

STATEMENT FROM STUART S. ZISHOLTZ

Recently, we have seen an influx of claims by subcontractors where the General Contractor received funds and used those funds for other purposes. These claims fall under the trust provisions of the New York State Lien Law.

The New York State Lien Law is unique in that it declares funds received by an owner from a financial institution as trust funds for the benefit of the General Contractor and subcontractor. When those funds are paid to the General Contractor, they become trust funds for the benefit of the subcontractor.

The harsh remedy of diverting trust funds is specifically addressed in the New York State Lien Law. The result of a diversion of trust funds may constitute personal liability of the officers, directors and shareholders of the corporation. The New York State Lien Law also declares such diversion as a larceny with criminal implications associated with it.

In certain circumstances, the District Attorney will prosecute a diversion of trust funds. In a civil matter, the lawsuit must be brought as a class action with the individual officers, directors and shareholders named as defendants.

A diversion occurs when funds are specifically paid to an owner or General Contractor and utilized for purposes other than paying the contractors, subcontractors and suppliers on the specific project. If the funds are used for other projects or for other reasons, it may result in a claim for diversion of trust funds.

The purpose of this article is to clarify the mistaken belief that a General Contractor can close up shop and walk away without any repercussions. A debt can continue to haunt a General Contractor and an owner who deliberately avoids paying a debt and diverts the funds to the detriment of hard-working subcontractors and suppliers.

Never let your lien time run out!

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