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Construction Law - Corporate Law - Education Law - Labor Relations - Municipal Law - Real Estate Law - Real Property Taxation

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CONTRACTUAL LIMITATIONS ON TIME TO SUE ENFORCED IN CONSTRUCTION CONTRACT DISPUTES

AWI Security & Investigations v. Whitestone Construction Corp., 0303759/2014 (Sup. Ct. Bronx Cty.)

AWI performed security work on 4 sites, ending in 2012. In 2014, AWI sued Whitestone, claiming that it was owed unpaid fees under the contract. Whitestone moved to dismiss due to a clause in the contract that specified that no claim could be brought more than 6 months after the cause of action accrued, the termination or conclusion of the contract, or the last day that Plaintiff performed work on the project. AWI argued that General Municipal law Section 106 extended the 6 month period continuously by continuously obligating Whitestone to remit certain government funded payments, and that a July 2012 letter from Whitestone acknowledged the debt.

The court disagreed, dismissing the case on the grounds that the statute didn't extend the limitation period. The court also noticed that AWI didn't challenge the clause itself and therefore it enforced the clause.

FAILURE TO PLEAD THE CONTENTS OF A CONTRACT RESULTED IN DISMISSAL OF COMPLAINT

Constantine v. Four Star Air Conditioning Co., LLC, 0708502/2016 (Sup. Ct. Queens Cty.)

Constantine sued alleging defendants entered into an agreement for the sale of his interests in defendant Four Star Air Conditioning (FSAC) for an unspecified payment to be made no later than Feb. 5, 2013. The complaint alleged defendants failed to make the payment and owed $40,551, and Constantine also sought interest and legal fees. Defendants moved for dismissal arguing the complaint failed to state a cause of action as it lacked sufficient detail. FSAC's owner affirmed he bought Constantine's shares and paid him, annexing a record of payments to plaintiff. Constantine argued the documentary proof was unrelated to the contract sued upon, and while not refuting payments, claimed they were for an unrelated debt. Yet, the court noted Constantine failed to provide the contract upon which the complaint rested, nor was the contract pleaded by alleging any of its terms. Further, plaintiff merely alleged defendants' proof of payment was unrelated to the contract sued upon. Also, the court concluded Constantine failed to demonstrate that defendants were enriched at his expense. Therefore, defendants' motion to dismiss the complaint, including a claim for unjust enrichment, was granted, and the complaint was dismissed.

TOWN NOT RESPONSIBLE TO SUBCONTRACTOR WITHOUT PRIVITY OF CONTRACT UNLESS TOWN ASSENTS TO THE OBLIGATION

County Wide Flooring, Corp. v. Town of Huntington, 56 Misc.3d 1211 (A)(Sup. Ct. Suffolk Cty. 2017)

Plaintiff entered into a subcontract with Wenger Construction in connection with an ice rink expansion in the Town of Huntington. Plaintiff alleged Wenger and Town owed it nearly $148,000 for work performed. The complaint against Wenger was dismissed as time-barred. Town moved for summary judgment dismissal arguing plaintiff could not maintain quantum meruit or unjust enrichment claims against it. The court agreed stating where there was an express contract between a general contractor and subcontractor, the premises' owner could not be held directly liable to subcontractor on the theory of implied or quasi-contract unless owner assented to such obligation. It ruled there was no privity of contract between plaintiff and Town, as the contract was between plaintiff and Wenger.

Despite plaintiff's assertions, the subcontract with Wenger barred any claims against Town sounding in quantum meruit or unjust enrichment as the record did not reflect Town expressed a willingness to pay plaintiff. The court ruled plaintiff's reliance on General Municipal Law §106-b was misplaced as it did not create a private cause of action or impose liability on public owners for their, or their contractor's failure to comply therewith. Hence, the complaint was dismissed against Town.

CONTRACTOR'S INTERVENTION DEPRIVED THE COURT OF SUBJECT MATTER JURISDICTION

S&S Kings Corp. v. Westchester Fire Ins. Co., 2017 WL 396741 (SDNY 2017)

S&N Builders Inc. (S&N) contracted with New York City's Dep't of Design and Construction to provide labor, materials and equipment for a Bronx building project. S&N subcontracted part of the work to S&S Kings Corp. S&N and Westchester Fire Ins. Co. are jointly and severally liable under a payment bond secured from Westchester. S&S Kings' diversity action against Westchester sought recovery of monies due under its subcontract with S&N. S&N sought to intervene under FRCP 24 claiming S&S Kings failed to fulfill its obligations under the subcontract, which S&N later terminated, and that it incurred significant expenses correcting and completing S&S Kings' work.

The court granted S&N's intervention motion, finding the four elements articulated by Weisshaus v. Swiss Bankers Assoc.(In re Holocaust Victim Asets Litig.) 225 F. 3d 191, satisfied. However, because S&S Kings and S&N are New York citizens under 28 USC §1367, the court lacked supplemental jurisdiction over S&S King's state-law claim. Because exercise of jurisdiction thereover would be inconsistent with 28 USC §1332, on which the court's original jurisdiction was "solely" founded, S&N's intervention deprived the court of subject matter jurisdiction and the action was dismissed.

ORAL AGREEMENTS FOR DESIGN PROJECT RULED UNENFORCEABLE DUE TO TAKING LONGER THAN A YEAR TO COMPLETE

Koutsomitis Architects, P.C. v. Poll, 653765/2014 (Sup. Ct. N.Y. Cty.)

Plaintiff Koutsomitis Architects responded to a request for proposal for design work related to three central park projects, owned by Poll. The parties entered into a written contract for one of the three projects, and maintained oral agreements for the other two. Koutsomitis performed work and issued invoices to Poll. Poll partially paid the invoices. Koutsomitis sued for breach of contract, quantum meruit, account stated and unjust enrichment.

The court ruled that the oral agreements were unenforceable. Oral contracts that take more than a year to perform are unenforceable. The court held that, to determine how long the contract will take, the court will look at what could have been, not what actually happened. Here, the court found that the parties made plans for a multi-year project. The court found the oral contracts unenforceable and gave Koutsomitis partial payment for valuable work done not already paid for.

COURT MUST DETERMINE WHETHER A PLAINTIFF IS A LICENSED HOME CONTRACTOR BEFORE PLAINTIFF CAN BE GRANTED COMPENSATION FOR WORK DONE

Thorne v Alleyne, 54 Misc.3d 38 (Sup. Ct. App. Term 2016)

This case involves a small claims dispute. Plaintiff claimed that Defendant agreed to pay Plaintiff $3,500.00 for installing flooring in Defendant's house. Plaintiff did a partial job and thus was willing to reduce the amount he was seeking. The small claims court granted Plaintiff $1,500.00 and Defendant appealed.

On appeal, the court noted that a small claims judge must address the issue of whether Plaintiff was a licensed home improvement contractor, whether Defendant raises that issue or not. Because the small claims judge failed to address that issue, Plaintiff cannot recover.

Additionally, the court notes that Plaintiff has the burden of proving that he is a licensed home improvement contractor, not Defendant. Because Plaintiff made no such showing in this case, the court ordered a new trial to determine whether Plaintiff was licensed.

INDEMNIFICATION CLAUSE CREATES OBLIGATION IN INTERNATIONAL LITIGATION EVEN WHERE INDEMNIFICATION CLAUSE IS LIMITED IN SCOPE

Tyco International Holdings, S.A.R.L. v. Atkore International Group Inc., 2017 WL 3328175 (SDNY 2017)

Atkore's steel pipes are coated with ABF II, an antimicrobial film purportedly incompatible with CPVC pipes. Plaintiff Tyco sold its shares in Atkore in 2010. Atkore agreed to indemnify Tyco for up to 85 percent of its losses due to claims arising from alleged incompatibility of ABF II coated pipes with CPVC pipe or fittings. Ongoing litigation in Quebec (the Ideal Litigation) arose after Protection Incendie Ideal (PII) sued Atkore. Due to a rebuttable presumption in products liability cases under Quebec law, the Ideal Litigation required Atkore to prepare reports attributing the leaks PII experienced to various causes, but not mentioning ABF II or incompatibility with CPVC pipes.

In Tyco's breach suit, District Court found Atkore bound to indemnify Tyco in the Ideal Litigation. It must cover 85 percent of Tyco's expenses and losses resulting from claims therein, to the extent they arose from alleged antimicrobial formula/CPVC incompatibility, now and going forward. Atkore's indemnification obligation was triggered no later than Nov. 2008 when PII first sued Tyco in Quebec. As there was no basis to find Atkore agreed to act as an insurer, its duty to defend was not greater than its duty to indemnify, which was limited by its 2010 agreement with Tyco.

EMPLOYEE PLAINTIFF WAS ENTITLED TO LEGAL FEES AFTER SUING TO ENFORCE COMPLIANCE WITH BENEFITS PLAN

Verdier v. Thalle Construction Co., 2017 WL 78512 (SDNY 2017)

Verdier worked for Thalle Construction from April 1970 through November 1978, and again from November 1981 through February 1990. Under their 1982 Deferred Compensation Plan (Agreement), revised in 1984, plaintiff would receive benefits for 1970 through 1978 in 2013 when he turned 65, comprising equal monthly benefits based on the average of his final five years of compensation. Such average, for 1985 through 1990, was $48,315. In this ERISA action, Verdier claimed entitlement to $289,900 under the Agreement whereas Thalle—which stipulated to liability—claimed he was entitled to only $123,202. Only partly granting Verdier's motion to amend and for summary judgment, the court found Verdier entitled to only $123,202 in benefits under the Agreement. He would have been entitled to the full $280,900 benefit had he remained at Thalle until retirement. Thus his benefit must be modified, pursuant to the "non-forfeitable percentage" schedule in Exhibit B to the Agreement, to account for his pre-retirement leave. Despite noting that punitive damages are not recoverable under ERISA, and that he thus lacked a cognizable claim therefor, the court found plaintiff entitled to attorneys' fees under ERISA §502(g).

CONTRACT CLAUSE BARRING DAMAGES FOR DELAY WAS FOUND VALID

WDF Inc. v. The Trustees of Columbia Univ. in the City of N.Y., 651250/2016 (Sup. Ct. 2016)

An action arose involving a major construction project known as the Manhattanville Development project that is located on property in West Harlem owned by Columbia University. Plaintiff, the HVAC subcontractor on the major construction project, sought millions of dollars for work that it performed under the contract, for extra work, and for damages incurred in the form of increased labor and material costs. Both defendants The Trustees of Columbia University in the City of New York and general contractor Lend Lease (US) Construction LMB Inc. filed pre-answer motions to dismiss the complaint.

The instant court had to determine whether plaintiff's claims were barred by a clause in the contract barring money damages for delays. The court referenced the leading Court of Appeals decision on the issue, Corinno Civetta Constr. Corp. v. City of New York, which analyzed the validity of contract clauses barring a contractor from recovering damages for delay in the performance of a contract. The instant court, following that decision, granted the motion in substantial part, determining that the "no damage for delay" clause was valid and enforceable and barred many of plaintiff's claims.

NOTICE REQUIREMENTS OF STATE FINANCE LAW SECTION 137(3) ARE REQUIRED FOR A SUIT ON A BOND PAYMENT

Maine Service Corp. v. K.D. Hercules Inc. et al, 0450196/2016 (Sup. Ct. N.Y. Cty.)

Universal was general contractor for the New York City Housing Authority, and obtained payment bonds from General Casualty. Universal subcontracted with K.D. for asbestos removal. K.D. was supplied materials by Maine, who commenced an action against Universal, NYCHA and KD for unpaid fees. Universal moved for summary judgment, dismissing all claims against it on the grounds that Maine failed to comply with the notice requirements of State Finance Law Section 137(3).

Section 137(3) requires, in relevant portion, that in order to bring a claim on a bond from a general contractor with whom they have no contract, a supplier of materials to a subcontractor must, among other things, give written notice to the general within 120 days of the date on which the last material was furnished. Maine admits that notice was given after that period, but argues that Universal had actual notice, as demonstrated by Universal's having issued two-party checks payable to Maine and K.D., at Maine's late request.

The court held that that issuing two-party checks does not constitute notice, particularly because the checks were for a substantially smaller sum of money than Maine demands in the suit, and thus Universal cannot be said to have had actual notice of the nature of the claim brought. Additionally, the court held that the statute only allows for actual notice and allows for notice that is defective in form but in timing. In other words, actual notice does not excuse late notice, only notice not delivered via the proper method.

THIRD PARTY MOTION TO INTERVENE GRANTED WHERE INTERVENOR WAS ENTITLED TO LIQUIDATED DAMAGES

Rinaldi v. Anchorage Construction Corp., 0450691/2016 (Sup. Ct. N.Y. Cty.)

In a breach of contract action, non-party Red Apple 81 Fleet Place Development LLC, the owner of a real estate development in Brooklyn, moved to intervene as intervenor/plaintiff. The court granted Red Apple's motion to intervene. It noted that Red Apple sought reimbursement of money paid in advance to complete work on the project, and that Red Apple asserted that plaintiff violated time of the essence in performing the work and, therefore, Red Apple would be entitled to liquidated damages from plaintiff.

The court determined that Red Apple's interests, therefore, cannot be adequately represented by a party it is suing in the litigation. The court further held that Red Apple has demonstrated as co-obligee its statutory right to intervene in this action "as the action involves the disposition or distribution ... or a claim for damages ... and the person may be adversely affected by the judgment." The court also concluded that Red Apple has a real and substantial interest in the outcome of this litigation and has been involved in negotiations prior to the commencement of legal action. Finally, the court found no showing of undue delay or substantial prejudice to any of the defendants.