

CONSTRUCTION LAW NEWSLETTER

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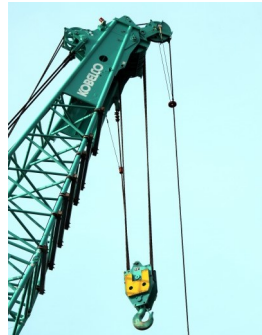
TRENDS IN CONSTRUCTION LAW

When reviewing a contract particular attention should be paid to whether the contract provides for arbitration or litigation as a means of dispute resolution. Each mechanism has its pros and cons.

For example, the rules of evidence are relaxed in arbitration proceedings so that hearsay statements are allowed and formal authentication of exhibits is usually not necessary. In addition, arbitrators have a significant amount of discretion in

how the proceeding is conducted regarding presentation of evidence, witnesses and so on. It should also be noted that arbitration decisions are almost always final because the standard for vacating an arbitration decision is very strict.

With regard to litigation, it can be more time consuming and costly because of the formalities of complying with the civil practice rules and the rules of evidence. However, litigation also presents opportunities for pre-trial dispositive motion practice which



may decide the case in your favor prior to the trial.

Whether arbitration or litigation is preferred, parties should make an informed choice in their dispute resolution procedure when reviewing contracts.

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CASE LAW UPDATE

On August 24, 2016, Justice Ellen Coin, of the New York County Supreme Court, decided the case of *V.C. Vitanza Sons, Inc. v. Liberty Mut. Ins. Co.*

The case centered on a plumbing subcontractor who performed work on a public school project in New York City. The subcontractor commenced an action to recover on the labor and material payment bond when it went unpaid.

It later filed a motion for summary judgment to recover against the surety.

The surety opposed the motion, alleging that payment to the subcontractor was contingent on the GC receiving payment from the owner. The subcontractor responded that such clauses are unenforceable "pay if paid" provisions.

The court partially granted the subcontractor's motion.

It held that the subcontractor was entitled to judgment on the amount being withheld pursuant to the "pay if paid" language. However, the court denied the motion with regard to retainage and disputed backcharges.

The subcontractor was also awarded 9% interest on the judgment pursuant to State Finance Law section 137.

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Consult your attorney regarding specific legal needs. This may be construed as attorney advertising. Prior results do not guarantee a similar outcome.