

New York Court Extends Notice of Automatic Renewal Statute to Billing Agreements

Both commercial businesses and professional practices alike frequently enter into agreements containing “evergreen” provisions, i.e. such agreements automatically renew unless the business or practice delivers a timely notice of non-renewal to the other party. More often than not, the business or practice owner forgets to calendar the expiration date of the agreement and an inadvertent renewal takes place.

Several relatively obscure provisions of the New York General Obligations Law prohibit the effectiveness of such evergreen provisions in New York unless the other party to the agreement reminds the business or practice in writing, within a period of 15 to 30 days prior to the date of expiration of the agreement, that the automatic renewal will take place shortly. These provisions of the GOL apply to real estate leases, equipment leases and a contract for “...service, maintenance or repair to or for any real or personal property.” Over the years, many business owners have gone to court to have the reference to a “service contract” interpreted more akin to a “services contract.” These attempts have sometimes been successful (real-time financial information services, telephone answering service, mobile MRI services, alarm system, real estate management, etc.) and other times not (consulting agreements, employee benefits plan administration, attorney retainer agreement, etc.).

A recent New York appellate court decision has extended the reach of the statute to apply to billing agreements for medical practices. The court determined that the billing and medical records of the practice constituted the “personal property” referenced in the statute, and that the services provided by the billing company qualified as a “service contract.”

Owners of professional practices of all kinds in New York should take notice of this development. Owners of commercial businesses should be mindful of these GOL provisions in general as well if they discover that they have unknowingly become subject to extended terms for contracts of these types which they did not desire.

For more information, please contact Joshua S. Levine, Esq.

Contact:

Joshua S. Levine, Esq.
jlevine@dmlawyers.com
914.948.1556, ext. 8003