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Appellate Division Affirms: Binding Dispute Resolution Provisions in Standard AIA Construction Contracts Are Enforceable

In a recent unpublished opinion, the New Jersey Appellate Division held that an agreement to arbitrate set forth in the binding dispute resolution provision in a standard form American Institute of Architects (AIA) construction contract between a condominium association and contractor was enforceable. The binding dispute resolution provision appears in the AIA standard form as a series of checkboxes in which the parties may select arbitration, litigation, or another dispute mechanism by placing an "X" in one of the boxes. The AIA standard form also contains language that applies if the parties have selected arbitration as the method of binding dispute resolution, including the rules for conducting that arbitration and finalizing an award.

Arbor Green Condo. Ass'n, Inc. v. Start 2 Finish Restoration & Bldg. Servs., LLC et al. arose out of Start 2's alleged deficient workmanship under a construction contract to restore two buildings damaged by a storm, which resulted in Arbor Green terminating the contract. Start 2 subsequently filed two construction liens and two demands for arbitration (one for each building) in accordance with the selected dispute resolution method in the parties' AIA form agreement. Arbor Green failed to answer the demands for arbitration, resulting in awards in Start 2's favor. Start 2 then filed two orders to show cause and verified complaints that asked the court to enter monetary judgments to enforce the liens. Arbor Green moved to dismiss Start 2's complaints and filed a separate action that sought, among other things, a declaratory judgment voiding the arbitration awards on the ground that the contract's binding dispute resolution provision failed to expressly state that Arbor Green waived its right to a jury trial and, alternatively, that Start 2 waived its right to arbitrate upon filing actions in court seeking monetary judgments to enforce the

construction liens. The motion judge ultimately dismissed Start 2's complaints and consolidated the controversy with Arbor Green's cause of action.

Relying on the New Jersey Supreme Court decision in [*Atalese v. United States Legal Services Group, L.P.*](#), the trial court dismissed Arbor Green's complaint and compelled arbitration. The motion judge found that *Atalese*, which requires an agreement to explain in some minimal way that the parties clearly and unambiguously chose to arbitrate rather than litigate in court, was satisfied here because the parties selected arbitration in the binding dispute resolution provision on the AIA form contract. Accordingly, the motion judge held, Arbor Green waived its rights to litigate, and Start 2's filing of a complaint for monetary judgments in court did not change that outcome.

The Appellate Division affirmed the trial court's decision for similar reasons, acknowledging that no "magical language" is required to accomplish a waiver of rights in an arbitration agreement and that an arbitration clause is sufficient if it advises the parties that they are waiving the right to seek relief in court. The court held that the AIA's binding dispute resolution provision met this standard, specifically finding that the provision was plainly written and expressly advised the parties how to select a dispute-resolution method. The court also noted that the AIA agreement set forth the rules that would apply in arbitration and when finalizing an award and that there was no evidence of unequal bargaining power or lack of sophistication, a relevant factor in determining that the parties knowingly and voluntarily agreed to the agreement's terms.

The Appellate Division was similarly unpersuaded that Start 2 waived its right to arbitrate by filing complaints seeking monetary judgments in the Law Division. To support its finding, the Appellate Division pointed to the factors set forth in [*Cole v. Jersey City Med. Ctr.*](#) and found that the totality of circumstances did not suggest that Start 2 waived its right to arbitrate because (1) it did not delay in asserting its rights to arbitrate for the recovery of damages under the construction liens; (2) discovery had not begun and no trial had been scheduled when it moved to dismiss Arbor Green's complaint for declaratory judgment; and (3) there was no concomitant

prejudice to Arbor Green because there was no clear and convincing evidence that Start 2 pursued a litigation when it sought monetary judgments pursuant to the construction liens.

AIA template forms are widely utilized as standard custom and practice in the construction industry, as parties seeking to simplify and streamline construction agreements often take advantage of their clearly defined terms and organized structure. Parties should remain mindful, however, that their selection in the binding dispute resolution provision of the AIA form will likely dictate where and how their future disputes must be resolved.

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