

# The Appellate Advocate:

## A Recap of Recent Decisions by NJ's Appellate Courts



### **NJ Propertylink, LLC v. ADT Corporation No. A-3586-23**

Finality is a funny thing these days. Robert Downey, Jr. is back in the MCU. The Indiana Pacers lose games until they win them at the final buzzer. And (forced segue incoming) whether a judgment is final—and thus appealable as of right—continues to perplex litigants.

In *NJ Propertylink, LLC v. ADT Corporation*, the Appellate Division concluded that the plaintiffs' attempt to reverse a trial court order upholding a consent agreement to arbitrate was premature. The panel ruled the June 20, 2024 order under appeal was not a final judgment, and thus not subject to an automatic appeal under New Jersey appellate procedure.

The case arose from a 2022 contract between Propertylink and ADT for the installation of surveillance equipment. The work was subcontracted through Intel Video Surveillance Corp. and R&J Home Services LLC. Plaintiffs alleged significant property damage due to poor installation and filed suit in 2023. But the litigation was stayed after all parties agreed to arbitrate under a consent order dated January 4, 2024.

Tensions reignited when plaintiffs objected to the designated arbitration forum and claimed the contractual arbitration clause was unenforceable. They moved to vacate the consent order, citing high arbitration costs and asserting that individual plaintiffs had not consented to arbitration.

When the trial court refused to void the consent order, plaintiffs appealed. But the Appellate Division held firm: under Rule 2:2-3, orders like the one at issue—denying a motion to vacate but not compelling or denying arbitration outright—are interlocutory and require special permission to appeal, which the plaintiffs failed to obtain. The panel also emphasized that the underlying contract—formed between interstate parties—was governed by the Federal Arbitration Act. That statute, along with New Jersey's Arbitration Act, mandates that litigation be stayed when arbitration is underway.

In dismissing the appeal, the Appellate Division declined to weigh in on the enforceability of the arbitration terms, leaving that issue to be addressed after proper procedural steps are taken (e.g., raising arbitrability arguments to the arbitrator).

The great Yogi Berra once said, “You can't fail if you never stop trying.” And of course it was Yogi Berra who said, “It ain't over 'til it's over.” Both speak to the importance of finality in appellate procedures, an importance that was on full display in this case.

### **About Thomas Cotton**

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



973-540-7333

[tjc@spsk.com](mailto:tjc@spsk.com)

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