

New York State Court Applies Rules To Sequence Simultaneous Litigation and Arbitration

January 18, 2012 by [Louis M. Solomon](#)

[Boz Export & Import, Inc. v. Karakus](#), Dkt. No. 8738/11 (N.Y. Sup. Ct. Kings Cty. 2011), expounds on several current and timely topics in international practice but from the perspective of a state court jurist (called a Justice in New York courts). The decision was filed by a New York State judge sitting in a court of first instance having general jurisdiction.

At issue in *Boz* were motions and cross-motions. The motion was to stay the action pending the disposition of an arbitration. The cross-motion sought to stay the arbitration. Issues and parties overlapped, but not entirely.

We have frequently seen that the issue of the optimal sequencing of disputes is a key issue in determining the success of an international dispute. (See the discussion of [sequencing](#) on our e-book, [International Practice: Topics and Trends](#).)

In New York state court practice, the general statutory framework for ordering or sequencing disputes that are being litigated and arbitrated is Section 7503(a) of the New York Civil Practice Law and Rules, of CPLR. It provides:

“A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate. Where any such question is raised, it shall be tried forthwith in said court. If an issue claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration”

To apply this statute, the court first ruled that arbitration agreement in New York are enforceable “without regard to the justiciable character of the controversy”.

Second, the Court echoed federal authority underscoring the judicial policy favoring arbitration — when the parties’ agreements provides for it.

Third, the Court set forth three threshold questions requiring judicial determination: “whether the parties made a valid agreement to arbitrate, whether if such an agreement was made it has been complied with, and whether the claim sought to be arbitrate would be barred by limitation of time had it been asserted in court”.

Fourth, because of ostensibly inconsistent provisions in the operative agreement, the Court took testimony from the corporate lawyer-drafter and ruled that the broad arbitration clause would take precedence over the clause permitting judicial injunctive relief. The result is that the case was stayed in favor of the arbitration, the only exception being a collateral issue that the Court determined it could decide itself.

Tagged [Judge vs. Arbitrator](#), [Sequencing Dispute Resolution](#)