

STATEMENT FROM STUART S. ZISHOLTZ

We all know that there is a distinction between a public improvement and a private improvement lien. A public improvement lien can be filed within 30 days after completion and acceptance of the property, and a private improvement must be filed within eight months after the last item of labor and material was supplied by the lienor.

A private improvement project is a building that goes up for private use, and a public improvement is a road, a school, a firehouse, a police station, a bridge, etc.

Then we get the hybrid. That is when the Governmental Agency owns the land and a private improvement is built on the land. Mitchell Field is owned by the County of Nassau, and technically none of the structures on Mitchell Field are lienable.

A number of years ago, the Lien Law was amended to reflect this hybrid law to provide that where the Industrial Development Agency (IDA) becomes the owner of a piece of property and does the financing for a private developer, that development is treated as a private improvement subject to a mechanic's lien.

In Times Square, the loophole was clearly evident in a recent case. The underlying land was owned by the City of New York, which in turn brought in a public development corporation to clean up the area, which in turn leased some of the property to Loew's theater. A materialman filed a Mechanic's Lien and the Court ultimately vacated the lien because the City owned the property. There is no possible liability on the part of the City of New York. The loophole is that the job is not being financed by the IDA, and when Legislature amended the Lien Law they referred to the IDA and neglected to include all public benefit corporations. The Judge who struck the Mechanic's Lien was so incensed, that he wrote in his decision that it defies common sense and logic and called upon

the legislature to plug this loophole.

The bottom line is that if anyone ever finds themselves in this type of situation, you must determine if there is a payment bond, and you must get direct contracts with the developer. You cannot rely upon a Mechanic's Lien under those circumstances.

Never let your lien time run out.

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me or the Association.