William & Mary Law Review

Volume 3 (1961-1962)
Issue 1

Article 16

October 1961

Arbitration and Award: Specific Performance of a Building Contract Affirmed by a Court of Equity

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ARBITRATION AND AWARD

Specific Performance of a Building Contract Affirmed by a Court of Equity

Courts of equity, in American jurisdictions, have long followed the principle that specific performance of a contract will not be decreed, if the performance is of such a character as to make effective enforcement unreasonably difficult, or will require long and continued supervision by the court.[1] Yet, in a recent 4 to 3 decision of the New York Court of Appeals this principle was ignored.[2]

In the instant case a landowner was developing a shopping center on Long Island and agreed to construct a department store for the respondent. Because of the "tight mortgage money market," he had difficulty in securing funds for the proposed building and, therefore, defaulted on the contract. In accordance with the terms of the contract, respondent initiated arbitration proceedings before the American Arbitration Association. The arbitrators awarded specific performance. In affirming the arbitration award, the majority relied upon two principles.

The first principle employed, was that even though a court of equity may not have granted specific performance of the contract in an original action; nevertheless, it has long been the policy of the courts to affirm and enforce an arbitration award where it is found that the parties to the contract have either expressly or impliedly agreed that such a remedy shall be available or have stipulated that any just or equitable relief may be granted.[3] In this case the parties had agreed to such relief, since, under the rules of the American Arbitration Association, the arbitrator is

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[1]RESTATEMENT, CONTRACTS, § 371 (1932).

[2]Grayson-Robinson Stores v. Iris Construction Co., 8 N.Y. 2d 133, 168 N.E. 2d 377 (1960).

[3]Ruppert v. Egelhoffer, 3 N.Y. 2d 576, 148 N.E. 2d 129 (1958); Staklinski v. Pyramid Electric Co., 6 N.Y. 2d 159, 160 N.E. 2d 78 (1959); *in re* Albert, 160 Misc. 237, 288 N.Y.S. 933 (1936); Pocketbook Workers Union v. Central Leather Goods Corp., 14 Misc. 2d 268, 149 N.Y.S. 2d 56 (1956); Freyberg Bros. Inc. v. Corey, 177 Misc. 560, 31 N.Y.S. 2d 10 (1944).

empowered in his award to grant any just or equitable remedy or relief, including specific performance.

The second principle relied upon was that under the New York Civil Practice Act, Article 84, it is stated that when arbitration is consented to by the parties, then those who agree to arbitrate should be made to abide by their solemn promises.[4] It was further stated that the courts should follow a liberal policy in confirming arbitration awards which follow the original intentions of the parties. The courts feel that by doing so, it will ease the current congestion of the court calendars.[5]

Careful note should be taken of the dissenting opinion in the *Grayson-Robinson* case:

> The decision in the present case lends the enforcement machinery of the courts, to implement specific performance directed by arbitration that extends beyond any equitable relief which the courts have heretofore granted either on arbitrations or after trials.[6]

By stating that the courts have traditionally denied specific performance in cases where elaborate and time-consuming building construction must be performed, the dissenting opinion follows the generally accepted rule.[7]

> Justice Van Voorhis, dissenting, continued by stating:
> The record before us indicates that the appellant applied unsuccessfully to 27 different lending firms in order to obtain the necessary mortgage money with which to erect this building. Petitioners appear to recognize that for this reason the building may not be constructed even after the entry of the order for specific performance.[8]

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[4]New York Civil Practice Act, Article 84, § 1450.

[5]Lawrence Co. v. Devonshire Fabrics, 271 F. 2d 402, 410 (2d Cir. 1959).

[6]8 N.Y. 2d 133, 139 (1960).

[7]Beck v. Allison, 56 N.Y. 366 (1874); Standard Fashion Co. v. Siegel-Cooper Co., 157 N.Y. 60, 51 N.E. 408 (1898); McCormick v. Proprietors of Cemetery of Mt. Auburn, 285 Mass. 548, 189 N.E. 585 (1934); Jones v. Parker, 163 Mass. 564, 40 N.E. 1044 (1894); RESTATEMENT, CONTRACTS, § 371 (1932).

[8]8 N.Y. 2d 133, 143 (1960).

According to the dissenting opinion, the court should remand the case to the arbitrators and recommend that damages be awarded.

The decision in this case has put arbitration in a position whereby it has become not merely a step in the judicial process, but an end within itself. The majority opinion infers that had the suit been originally brought before the court, it would have awarded damages instead of a decree of specific performance, but since the matter had already been arbitrated by the agreement of the parties, the award given should be affirmed. In doing so, the court placed itself in a position of having to supervise the respondent's actions in order to ascertain that he performs the contract properly.

If the decision of the court is followed (as it most likely will be) the court will defeat the very reason for this decision. By stating that arbitration awards should be enforced in order to clear the calendar, the court has placed expediency first and justice second. It has put contracting parties in such a position that if they desire to arbitrate any matter, they must be bound by the arbitrator's award, whether it is just or not. Because of this it is more than likely that many future contracts will not include a provision for arbitration. Consequently all differences, whether large or small, will be settled in court. If such a policy is followed it is almost certain that there will be an increase in the amount of litigation before the courts. Even in contracts where there is an arbitration provision, if the court continues to allow arbitrators to award a decree of specific performance, when such performance is impossible, as they have in this case, the contracting parties will find themselves in no better position than before. Since the performance of the contract is impossible, the appellant will be forced to seek damages. Hence, instead of an expedient settlement of this case, litigation has been prolonged.

M. P. Y.