

STATEMENT BY STUART S. ZISHOLTZ

In the event you are performing work for an out-of-state general contractor or owner, there is a strong likelihood that there is a Forum Selection Clause in your Agreement. A Forum Selection Clause determines a location where a lawsuit should be brought in the event a dispute occurs between you and the contractor or owner.

The Forum Selection Clause in the Agreement, more likely than not, contains the location of where the general contractor is located. Thus, if you are hired by a general contractor located in Atlanta, Georgia, the likelihood is that he will compel you to institute an action in Georgia as opposed to where you are located.

These forum selection clauses are valid and enforceable unless the challenging party can establish that it is a completely unreasonable, unjust, in contravention of public policy, invalid due to fraud or would cause such difficulty that you would practically be deprived of your day in Court.

The criteria necessary to defeat the Forum Selection Clause is extremely difficult and unlikely to be granted. The various exceptions referred to above are limited in nature and should not be relied upon by you when entering into a contract.

In a decision rendered by the Appellate Division, Second Department, the Court enforced the Forum Selection Clause and directed that the parties proceed with their litigation in Pennsylvania. The Court specifically found that when entering into the contract, the parties agreed upon the location of any future litigation. Since that location was Philadelphia, Pennsylvania, the Court granted the defendant's motion to dismiss the complaint finding that the Forum Selection Clause was unambiguous and valid. There is a statute in New York that directs that any lawsuit be initiated in the County where the work was performed. Thus, the statute may

overrule the contract in limited instances. Further, a foreclosure lawsuit must be commenced in the County where the property is located. You cannot seek to sell a property located in New York City by bringing a claim in Atlanta, Georgia.

Before you enter into any contract, you must review all of the terms and conditions set forth in the contract in order to ensure that you are properly protected. The costs associated with pursuing a claim in another state could be extremely expensive. Simply modifying the Forum Selection Clause could alleviate a lot of problems and expenses in the future.

Never let your lien time run out!!

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims, please contact me.

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