

CONSTRUCTION LAW NEWSLETTER

VOLUME II, ISSUE XI SEPTEMBER 2017

TRENDS IN CONSTRUCTION LAW

The American Institute of Architects (AIA) set of construction documents are the most widely used in the industry. The AIA recently released the 2017 version of the A401, standard form of agreement between contractor and subcontractor.

Important changes in the 2017 version address the following subjects:

- Providing architecture and engineering services by subcontractors

- Arbitration procedures
- Consequential damages
- Termination of the contract
- Overhead and profit on work not executed
- Commencement date
- Subcontract time
- Contract alternates
- Progress payments
- Retainage
- Insurance and bonds
- Notice provisions
- Electronic form of notice per AIA E203



All parties in the construction industry should make themselves aware of the various changes in the AIA A401-2017.

CASE LAW UPDATE

On March 24, 2017, the Fourth Department Appellate Division decided the case of *Auburn Custom Millwork, Inc. v. Schmidt & Schmidt*. The case involved a manufacturer of architectural millwork that supplied materials to a general contractor on a project involving the Town of Charlton. After the general contractor was terminated by the Town, the millwork supplier sued the GC for breach of contract and account stated.

The court granted a motion

for summary judgment in favor of the millwork supplier on its breach of contract cause of action, but denied it summary judgment based on account stated. The Court also denied the GC's motion for summary judgment. Both parties appealed.

Upon the appeal, the Fourth Department Appellate Division modified the Supreme Court decision by denying the millwork supplier's motion for summary judgment in its entirety. The Court held that the supplier did not

establish breach of contract as a matter of law and also failed to establish an account stated, which is when a bill is sent and the receiving party does not contest its validity.

With regard to the account stated cause of action, the Court held that although a party may not object to the invoice in writing, contemporaneous written notices regarding submittals and sufficiency of the work created an issue of fact that precluded summary judgment.

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