

CONSTRUCTION LAW NEWSLETTER

VOLUME III, ISSUE I NOVEMBER 2017

TRENDS IN CONSTRUCTION LAW

There has been a push for many years to reform the scaffold law in New York. Thus far, those efforts have not been successful.

However, the strict liability imposed by New York's scaffold law could be affected by a federal law being introduced into Congress.

The "Infrastructure Expansion Act" would relieve some of the negative effects of the NYS scaffold law by imposing a comparative negligence liability standard on all construction projects which

receive federal funds.

Comparative negligence apportions a percentage of liability to each party based on their responsibility for the injury.

This standard is seen by many as being more equitable, as opposed to the scaffold law, which imposes strict liability on the property owner.

As part of the justification for the law, it is estimated that the scaffold law raises construction costs in New York by 7%.

Also noteworthy is that New York is the only state which has an absolute liability law like the



scaffold law. Therefore, although this is federal legislation, it would effectively only apply to New York State.

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CASE LAW UPDATE

On November 9, 2017, the Fourth Department Appellate Division decided the case of *Sallustio v. R. Kessler and Associates, Inc.* The case involved the construction of a single family home.

During the course of construction, a dispute arose. As a result, the owners refused to release any further draws until the alleged defects in the home were corrected. The contractor in turn sent the plaintiffs/

owners and invoice and filed a mechanic's lien on the property.

For approximately six weeks thereafter, the owners placed a sign on their property that stated "R. KESSLER SCREWED U.S. BEWARE."

The owners commenced a breach of contract action against the contractor and the contractor filed a counterclaim for, among other things, defamation based on

the sign the owners erected.

The owners filed a motion to dismiss the defamation counterclaim. The Supreme Court denied the motion and the Appellate Division affirmed, holding that the sign was a mixed statement of opinion and fact and "reasonably susceptible of defamatory connotation."

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