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Second Circuit Clarifies that a Stay, Not Dismissal, is the Appropriate Federal Arbitration Act Remedy

When a party files a lawsuit in violation of a contractual obligation to arbitrate, the defendant often moves to “dismiss or stay” pending arbitration pursuant to Section 3 of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 3. Courts have come to different conclusions about whether they may dismiss a case under Section 3 of the FAA or whether the only remedy is a stay pending arbitration. The Second Circuit, in *Katz v. Cellco Partnership*, ___ F.3d ___ (2d Cir. 2015), recently clarified how courts should proceed. It held that the only proper remedy under Section 3 is to stay the case. The Court acknowledged a Circuit split on the question of whether courts also have the discretion to dismiss lawsuits rather than stay them in order to manage their dockets efficiently. Expressing concern about the possibility of an appeal of dismissal being “hostile to arbitration” in contravention of U.S. Supreme Court precedent, the Court ultimately concluded that despite “the impetus for a rule permitting dismissal, . . . the text, structure, and underlying policy of the FAA mandate a stay of proceedings when all of the claims in an action have been referred to arbitration and a stay requested.” While not a huge doctrinal shift, the decision has significant practical implications: parties seeking to enforce their arbitration clauses pursuant to Section 3 of the FAA in federal district courts in the Second Circuit can no longer request dismissal and instead should ask for a stay only.

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