



California Contract Law Alert

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California Upholds Contractual Waiver of Rights

Brisbane Lodging, L.P. v. Webcor Builders, Inc.

Cal App, 1st Appellate District.

SUMMARY: The executed construction contract contained the 1997 American Institute of Architects (AIA) Standard Form of Agreement Between Owner and Contractor. The operative provision provided that all causes of action relating to the contract work would accrue from the date of substantial completion of the project. Suit was brought more than four years after the specified accrual date. Motion for Summary Judgment was granted for Defendant. Appeal was taken, the reviewing court upholding the trial court's ruling the "clause was valid and enforceable" and that the "agreement was one between sophisticated parties seeking to define the contours of their liability."

HOLDING: "... public policy principles applicable to the freedom to contract afford sophisticated contracting parties the right to abrogate the delayed discovery rule by agreement."

DISCUSSION: At issue was whether the delayed discovery rule can be waived or modified by contract. The court, in its review of out of state authorities, determined there is a broad consensus to permit parties to "avoid the uncertainty surrounding the discovery rule for the security of knowing the date beyond which they would no longer be exposed to liability." Accordingly, the court concluded "sophisticated parties should be allowed to strike their own bargains and knowingly and voluntarily contract in a manner in which certain risks are eliminated and, concomitantly rights are relinquished."

Brisbane argued enforcement of the subject provision violated California public policy. In response the appellate court noted "Courts have been cautious not to 'blithely apply[] public policy reasons to nullify otherwise enforceable contracts.'" Commenting on Brisbane's failure to show how policy purposes would be harmed, the court observed "the delayed discovery rule has most often been described as an equitable doctrine designed to achieve substantial justice in situations where one party has an unfair advantage and it would be inequitable to deprive "an 'otherwise diligent' plaintiff in discovering his cause of action." The court continued, stating "It is normally applied in situations where there is a 'fiduciary, confidential or privileged relationship' --- basically, where individuals hold "themselves out as having special skill, or are required by statute to possess a certain level of skill" and it is manifestly unfair to deprive plaintiffs of their cause of action before they are aware that they have been injured." Additionally, the court reminds that statutes of limitations are a personal right benefitting the individual which may be waived.

Ultimately, the court reaffirms it is California's "longstanding public policy" [to] "respect and promote the freedom of private parties to contract, it remarking "public policy requires 'that men of full age and competent understanding shall have the utmost liberty of contract, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice.'"

ANALYSIS: While not necessarily assistive in matters involving consumer contracts, this case serves to remind the import of the libertarian foundation of contract law in California.

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