

Supreme Court, Appellate Division, First Department, New York.
In re MERRITT ENGINEERING CONSULTANTS, P.C., Petitioner-Appellant,
v.
55 LIBERTY OWNERS' CORP., Respondent-Respondent.
May 3, 2005.

Background: Engineering firm petitioned to stay arbitration of building owner's claims. The Supreme Court, New York County, Marcy Friedman, J., dismissed petition. Firm appealed.

Holding: The Supreme Court, Appellate Division, held that project affected interstate commerce, thus invoking Federal Arbitration Act.

Affirmed.

[1]

33 Arbitration
33I Nature and Form of Proceeding
33k2.2 k. What Law Governs. Most Cited Cases

Construction project, involving extensive repair to roof and facade of building, and the subject of parties' project consultants agreement, affected interstate commerce, thus invoking Federal Arbitration Act. 9 U.S.C.A. § 1 et seq.

[1]

83 Commerce
83II Application to Particular Subjects and Methods of Regulation
83II(I) Civil Remedies
83k80.5 k. Arbitration. Most Cited Cases

Construction project, involving extensive repair to roof and facade of building, and the subject of parties' project consultants agreement, affected interstate commerce, thus invoking Federal Arbitration Act. 9 U.S.C.A. § 1 et seq.

[2]

33 Arbitration
33IV Performance, Breach, Enforcement, and Contest
33k23.12 Questions to Be Determined
33k23.15 k. Procedural Arbitrability. Most Cited Cases

Timeliness of building owner's claims against engineering firm was for arbitrators, not court, given parties' decision to submit to arbitration all claims and disputes arising out of or relating to agreement.

Gogick, Byrne & O'Neill, LLP, New York (Stephen P. Schreckinger of counsel), for appellant.
Anderson & Ochs, LLP, New York (Jason A. Stern of counsel), for respondent.

MAZZARELLI, J.P., SAXE, MARLOW, GONZALEZ, SWEENEY, JJ.

*1 Judgment, Supreme Court, New York County (Marcy Friedman, J.), entered on or about April 7, 2004, which dismissed the petition to stay arbitration and directed the parties to proceed to arbitration, unanimously affirmed, with costs.

[1] As the Court of Appeals recently held in a related action, the instant construction project, involving extensive repair to the roof and facade of respondent's building, and the subject of the parties' Project Consultants Agreement, affected interstate commerce, thus invoking the Federal Arbitration Act (see 9 USC § 1 et seq.; and see *Diamond Waterproofing Systems, Inc. v. 55 Liberty Owners Corp.*, 4 N.Y.3d 247, 251-52, --- N.Y.S.2d, --- N.E.2d ---- [2005]; see also *Citizens Bank v. Alafabco*, 539 U.S. 52, 123 S.Ct. 2037, 156 L.Ed.2d 46 [2003]). Petitioner prepared a project manual and drawings in conjunction with the Illinois engineering firm of Wiss, Janney, Elstner Associates. Petitioner was required to attend meetings out of state, and a significant portion of the supplies and equipment came from outside New York (see *id.*).

[2] The timeliness of respondent's claims is for determination by the arbitrators, not the court, given the parties' decision to submit to arbitration all claims and disputes arising out of or relating to the agreement, and that the choice-of-law clause

therein does not expressly provide that the agreement and its enforcement would be governed by New York law (Diamond Waterproofing Systems, Inc., supra at 253, --- N.Y.S.2d ----, --- N.E.2d ----; Hamerslag, Kempner & Co., L.P. v. Oestrich, 234 A.D.2d 172, 651 N.Y.S.2d 489 [1996]).
N.Y.A.D. 1 Dept.,2005.
Merritt Engineering Consultants, P.C. v. 55 Liberty Owners' Corp.
2005 WL 1018111 (N.Y.A.D. 1 Dept.), 2005 N.Y. Slip Op. 03595

END OF DOCUMENT

(C) 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.