

STATEMENT FROM STUART S. ZISHOLTZ

Many of the articles I have written in the past pertain to public projects and the ruthless clauses that appear in the contracts. A recent decision from the Appellate Court reaffirms the harsh consequences when a contractor fails to comply with specific terms of a public contract.

The facts of the case are as follows:

A contractor was hired by the City of New York to perform work on three subway stations at a contract price of \$38,000,000.

After the work commenced, the City notified the Contractor, pursuant to the terms of the contract, that it was in default under the contract and had seven days to cure. After the Contractor submitted a timely “cure plan”, the City notified the Contractor that the cure plan was unacceptable and terminated the contract for cause.

Thereafter, the Contractor commenced a lawsuit to recover damages for breach of contract and sought a preliminary injunction restraining the City from enforcing a ten-day time limitation for submitting the dispute to arbitration. In the answer to the lawsuit, the City asserted that the Contractor was required to pursue arbitration and could not institute the lawsuit. Since the Contractor did not pursue arbitration pursuant to the terms of the contract, the City sought dismissal of the lawsuit.

The Lower Court denied the Contractor’s application for a preliminary injunction. The Contractor failed to pursue an appeal from the Lower Court’s Order and failed to follow up and file for arbitration.

The Contractor then moved to dismiss the defenses of the City and the City cross-moved for summary judgment dismissing the lawsuit on the grounds that the Contractor failed to submit the dispute to arbitration.

The Lower Court granted the City's application for summary judgment and dismissed the lawsuit. The Appellate Court agreed with the Lower Court and affirmed the dismissal Order.

The Contractor was required to pursue arbitration and since its ten-day time period to file for arbitration expired, the Contractor was foreclosed from pursuing any other remedy.

It is essential, therefore, that you review your contract and understand each and every term and condition. Municipal corporations are ruthless and their contracts are extremely harsh. If you do not comply with each and every term and condition of the contract, the likelihood of success is diminished.

Never let your lien time run out!

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