

Contractual Limitations Periods, STA Legal Log, by Andrew Richards, Esq., 2-2022

Over the last couple of decades, the Standard City Construction Contract has changed with respect to the limitations period for which a contractor may commence an action for delay claims and other claims which are not subject to the PPB rules. There is one rule which does not change. No matter what the timing is for bringing a claim in the contract, a lawsuit to bring a claim must be brought within six years of substantial completion.

One of the older City contracts contained a provision that the contractor had to bring an action within one year of the date when the final payment voucher was filed by the City. However, in *JCH Delta Contracting, Inc. v. City of New York*, the Appellate Division, First Department, held that the six year limitations period could not be extended by that contractual provision. In that matter the City did not file the final payment voucher until after six years had passed from the date of substantial completion. The Court decided that regardless of the limitations period set forth in the contract, an action must be commenced within six years of the substantial completion date.

Now, what if the City does not issue a substantial completion certificate until well after the declared substantial completion date? Don't worry. The time period to commence the action will only start to run after the contractor is notified of the substantial completion date. A party to a contract cannot create an impediment to the completion of a condition precedent and benefit from its wrong act.