without the acquiescence of the other partner arose.

In the contract with plaintiff and the board of education was an architectural firm with whom plaintiff had a separate contract. The architectural firm did not acquiesce in plaintiff's claim for arbitration. This should not prevent the plaintiff from moving for arbitration of the dispute. This is so even if he was considered the partner of the architectural firm. The contract containing the arbitration clause was signed by all the partners and the dispute was one within the coverage of the arbitration clause; under such conditions one of two members of a partnership may demand arbitration without the consent of the other partner as such partner is an agent of the partnership.[50]

That provision of the Partnership Law,[51] which prohibits submission of a dispute to arbitration by one partner only, has no application here, because it applies in the absence of a contract having an arbitration clause. The arbitration clause in the contract in the instant case is broad enough to cover any dispute and it seems the parties desired it this way or else they would have limited it in scope. No doubt there was a bona fide dispute, and with that decided, the matter of its being arbitrated could not be in doubt, because of the general wording and wide scope of the arbitration clause. It seems to the writer, that wherever an arbitration clause is as broad as the one in this contract, all doubts about a particular dispute should be resolved in favor of arbitration to do full justice to the parties to the contract.

48. "Clause 12" Arbitration. All questions in dispute under this agreement shall be submitted to arbitration at the choice of either party.

49. *Matter of Bohlinger (National Cash Register Co.)* 305 N.Y. 539, 114 N.E. 2d 31 (1953).

50. N. Y. PARTNERSHIP LAW §20(1); *Matter of Damsker,* 283 App. Div. 719 127 N.Y. S.2d 355 (2d Dep't 1954).

51. N. Y. PARTNERSHIP LAW §20(3)(e).