

STATEMENT FROM RICHARD C. ZISHOLTZ

Like everything in the law, there are exceptions to the general rules. The general rule, for the purposes of this statement, is that parties to a contract are bound by each term and condition within its contract. The concept being, of course, that the parties had free reign to negotiate the terms and had an opportunity to review the contract prior to executing the document.

Time and time again, clients ask me if an arbitration clause in their contract will be enforceable, and if we can pursue the claim in Court instead. My answer is always the same. The arbitration clause will be enforceable if the opposing party chooses to compel arbitration. The time to have negotiated the clause was when entering into the contract and not after a dispute arises.

However, certain rules are meant to be broken. When the legislative purpose of a statute is deemed to be defeated through a contract clause, Courts will refuse to enforce the clause.

In a dispute between a contractor and subcontractor over certain payments being withheld, a subcontractor may seek expedited arbitration pursuant to the Prompt Payment Act. In this situation, the New York Courts have refused to enforce a contract clause that designates litigation, rather than arbitration, as the method of dispute resolution. Compelling the subcontractor to litigate would defeat the legislative intent of the Prompt Payment Act.

The time to review and discuss the details of your contract is before executing the document. Too often clients seek to amend their contract after a dispute arises. Many issues can be avoided by consulting an attorney to review your contract ahead of time.

Never let your lien time run out!!

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