



## **Why should I retain an attorney who concentrates in construction law? - by Andrew Richards**

June 01, 2021 - Long Island

“I have a lawyer who handles all of my legal work. Why should I retain an attorney who concentrates in construction law?...”

All too often, I am approached by a prospective client to discuss a dispute regarding a project that is either under construction or has been completed where I have to inform the prospective client that the contract terms do not support his position. Whether the prospective client wants to terminate the contract, suspend work or make a claim for extra work, in many cases the contract does not contain terms which allow the owner or contractor to take the action it deems appropriate. Other times, I am advised by a prospective client that the attorney that they hired is billing so much money that if the case goes to trial, the attorneys' fees will be more than the claim.

The prospective client proceeds to tell me that their attorney, who has handled all of the company's legal work, either prepared the contract or is handling the litigation. What becomes clear from reading the contract or assessing the litigation is that the attorney is not familiar with the process of construction, what issues generally end up in disputes, the clauses that should be inserted in the contract to protect the client for these common issues of dispute or the laws and statutes regarding construction disputes.

For instance, a well written construction contract for an owner should include provisions for a quick termination if the contractor is not performing to the satisfaction of the owner, termination for convenience, liquidated damages, and notice provisions as conditions precedent for extra work claims and time extensions, which are not included or, if included in a pre-printed form of contract, are insufficient to protect the owner. If we are representing the contractor, provisions reserving rights to make claims, a quick suspension of work or termination of the contract for non-payment and payment for extra or disputed work are included in the contract.

We also make sure that day in and day out, you're provided with the advice, as needed, regarding disputes that arise during the construction of a project. By having the knowledge of construction law, the terms of the contract and the construction process itself, we can help the client avoid litigation or make sure the client has complied with all terms of the contract and any pertinent statute so that the client is in a strong position if litigation is unavoidable. Does your attorney keep up with the changes in statutes that govern construction claims? For example, the limitations for a claim against a

payment on a public improvement project recently changed to enlarge the time to file the claim. In addition, does your attorney know that a mechanic's lien may be filed for up to 90 days for retainage from the date the retainage was due to be released?

Issues arise throughout each and every construction project. For example, you must ask yourself, is work the contractor asked to perform included in the scope of the contract? Will delays to the project entitle a contractor to an extension of time to complete the job? These questions are not only asked on the job, but also in the courtroom. Also, before hiring an attorney to draft construction contracts or represent you in construction litigation, you should ask him or her certain questions. How many times have they drafted such an agreement without having to refer to pre-printed forms? How many times have they represented a party in a construction dispute? A great construction lawyer should not only have the depth and knowledge of construction law, but also knowledge of the construction process in and of itself.

At KDV, we take pride in the fact that we can service both developers and contractors with all of their construction law, and labor and employment law needs. Our attorneys have decades of experience in both areas handling cases of all sizes. Whether the need is for a construction contract, advice during construction in order to avoid or resolve a dispute, the need to maintain construction in the face of a labor dispute, or post-project litigation, we have a number of attorneys who concentrate on these issues daily. Each and every developer and contractor should ask themselves; does my attorney deal with the issues and practice in these areas each and everyday? If not, speak with KDV.

Andrew Richards is a co-managing partner – Long Island office, chairman of construction practice group at Kaufman Dolowich & Voluck, LLP, Woodbury, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540