

CONSTRUCTION LAW NEWSLETTER

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TRENDS IN CONSTRUCTION LAW

Most contractors are aware of the Prompt Payment Law in NYS, which applies to private construction projects for which the aggregate cost is \$150,000.00 or greater.

The Prompt Payment law provides for default contractual provisions when the parties' contract is silent on those issues. Section 756-a sets forth the general rule that "except as otherwise provided in this article, the terms and conditions of a construction contract shall supersede the provisions of this article and govern the conduct of the parties thereto."

Therefore, in most cases, the Prompt Payment law

will not save a contractor from unfavorable contractual provisions. However, some contractual provisions are expressly voided by the Prompt Payment Law, as follows:

- 1) A provision making the laws of another state apply, and venue of a dispute being placed in another state (*note this does not apply to material suppliers)
- 2) A provision prohibiting a contractor from suspending performance for non-payment
- 3) A provision waiving the right to arbitration provided in the Prompt Payment Law
- 4) A provision establishing different payment provisions than those in the Prompt Payment law.



Many contractors use the Prompt Payment law provisions to their advantage when negotiating contracts or as leverage in a dispute by demanding arbitration or noting violations of the payment provisions.

CASE LAW UPDATE

On September 16, 2015, the Second Department Appellate Division decided the case of *Aluminum House Corp. v. Demetriou*.

The case centered on a mechanic's lien that was filed on March 7, 2005. Pursuant to Lien Law section 17, a mechanic's lien is valid for one year if not renewed. One method of keeping the lien valid is to file a notice of pendency to foreclose the lien. This keeps the lien valid for an additional three years.

When the parties in the *Aluminum* case finally went to trial on April 4, 2013, the notice of pendency had expired, and the lien along with it. As such, the Judge granted a motion to dismiss the complaint, leaving the plaintiff without a remedy.

Upon appeal, the appellate division reversed. The court held that even though the lien had expired, the plaintiff was still entitled to pursue a personal judgment based upon a breach of contract. The Court

cited Lien Law section 54 in support of its decision, which states if "the lienor shall fail, for any reason, to establish a valid lien in an action under the provisions of this article, he may recover judgment therein for such sums as are due to him, or which he might recover in an action on a contract, against any party to the action."

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