When “Liquidated Damages” Are Not

“As a general rule, courts do not save sophisticated parties from bad deals; instead, courts enforce both good deals and bad deals between sophisticated parties according to the express terms set forth in a written contract,” writes Glenn D. West in ***Global Private Equity Watch’s Insights***.

“New York is particularly prone to upholding these freedom of contract principles because freedom of contract avoids ‘judicial upending of the balance struck at the conclusion of the parties’ negotiations,’ as well as ‘promotes certainty and predictability and respects the autonomy of commercial parties in ordering their own business arrangements.'[2] But most general rules have their exceptions. And a recent decision by New York’s highest court, The Trustees of Columbia University v. D’Agostino Supermarkets, Inc., 2020 WL 6875988 (N.Y. Nov. 24, 2020), illustrates the application of one of those exceptions to the otherwise strong policy favoring freedom of contract—unenforceable penalties for breach of contract.”

Read the article.