



Executive of the Month: Asselta, co-head of construction law department at Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP

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The New York Real Estate Journal recently sat down with Joseph Asselta, co-head of the construction law department at Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana LLP, for a question and answer session.

Q: How and when did you get your start in construction law?

A: I clerked for a construction law firm when I was in law school at St. John's University and then joined as an associate after graduation in 1992. Very early on, my direct contact with clients enabled me to listen to and learn from them about their biggest concerns in the industry. I also became involved in both the transactional side and the litigation end of construction which helped me see how certain contract language could be used to help avoid disputes. I eventually formed my own law firm, Agovino & Asselta, LLP, which grew to 10 attorneys over the course of 15 years, prior to our recent merger with Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana LLP. Throughout my career, I have represented all types of parties involved in a construction project, including owners, general contractors, design professionals, subcontractors and suppliers, which has provided me with invaluable experience and insight. Not only have I learned how each party views their role in the project, but also how best to resolve the inherent conflicts that exist between the various parties.

Q: What professional organizations are you involved with?

A: I am a member of the New York State, American and Nassau County Bar Associations and serve on their construction law committees. From 2001-2003, I was the chair of the construction law committee of the Nassau County Bar Association. I am also a member of the General Contractors Association of New York (GCA) and the Long Island Contractors' Association (LICA), and I have authored numerous articles and lectured on current construction-related topics, including "Responding to the Filing of a Mechanic's Lien," "Building Finance and Preserving Priorities under the Lien Law" and "Current Insurance Issues in the Construction Industry."

I practice not only in New York but also in Massachusetts, and regularly appear in New Jersey and other state courts.

Q: Tell us about your top three cases.

A: One of my shortcomings is that I cannot help but treat every case as one of my top cases, and I put as much effort into a "smaller" case as I do with a "larger" case. Some of my most satisfying results are when I obtain monetary recoveries for clients who have been taken advantage of by others with "deeper pockets." For example, I represented a general contractor who had built a self-storage facility in upper Manhattan and who had performed numerous items of extra work as verbally directed by the owner. After the job was completed, however, the owner felt that it should not have to pay for the extra work and also held back the remaining contract balance as leverage.

My client refused to succumb to this tactic and commenced arbitration proceedings against the owner who thought it would wear us down by asserting bogus counterclaims and dragging out the entire process to about seven hearing days. Eventually, though, this backfired on the owner, as the arbitrator ultimately awarded my client not only almost the entirety of what he was looking for, plus interest, but also, most notably, the attorneys' fees and arbitration costs incurred in connection with the prolonged hearings.

As another example, I represented an electrical subcontractor whose labor force worked around the clock over a three-week period, as directed, to ensure that a certain retail store in Manhattan opened on time. However, once he finished his work, no one wanted to pay for all of his additional labor costs. Initially, our lawsuit was dismissed by the lower court but that decision was reversed on appeal. When we went back to the lower court, our original judge had left the bench and we were reassigned to a new judge, and then yet another judge. Finally, after years of delay, the matter was scheduled for a trial. Our perseverance eventually paid off as the matter was settled prior to trial and the client was paid.

On the transactional side, I represent both owners and contractors and have recently negotiated and drafted general contracting/construction management contracts ranging from \$30 - \$60 million involving property in Manhattan.

Q: What do you enjoy most about your practice?

A: For many clients, I serve as a sort of outside general counsel who is available on a daily basis to listen to their immediate concerns and issues and counsel them on practical, cost-saving strategies to avoid and resolve disputes during their projects. In many instances, a one-hour review and phone call can result in big savings in the long run.

Q: What is one thing that you will do differently as an individual or a firm compared to last year?

A: Towards the end of 2013, my firm Agovino & Asselta LLP merged with the law firm of Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana LLP thereby broadening our ability to serve the construction and real estate communities. Thus, in addition to providing traditional construction law services like contract review and drafting and claims avoidance/dispute resolution, we are able to further advise our clients on a variety of other issues, such as zoning, land use, corporate, employment, trusts and estates and tax.

Asselta's Background

Asselta is co-head of the firm's construction law department. Asselta represents clients in all segments of the construction industry including owners, developers, financial institutions, design professionals, general contractors, construction managers, government contractors, trade contractors, subcontractors, suppliers, equipment rental companies, insurers and sureties (on both public and private projects). He has prosecuted and defended numerous small and multi-million dollar claims relating to non-payment, extra work, delays, changed and unforeseen conditions, design and construction defects, defaults, terminations, mechanic's liens, prevailing wages and project labor issues, insurance coverage and performance and payment bonds in both state and federal courts as well as administrative agencies, arbitration and mediation. A significant portion of his practice also includes the review, drafting and negotiation of construction contracts and related project documents. Asselta further provides his clients with advice and representation in connection with their corporate, commercial, real estate and insurance needs.

Asselta is a member of and has served as co-president on the board of directors of Landmark on Main Street, Inc. (a not-for-profit cultural and civic organization in Port Washington,), is a member of

the board of directors of Port Washington Youth Activities (PYA), and has been a member of the New Salem Civic Association's Historic District committee and a sponsor of the Long Island Children's Museum (serving as chair of one of the Museum's Leadership Committees). He is also a member of the Columbian Lawyers' Association of Nassau County.

Asselta graduated cum laude from Georgetown University and received his Juris Doctor, cum laude, from St. John's University School of Law. He also attended Phillips (Andover) Academy.

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