Articles + Publications | February 27, 2026

Building on Promises: Under New York Ruling, Extended Warranties Go Further

WRITTEN BY

Daniel Towns | Kevin P. Wallace

INTRODUCTION

Latent construction defects can surface years after construction ends. Every defect is different, but they all raise the same question: who is responsible? This is a simple question with no simple answer, and warranty disputes can lead to huge losses for owners and contractors alike: owners are forced to pursue warranty claims and risk incurring costs of correction that should have been covered, while contractors bear the risk of "call back" repair work for which they may not be responsible. Both parties have multiple tools at their disposal to clarify their obligations and allocate responsibilities, but many (if not most) construction contracts fail to achieve the appropriate balancing of the risks each party should properly take on.

The following analysis focuses on a 2021 New York case, *HTRF Ventures, LLC v. Permasteelisa N. Am. Corp.*, 190 A.D.3d 603 (1st Dept 2021), which has had notable impacts on the negotiation of guarantees and warranties against defective work and materials. The article begins with the background of the case, then examines the *Permasteelisa* holding and its significance in light of the traditional warranty language used in the construction industry. *Permasteelisa* has implications for both owners and contractors in New York, which is a trendsetter for the construction industry, and contracting parties are already making changes to adjust to the new precedent. In other words, while directly affecting those in New York, construction professionals everywhere should watch closely.

THE *PERMASTEELISA* CASE

Permasteelisa arose out of an issue with defective window units and sealants in the curtainwall system at the Frank Gehry-designed Inter Active Corporation, or IAC Building, located at 555 West 18th Street in Manhattan, New York. In November 2016, HTRF Ventures, LLC (HTRF), the owner of the IAC Building, commenced a breach of contract action against Permasteelisa North America Corporation (Permasteelisa) for Permasteelisa's failure to remedy defects, alleging leakage arising from faulty sealants within the window units installed in the IAC Building's curtainwall by Permasteelisa.

The IAC Building[1]

Permasteelisa had been engaged by the construction manager pursuant to a subcontract that named HTRF as a third-party beneficiary to complete the curtainwall scope of work on the IAC Building, which was completed in 2007.[2] The dispute arose because Permasteelisa refused to repair or replace the window units and remedy the issue with the sealants, arguing that they were only bound by a five-year warranty period covering workmanship (and that its material suppliers were responsible for the longer warranty periods covering the materials). Here, the subcontract required Permasteelisa to remediate "faulty, defective or improper Work, materials or equipment" discovered within one year of the acceptance of the project "or for such longer period as may be provided in the Plans, Specifications including all Performance Criteria, General Conditions, Special Conditions or other Contract Documents." Importantly, the specifications required (i) a five-year warranty covering materials and workmanship, (ii) a 10-year warranty on seal failure of the double-glazed units, and (iii) a 20-year warranty for structural glazing and silicone weather seals. Permasteelisa provided a five-year warranty for materials and workmanship, as well as a 10-year warranty from the seal supplier and a 20-year warranty from the glazing supplier.

For its part, HTRF argued that Permasteelisa was bound not only by the five-year guarantee issued by Permasteelisa directly, but also by the separate, 10-year warranty against failure of the sealants in the window units that was contained in the relevant specifications. In support of its claim, HTRF pointed out that Permasteelisa's subcontract required it to guarantee its work for one year or "for such longer period as may be

provided in the Plans, Specifications, … or other Contract Documents." HTRF argued that the separate 10-year warranty constituted such a "longer period" provided in the specifications and that, therefore, Permasteelisa was bound to honor that 10-year period.

In opposition, Permasteelisa took the position that it had followed the contractual requirements to "submit" its own five-year warranty and "provide" the separate 10-year warranty from the window unit manufacturer, attacking the owner's reliance on the 10-year warranty as a "preposterous, tortured and intentional misreading."[3] Overruling these objections, the New York County Supreme Court (the trial court in Manhattan) held that the contract documents bound Permasteelisa to both the five-year and 10-year warranties and that "[u]nder the plain language of the relevant agreements, Permasteelisa's failure to honor and satisfy these warranties constituted a default by Permasteelisa."[4] The result was that Permasteelisa faced potentially millions of dollars in additional costs, as the rework involved removing the window units, cleaning the defective sealant, applying new sealant, and reconstructing the curtainwall.

In 2021, the Appellate Division, First Department (the intermediate appellate court covering Manhattan and the Bronx) affirmed the trial court in a ruling that has reshaped the impact of warranty provisions in New York construction contracts. The First Department adhered to well-recognized principles under New York law that a contract must be interpreted to give meaning to each and every part, and courts are to avoid interpretations rendering any term meaningless or without effect.[5] Importantly, the First Department held that Permasteelisa could not raise its assignments of supplier warranties to HTRF as a defense because "Permasteelisa … unmistakably agreed … to both a guarantee and a warranty, separate and apart from each other."[6] Thus, even if supplier warranties are provided to the owner, under *Permasteelisa*, any guarantee incorporating "such longer period as may be provided in the Plans, Specifications, or other Contract Documents" may cause the contractor to also be directly liable for any of the extended warranties contained in the construction documents.

In practical terms, the First Department held that if a contractor's guarantee says it applies for one year or any longer period referenced in the drawings, specifications, or other contract documents, then the contractor can be held responsible for those longer warranty periods even if the contractor expected to provide only a short-term guarantee paired with longer warranties from downstream parties. Consider the following hypothetical: A contractor signs a contract with a one?year guarantee on its work, "or for such longer period as may be provided in the contract documents." The roofing specification includes a 20?year warranty. Under *Permasteelisa*, the contractor can be held responsible for roof failures during the 20?year period, not just the first year.

WARRANTIES AND GUARANTEES

The dispute in *Permasteelisa* centers on language that appears frequently in standard construction contracts. To understand the case's broader impact, it is useful to consider how warranties and guarantees are usually addressed. Most forms include a set of two or three promises known variously as "warranties" and "guarantees." Typically, a "warranty" concerns the performance or durability of a product, piece of equipment, building materials, or construction work, and a "guarantee" concerns a contractor's obligation to perform "call back" work when defects are discovered.[7] Some states, such as California and Florida, provide implied warranties of workmanship for all construction work that arise in addition to any express warranties given by contractors.[8] In New York, the implied warranty of workmanship applies only to residential home builders and runs to the benefit of homeowners, meaning that construction defect claims by commercial real estate developers are subject to the same six-year

statute of limitations applicable to any other contract claim.[9] In the absence of strong statutory protections, then, commercial project owners often insist upon including express warranty provisions in New York contracts.

Regardless of which state laws apply, express warranty provisions are a core feature of commercial construction contracts throughout the industry. So-called “special” guarantees and “extended” product or materials warranties, on the other hand, are commonly found in the specifications pages within the construction documents.[10]

The drafting of warranty and guarantee provisions varies depending on the party holding the pen. One of the most common American Institute of Architects (AIA) construction agreements, for example, uses the following language:

> If within one year after the date of Substantial Completion of the work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9.1 [concerning partial occupancy or use], or by terms of an applicable special warranty required by the Contract Documents, any of the work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition.[11]

The above-referenced provisions incorporate both the contractor’s standard one-year guarantee period and any special warranty contained within the specifications. Although other standardized construction contracts deal with the issue differently, such as the more contractor-friendly ConsensusDocs,[12] most owner-protective warranty provisions contain the above language in one form or another.

On the opposite extreme, some contractors may insist on a complete transfer of warranty liability to subcontractors, pursuant to a provision such as the below:

> Contractor shall assign to Owner all warranties received by it from Subcontractors that are not otherwise issued in Owner’s name. Such assignment of warranties to Owner must also allow Owner to further assign such warranties. However, Owner shall not make any warranty claim against Contractor with respect to any portion of the Work supplied in whole or in part by any Subcontractor if and to the extent Contractor has previously assigned all warranties received by it from such Subcontractor to Owner.[13]

This contractor-friendly formulation has a few implications. First, the contractor’s responsibility to backstop subcontractor warranties ends once the warranties are assigned to the owner. Second, since the owner is in technical privity with the subcontractors with respect to post-assignment warranty claims, the owner is required to pursue warranty claims on its own. Owners, in turn, often demand that the contractor will “assist and coordinate” or “enforce on Owner’s behalf” as a way of binding the contractor to its subcontractors’ warranties without entitling the owner to a direct claim against the contractor based solely on a subcontractor’s breach. Third, and most importantly, this language forces owners to rely on the financial wherewithal of the subcontractors and not the contractor, which presents significantly heightened risk for project owners. The risk of subcontractor default or other neglect of warranty obligations shifts to the owner following the expiration of the contractor’s one-year guarantee period, resulting in exposures for latent defects that may not become apparent for years thereafter. If the responsible subcontractor, supplier, or vendor goes out of business or is otherwise unable or unwilling to honor its warranty, an owner may incur significant out-of-pocket expenses for remedying the defective work themselves.

In practice, the construction industry typically follows the second formula: most contractors provide a one-year call-back warranty and merely assist the owner with enforcing the terms of any extended warranties against the

subcontractors or vendors responsible for defective work. As noted above, however, many construction agreements contain the first formulation (such as AIA contracts and ConsensusDocs).

BUILDING ON THE *PERMASTEELISA* PRECEDENT

The principle set forth in *Permasteelisa* would eliminate the ambiguity between industry practices and contract drafting with respect to a contractor's warranty obligations. While this represents a new legal precedent, however, the rule established by *Permasteelisa* is not likely to lead to major changes in practice. Contractors will continue to push for standard one-year guarantees for "call back" work. Likewise, contractors will continue assigning subcontractor and supplier warranties to owners and seek to limit their obligations to assisting and coordinating the owner's enforcement rights after the contractor's guarantee expires. Owners will continue to accept this arrangement as long as warranty work gets done. But when the responsible party is unable or unwilling to honor the warranty, whether due to subcontractor default, bankruptcy, litigiousness, or all manner of disputes over the scope of responsibility, owners might wield the principles in *Permasteelisa* to push a contractor otherwise refusing to backstop the subcontractor's faulty work.

It must be noted, however, that *Permasteelisa* has not been tested on its merits – to date, no reported cases have referenced its holding on warranty language other than in a memorandum filed by one of the parties (ironically, in a case involving warranty claims against Permasteelisa subsidiary Benson).[14] Thus, much of the jurisprudence around warranty and guarantee language in New York construction contracts remains to be developed.

Some other questions remain untested as well. First and foremost, Permasteelisa was held liable under extended warranties as a subcontractor to the prime contractor on the IAC Building project. *Permasteelisa* has not been used as a basis to bind a general contractor or construction manager to warranties and guarantees provided by subcontractors, sub-subcontractors, or suppliers with multiple degrees of separation from the contractor. That prospect is complicated by the many variables involved in discovering, evaluating, and remediating construction defects. Thus, while *Permasteelisa* would likely bolster such a claim, whether it becomes a meaningful vehicle for large-scale call-backs against prime contractors remains to be seen. Moreover, the contract language in the prime agreement will ultimately govern the prime contractor's obligations to the owner.

In addition, *Permasteelisa* has not been extended to sureties who have provided performance bonds guaranteeing project completion. While at least one court has declined to extend *Permasteelisa* as such, holding that "the terms of the performance bond speak only to finishing the job in the event that [the contractor] failed to do so" and that "the ten year contractual warranty is not and has never been supported by [the surety's] performance bond," *see Kiva Const. & Eng'g, Inc. v. Int'l Fid. Ins. Co.* (W.D. La. 1990),[15] that case is not binding on New York courts.[16] Still, *Kiva Const. & Eng'g, Inc.* highlights an aspect of performance bonds that carries implications for *Permasteelisa*: standard performance bonds include contractual limitations periods, typically of two years after completion of the work. The question of whether this contractual limitations period would supersede an extended warranty period within the contract, which is guaranteed by that same performance bond, has no clear answer at this time.

Nonetheless, even if industry practices around warranty work have not undergone significant changes, *Permasteelisa* has important implications for construction counsel dealing with warranty provisions. First, *Permasteelisa* provides owners with an enforcement mechanism against contractors who have agreed to the

owner-protective warranty formulation and whose projects are not beyond the applicable extended or special warranty periods. In those circumstances, as demonstrated in *Permasteelisa*, long-term warranties will be deemed the responsibility of the contractor. While the *Permasteelisa* decision was specific to the First Department, which includes Manhattan and the Bronx, New York's other appellate divisions often follow the First Department, and are likely to follow suit. Thus, from the perspective of owners under contracts that incorporate extended warranties, *Permasteelisa* strengthens the ability to hold the contractor responsible for those longer obligations.

On the contractor's side, counsel is already negotiating warranty provisions more aggressively in the wake of *Permasteelisa*, pushing to align contract language to industry practices (handing off responsibility for warranty claims to owners after the one-year guarantee period). While attractive to contractors in the near term, this strategy carries risks in addition to the perceived benefits. While it may be true that contractors do not intend to personally guarantee 20-year warranties against roof leakage when they assign such warranty documents to project owners, the duty and risk of conducting due diligence on lower-tier subcontractors and suppliers are properly borne by the contractor and not the owner. Allowing strictly contractor-friendly warranty provisions shifts the burden of vetting the lower tiers to owners, who will need greater visibility into subcontractors' and suppliers' financial condition and business practices before they can comfortably rely on a long-term warranty not backed by the contractor. Since both situations are untenable, the solution will likely be somewhere in the middle. Ultimately, however, a good contractor will stand behind its work regardless of what the contract says.[17]

CONCLUSION

Permasteelisa promises not only to introduce changes but also to reinforce existing boundaries in the fast-moving New York construction sector. In order to keep deals moving, construction counsel for owners and contractors alike should understand its implications and be prepared for the additional clarifications likely to arise out of this new precedent. For both sides, the bottom line is that latent construction defects can sink a project, but adept counsel can avoid this pitfall by negotiating clear, fair, and meticulously drafted warranty and guarantee provisions.

---

[1] Photo: Wikimedia Commons 2009.

[2] As a third?party beneficiary, HTRF could enforce certain promises in the subcontract directly against Permasteelisa, even though it was not a signatory.

[3] *HTRF VENTURES, LLC*, Plaintiff, v. *PERMASTEELISA NORTH AMERICA CORPORATION*, Defendant., 2018 WL 8796964 (N.Y.Sup.).

[4] *HTRF Ventures, LLC v. Permasteelisa North America Corp.*, No. 655970/2016, 2019 WL 2929576, at *9 (N.Y. Sup. Ct. July 08, 2019).

[5] *HTRF Ventures, LLC v. Permasteelisa N. Am. Corp.*, 190 A.D.3d 603 (1st Dept 2021).

[6] *Id.*

[7] Richard S. Robinson, *Warranties in Construction Contracts: Contractor's Drafting Strategies*, Practical Law Real Estate 4-611-6846.

[8] California has a 10-year statute of limitations for latent deficiencies in construction accruing on substantial completion (*see* Cal. Civ. Proc. Code § 337.15), and Florida has a four-year statute for latent defects accruing upon discovery (*see* Fla. Stat. Ann. § 95.11(3)). However, Florida also has an outside date of seven years from substantial completion for any claims, regardless of when discovered. *Id.*

[9] N.Y. Gen. Bus. Law § 777-a(1) (Housing merchant implied warranty); N.Y. C.P.L.R. 213(2) (Actions on contract).

[10] As others have pointed out, construction contracts also contain order-of-precedence clauses (providing that, in the event of a conflict or inconsistency between or among the contract documents, the contractor is bound to the stricter or greater requirement) that could provide an alternate basis for bringing a *Permasteelisa*-type claim against a contractor whose contract documents include multiple guarantees and warranties. Richard S. Robinson, *Warranties in Construction Contracts: Contractor's Drafting Strategies*, Practical Law Practice Note 4-611-6846.

[11] *Menorah Campus, Inc. v. Frank L. Ciminelli Const. Co.*, 18 Misc. 3d 1135(A) (Sup. Ct. 2004), *aff'd*, 26 A.D.3d 904 (4th Dept 2006), *citing* AIA A201-1987 (General Conditions of the Contract for Construction) § 12.2.2.1 (emphasis removed). Note: this case was based on the 1987 AIA contract language, but no major updates have been made to that provision in modern AIA contracts.

[12] Steven G.M. Stein, Ronald O. Wietecha, "A Comparison of Consensusdocs to the Aia Form Construction Contract Agreements," *Constr. Law.*, Winter 2009, at 11, 14.

[13] "Common Use of *Subcontractor Warranties* Clause in Contracts." *Law Insider*, 2025. https://www.lawinsider.com/clause/subcontractor-warranties/_9 *Menorah Campus, Inc. v. Frank L. Ciminelli Const. Co.*, 18 Misc. 3d 1135(A) (Sup. Ct. 2004), *aff'd*, 26 A.D.3d 904 (4th Dept 2006), *citing* AIA A201-1987 (General Conditions of the Contract for Construction) § 12.2.2.1 (emphasis removed).

[14] *THE BOARD OF MANAGERS OF 252 CONDOMINIUM, on behalf of the Unit Owners, Plaintiff, v. WORLD-WIDE HOLDINGS CORP., et al*, 2025 WL 1998097 (N.Y.Sup.) ("Benson's Trade Contract includes a guarantee of its work for periods of between 10 and 20 years following the receipt of a temporary certificate of occupancy *and* the completion of all major punch list items. This guarantee is in addition to other warranties Benson has provided. Benson does not dispute, nor could it, that these guarantees remain in effect today and have not expired–indeed, the residential owners did not begin to occupy the Condominium and work on their punch lists did not even start until 2017 and continued for years afterwards. Accordingly, Benson's timeliness arguments fail.") (internal citations removed).

[15] *Kiva Const. & Eng'g, Inc. v. Int'l Fid. Ins. Co.*, 749 F. Supp. 753, 756 (W.D. La. 1990), *aff'd sub nom. Kiva Const. v. Int'l Fid. Ins.*, 961 F.2d 213 (5th Cir. 1992).

[16] Importantly, some surety bonds explicitly include the contractor's warranty obligations.

[17] Jeremy Baker, *Beware the "One Year" Warranty: Contractor Callback Periods v. Warranties of Quality Work*. Baker Law: Design and Construction Counsel. https://designbuildlaw.com/beware-the-one-year-warranty-contractor-callback-periods-v-warranties-of-quality-work/

RELATED INDUSTRIES + PRACTICES

- Construction