

The Saiber Construction Law Column: April 2025

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New Jersey law recognizes that the voluntary arbitration of civil disputes is generally favored, subject to certain exceptions. One exception occurs when a party to a contract containing an arbitration waives its right to compel arbitration by its actions or inactions. The New Jersey Appellate Division discussed these principles when it recently held that a construction company waived its right to compel arbitration in an action the construction company itself had filed in court.

In *Marmo & Sons Gen. Contr., LLC v. Biagi Farms, LLC*, a case decided by the Appellate Division in May 2024, parties executed a written contract for the construction of a house. The agreement provided that any disputes arising from the contract had to be referred to arbitration. After a dispute arose, a construction lien was asserted by the contractor, which was ultimately resolved under the New Jersey lien law through arbitration. Once the lien arbitration concluded, the contractor then filed a complaint in court against the homeowners for various other claims.

The court case proceeded in the ordinary course for nearly six months before the contractor filed a motion to stay the court proceedings and to compel arbitration. The trial court denied the motion and the contractor appealed. On appeal, the court looked at the totality of the circumstances before ruling that the contractor had waived its right to seek arbitration pursuant to the construction contract. Of particular significance to the court was that the contractor included the arbitration clause in the construction contract agreement, the contractor took advantage of discovery during the court action for six months, and the contractor used the court system to its advantage before shifting the case to arbitration. The appeals court ultimately held that the contractor had waived its right to seek arbitration.

Courts generally frown when parties waste judicial resources, particularly if a plaintiff brings a case and litigates it in court when it should have been pursued in arbitration. Contractors therefore should pay attention to the terms of their own agreements and resolve disputes in accordance with the terms of those agreements.

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Each issue's Saiber Construction Law Column will discuss a recent decision by New Jersey courts (or courts from other states) or other legal topics which may be of interest to people in the construction industry.

The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has

been made to ensure this information is up-to-date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

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