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The views reflected herein are those of the authors and do not necessarily represent the position of the SUFFOLK COUNTY ELECTRICAL CONTRACTORS ASSOCIATION, INC. or its Board of Directors.

General Membership Meetings are held on the third Thursday of each month.

Welcome all. For cancellations of any meetings, listen to WALK-97.5

MEETING NOTICE

DATE: Thursday, February 16, 2023  
TIME: 7:00 PM, SHARP  
PLACE: Courtyard Marriott  
5000 Express Drive  
Ronkonkoma, NY 11779  
(631-612-5000)

PROGRAM:

**Robert Szalay 631-512-3933**

***Monitoring of Everything:*** SCECA Board member Brian McAuliff will cover new technologies in battery storage, lighting control and integration. Demands will add complexity and require expertise. Increasing client demand to have everything on their cell phone will continue. Support technology is expensive and can easily become a nightmare. Being prepared for these changes will allow contractors to guide clients to the right products and service, as well as improve profitability. This is ideal for any contractor doing high-end residential, commercial and industrial work.

Ron Linsalato of ***Southampton Town*** will review some recent changes as they apply to electrical work in the town.

***In addition, we expect to host UI Supplies AV & Electrical of Plainview.***

EDITORIAL:

Happy February! Since our weather has been somewhat milder than usual, hold your breath. I'm sure "Old Man Winter" is not through with us yet. Go ahead, schedule that outdoor trench work etc., then watch what happens. (Hopefully the sun shines on your job!) By the way, this was written prior to the weekend of February 3 – 5. Hope your pipes did not freeze!

As always, we hope you will warm up at the February SCECA meeting. Board member Brian McAuliff will be presenting an interesting and pertinent program; don't miss it.

MEMBERSHIP:

***Rob Tchoke 631-475-1111***

*New members are welcome to attend a SCECA General Meeting, so please consider bringing a friend to see what we're about, and consider joining SCECA. **There is a Membership Application on the last page of this issue of "The Light."***

SCECA CEH CLASS:

Do you need to renew your Suffolk County Master Electrical License? If so, do not forget that you need to provide certification of eight (8) Continuing Education Hours. SCECA's next class is being offered on March 4<sup>th</sup>. Please go to our website or call the office to reserve your spot.



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To all: Members, vendors, advisors and other supporters of our organization,

I would like to thank Michael Ganz (our legal consultant) of Kaufman Dolowich Voluck LLP who gave a very informative presentation about construction contracts and what the contractor should be aware of before accepting a project. I would also like to thank N&S Electrical Supply for sponsoring the food and beverage at our meetings. N&S has been successful with stocking those hard to find “supply chain issue items”; give them a call.

At our upcoming February meeting, Brian Maculiff of Bri-Tech will be presenting a program about Home Automation and the opportunities that are available for contractors in this ever-evolving industry. To compliment this program, UI Supply (a supplier of electrical and AV technology) will be our Vendor of the Month-ask them about those AV and home automation products that your customers are looking for!

Remember, the best way to stay in touch and, “in the know” is to attend the meetings, and of course speak up and share your opinions. All of us, on the Board, hope to see and hear from all of you. Besides the monthly program, you can also expect that the “usual suspects” will be attending;

- PSEG LI reps
  - Inspection Agency reps
  - Suffolk County electrical licensing board reps.
  - Representatives from Nassau County
  - Vendors
  - Legal and insurance consultants
- and others.

So, come and join us for some dinner, education, the latest industry news and a chance to network!

Sincerely,  
Robert A. Szalay  
SCECA President



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**When:** March 16th 6-6:45PM (One hour before general meeting.).

**Where:** Courtyard by Marriott Long Island MacArthur Airport,  
5000 Express Drive South Ronkonkoma, NY 11779 (*Same as General Meeting 1st Floor*)

**RSVP:** [scecaelect@gmail.com](mailto:scecaelect@gmail.com) to reserve your spot



IT HAPPENED AT THE LAST MEETING:

2 - \$100 cash prizes were won by Scott Eastman and Dave Kennedy.

1 - \$90 cash prize was won by Jim Smith.

\$100 attendance award was drawn for Robert Schaefer (#439-CR) who **was not** present to win! ***Winner must be present & dues current, to win!***

**Joshua Carrick of Patriot Contracting Corp. in Westhampton  
was sworn in at our January General Meeting.**

CODE CORNER:

BY “SEMI-RETIRED” Chief Inspector Jim Smith

Since New York State has decided NOT to adopt the 2021 ICC codes (which references the 2020 NEC), the 2017 NEC will be the reference standard for at least the next couple of years. Now might be a good time to review the expanded GFCI requirements in the 2017 NEC.

Article 210.8 (B) Other than dwelling units.

All single phase receptacles rated 150 volts to ground or less, 50 amperes or less and three phase receptacles rated 150 volts to ground or less, 100 amperes or less installed in the following locations shall have ground fault circuit-interrupter protection for personnel.

- (1) Bathrooms (Receptacles are not required in commercial and industrial bathrooms but if installed will require GFCI protection.)
- (2) Kitchens (Article 100 a kitchen is defined as an area with a sink and permanent provisions for food preparation and cooking.) There has been a great deal of discussion about what constitutes permanent provision for cooking. The code panel has ruled that a microwave is not a permanent provision for cooking, however, some have a convection oven setting, I would consider that to be a permanent provision for cooking. Check with your inspector before beginning the job!

Continued, p. 7

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**Continued from p. 7**

CODE CORNER:

BY “SEMI-RETIRED Chief Inspector Jim Smith

- (1) Rooftops
- (2) Outdoors
- (3) Sinks (Receptacles within 6 feet, measured from the Top inside edge of the bowl of the sink)
- (4) Indoor wet locations
- (5) Locker rooms with associated showering facilities. (The code does not address the distance from the showers to the locker room)
- (6) Garages, service bays, and similar areas other than vehicle exhibition halls and showrooms.
- (7) Crawl spaces -at or below grade level. (The code does not define what constitutes a crawl space, however, the building code defines it as an area with less than 6 feet of head space. Check with your inspector!)
- (8) Unfinished portions or areas of the basement not intended as habitable rooms. (Again the code does not define what constitutes a habitable room. Check with your inspector.)

210.8 (E) – Crawl space lighting outlets. GFCI protection shall be provided for lighting outlets not exceeding 120 volts installed in crawl spaces.

Article 422.5- Ground fault circuit interrupter protection for personnel.

(A) General. Appliances identified in 422.5(A)(1) through (5) rated 250 volts or less and 60 amperes or less, single or three phase, shall be provided with GFCI protection for personnel. Multiple GFCI protective devices shall be permitted but shall not be required.

- (1) Automotive vacuum machines provided for public use.
- (2) Drinking water coolers
- (3) High pressure spray washing machines – cord and plug connected.
- (4) Tire inflation machines provided for public use.
- (5) Vending machines.

Note: With the exception of the high pressure spray washing machine, all of these appliances require GFCI protection both for cord and plug connection or “hard wired”.

Article 625 Electric vehicle charging system

Article 625.54 Ground fault circuit-interrupter protection for personnel.

All single phase receptacles installed for the connection of electric vehicle charging that are rated 150 volts to ground or less, and 50 amperes or less shall have ground fault circuit- interrupter protection for personnel.

Remember all GFCI devices must remain readily accessible after installation. Article 100 defines readily accessible as: Capable of being reached quickly for operation, renewal, or inspection without requiring those to whom ready access is requisite to take actions such as to use tools(other than keys), to climb over or under, to remove obstacles, or to resort to portable ladders, and so forth



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## **Are Pay-If-Paid Clauses Really Void In New York?**

By: Michael D. Ganz, Esq., Kaufman Dolowich & Voluck LLP,

It has long been held a maxim that a pay-if-paid clause in a construction contract is void under New York law. As such, during contract negotiations the parties often remove such clause as void, or too often, leave the clause in since they assume it is not binding. However, as described below and upheld by recent appellate court caselaw, that maxim and assumption is not true.

First things first – what is a pay-if-paid clause? A pay-if-paid clause is a provision in a contract wherein the obligation of a contractor to pay its downstream subcontractor or vendor is conditioned upon the contractor's receipt of payment from the owner. In essence, the provision obliges the subcontractor or vendor to assume the risk of the owner's payment to the contractor. Such a clause was held void and unenforceable as against public policy by the landmark case of *West-Fair Elec. Contrs. v. Aetna Cas. & Sur. Co.*, 87 NYS2d 148 (1995). The underpinning of *West-Fair* would violate public policy as such a clause would prohibit a subcontractor or vendor from filing a mechanic's lien for unpaid work or materials since it would only be entitled to payment if the owner paid the contractor.

In a recent case however, *Entech Eng'g, P.C. v. Dewberry Engrs. Inc.*, 204 AD3d 467 (1<sup>st</sup> Dep't. 2022), the appellate court affirmed the lower court's ruling that a pay-if-paid clause is valid in New York if the claimant has no lien rights.

Defendant Dewberry Engineers, Inc. (Dewberry) contracted with the New York City Economic Development Corporations' (EDC) Build-It-Back Hurricane Sandy Program to inspect approximately 10,000 New York City homes for structural, asbestos and lead paint issues. The funding for the project was federal HUD funds. Thereafter, Dewberry retained Entech Engineering P.C. (Entech) as a subcontractor to perform approximately 2,000 preconstruction lead paint inspections of single-family residences. Notably, the City's payment to Dewberry for Entech's services was a "condition precedent" to Dewberry's duty to pay Entech (the above-referenced "pay-if-paid" clause). Ultimately, Dewberry terminated Entech for cause, and Entech later brought claims based on three unpaid invoices for lead inspection services totaling \$1,464,983.

Entech moved for summary judgment on its claims, arguing, among other things, that Dewberry's failure to pay the invoices was a breach of the subcontract, and that the pay-if-paid clause was unenforceable since it violated New York public policy. Dewberry also moved for summary judgment dismissing Entech's complaint on several grounds, including that the pay-if-paid provision was valid since Entech had no lien rights and barred the claims because the City had not paid Dewberry for the invoices at issue.

*(Continued on page 16)*



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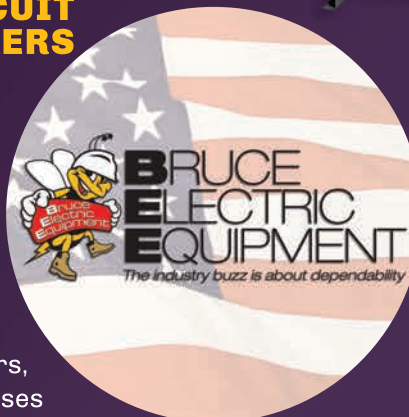
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<b>Information</b> * Description of work (256 Characters Maximum) New Pizzeria Restaurant		<b>Inspection Information</b> * Is job ready for inspection? Yes <input type="radio"/> No <input type="radio"/> * Please Select One: Rough <input checked="" type="radio"/> * Is Authorization To Install Required? Yes <input type="radio"/> No <input type="radio"/>	
The following must be completed if Authorization To Install is selected.			
* Service Phase (check at least one): 1 Phase <input type="checkbox"/> 100 Amp <input type="checkbox"/> 200 Amp <input type="checkbox"/> 300 Amp <input type="checkbox"/> 350 Amp <input type="checkbox"/> 400 Amp <input checked="" type="checkbox"/>		* Service Type (Select one): New Service <input type="radio"/> Change of Service <input type="radio"/> Re-connect <input type="radio"/> Fire Re-connect <input type="radio"/>	
Check here if work was performed on the Service <input type="checkbox"/>			

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\* \* \* \* \*

Happy Birthday to—February!

Daniel Araujo, James Biggers, Edward Byrne, Louis Calamita, Steven Danielson, Michael Desposito, Joseph Deubel, Jeffrey S. DiLandro, Jon R. Forsberg, Donald Joly, Mahesh Panchal, Mark Puccio, Ronald Sacher, Robert Szalay, Robert Tinto, Howard B. Weitzman, Edward Zafrani.

ASK THE AGENT:

Incentivize employees to get preventive care. Small businesses today are all competing for talent from a much smaller pool of potential employees than were available 5 years ago. This competition for talent has driven up the cost of doing business and has left employers looking for creative ways to separate themselves from the competition. While pay increases are likely to be part of any comprehensive solution, employees see pay increases as getting them back to even. An outside the box idea who's time might have come is to Incentivize employees to get preventive care. A company sponsored program that offers free annual physicals, diet counseling, disease screenings and routine immunizations can have a number of positive benefits for your company. Paying employees to engage in preventive health care services makes it abundantly clear their employer is invested in their health, their health is valuable and their employer is interested in making health more affordable. In addition, healthy employees are more productive and take less time off. If you don't currently offer a long list of free preventive services, consider adding them. The investment will pay off in healthier employees. If you already offer free preventive care, It's important to communicate clearly and frequently about these available benefits.

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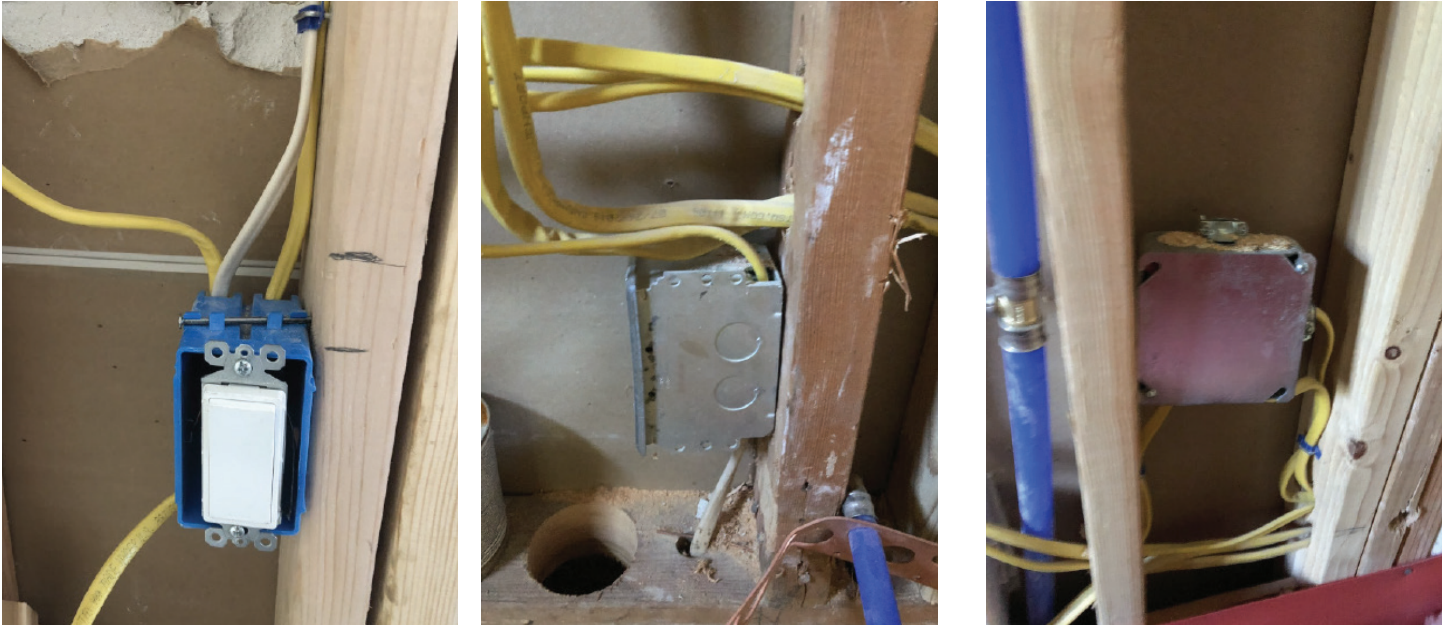
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Well, another month has passed and it's ready for another safety article. We ran across these violations at a kitchen bedroom renovation. Looking at these pictures from the open wall in the bedroom, they show the actual wiring of the kitchen outlets and switches. Look at the mix of 14-2 and 12-2 wires. Notice the junction boxes buried; who needs to service them? Unfortunately this goes on all the time. When you first walk in the kitchen, it's newly renovated and it actually looks nice, but it goes to show what we don't know behind the walls. We spent a little time tracing out these wires; lo and behold, the unlicensed contractor/electrician used one old circuit to feed, microwave, refrigerator, freezer, and counter outlet. I tried to educate the customer and tell them that this is against code, and it will never work. She'll have nothing but problems. I spoke with the general contractor doing the kitchen and he was fully confident that everything was good. I went back to the customer after speaking to the general contractor telling her that this is very bad. She actually defended the contractor. The bedroom that we were contracted to wire was done to code. I called in an electrical inspector for a rough in inspection and I documented all the buried junction boxes that were obviously very visible. You just can't make this stuff up. Yes, this is what we're dealing with as license electricians! On one side of the wall we are doing everything to code; on the other side of the wall is pure insanity and chaos.

Well, we finished up all the wiring to prepare for sheet rock in the bedroom and filed for an electrical inspection, documenting everything. The customer did not want anything done with the kitchen. Sometimes as electrical contractors, there's nothing we can really do except protect ourselves legally to the best of our ability: write out an invoice stating all the violations and what was seen along with a rough -in electrical inspection that's it.

Remember: document everything with pictures and be thankful and appreciative to our electrical inspectors. They are on our side helping us and always, always do everything to code.

I state again how important our electrical inspectors are be thankful that we have them. If they say we have to change something, do it and thank them for it. They have our back. I would like to personally thank all the electrical inspectors for what they do.

Well, I hope you enjoyed this article stay safe ! Robert Tschoke, vice president, safety chair

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## Are Pay-If-Paid Clauses Really Void In New York?

*(Continued from page 10B)*

In this factually noteworthy case, Entech has no lien rights because the work it performed was for home lead inspections and thus did not constitute “labor . . . for the improvement of real property” subject to a private mechanics’ lien (*see* Lien Law § 3). In essence, the work was performed as pre-construction services, in advance of a future and separate construction contract to repair damage to the home. Moreover, Entech had no public improvement lien rights as its public improvement lien was dismissed by the court on the grounds that this was not a public improvement project under the lien law.

The court held, “Where a subcontractor has no such Lien Law rights, there is no basis for finding that a pay-if-paid clause violates New York public policy and there is no impediment to enforcement of the pay-if-paid clause.”

It was undisputed that Dewberry was not paid by the City for the Entech invoices and accordingly, the appellate court affirmed the lower court’s dismissal of Entech’s claims based on the pay-if-paid provision in the subcontract. (Note in this matter, there were also questions of choice of law provisions under New York or Virginia law, but the court found the provision enforceable under either New York law or the Virginia law that was then in effect).

Contractors should be aware of the implications of the Entech case. Contractors often perform work where they are prohibited from filing a mechanic’s lien (e.g. federal projects, PANYNJ Projects, hybrid projects consisting of private work on public lands, etc.) and a pay-if-paid clause may well be considered enforceable, forcing the subcontractor or vendor to rely on payment from the owner to the contractor in order to be paid. Moreover, based upon Entech, it is conceivable that a contractor may even seek to enforce such a pay-if-paid clause in a contract where the subcontractor or vendor *actually had lien rights* but their lien rights expired since ostensibly the pay-if-paid clause would no longer implicate their lien rights.

Author bio:

[Michael Ganz](#) is a partner in the Woodbury, New York office of Kaufman Dolowich & Voluck LLP. He focuses his practice on Construction Law and has more than 20 years of experience in construction transactional matters and litigation. He can be reached at [michael.ganz@kdv.law](mailto:michael.ganz@kdv.law) or (516) 283-8761.



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