Construction Law Newsletter

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Trends in Construction Law

The terms of any construction contract are vitally important to how the project progresses and whether it can be a successful endeavor for all involved. Increasingly, the use of proprietary contracts has shifted the risk from one party to another, often without the risk saddled party having carefully reviewed the terms of the contract.

Well known industry contracts created by the American Institute of Architects (AIA) and the more recent consensus docs seek to equally spread the risks associated with construction among the parties. Proprietary contracts do the opposite.

Many times proprietary contracts are utilized by the parties entering into a very brief contract, which then incorporates extensive and onerous general conditions into that brief contract. Those general conditions become binding contractual provisions, just as if they were in the body of the contract itself.

Another way proprietary contracts are being used is via "master contracts" in which the parties agree in advance of individual projects that the terms of a master agreement will govern the relationship between the parties. These master contracts are generally revised every 2-3 years. While they are in effect, they will govern the rights of the parties on all projects undertaken during that time period.

Many parties use addendums attached to contracts as a way of pushing back against proprietary contracts.

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Case Law Update

On August 10, 2015, Justice Eugene D. Faughnan, of the Tioga County Supreme Court, decided the case of *Timber Solutions, LLC v. Rigas*.

The case centered on a general contractor who performed masonry, excavation and constructed a single family home on the defendants' property. Timber Solutions filed a mechanic's lien on the property when a dispute arose with regard to payment. When Timber Solutions filed a complaint to foreclose on the mechanic's lien, the defendants filed a motion to vacate the mechanic's lien and cancel the notice of pendency associated with the lien foreclosure.

The defendants argued that the lien was filed outside the four month time period for liens on single family dwellings and also that proof of service of the mechanic's lien was not timely filed.

Plaintiff argued its lien was timely filed because it was filed within four months of the contract completion date. The court looked to the last actual date of labor performed on the project, not the contract completion date. Therefore, the lien was vacated and the notice of pendency was cancelled.

The Court also stated that the mechanic's lien was invalid because Timber Solutions failed to file proof of service within 35 days of its filing.