

Enforceability of Arbitration Clauses in a Construction Contract

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In a recent matter before the appellate division, the Court discussed the enforceability of an arbitration clause in a construction contract where the clause did not contain a waiver of the right to file a state court action, nor a waiver of the right of a trial by jury. Furthermore, the court also reviewed the enforceability of the clause due to the fact that the font was less than 10-point print, and thus, was very difficult to read.

The Court explained that the arbitration clause was unenforceable since it lacked the required waivers with regard to the right to file a state court action, and the right to a trial by jury. Such waivers are mandatory and must be included in order for an arbitration clause to be found enforceable by the Court.

The court further explained that the clause lacked the mutuality of assent, because it was less than 10-point font, and thus, was not easily discernable. This issue of legibility adds yet another pitfall for drafters of contracts to avoid. Gone are the days of fine print which may be dispositive. Instead, the Court explained that any such material provision must be clearly legible. As such, all contractors must be aware of this ruling and should carefully review their agreements in order to correct any such potential issues.

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