

STATEMENT FROM STUART S. ZISHOLTZ

When an owner or a General Contractor refuses to pay all of the trades on the job, the trades should unite, and “stand” together. Something is radically wrong with the argument that every trade supposedly did a horrible job on the project. By uniting, it puts a recalcitrant owner or General Contractor into a very difficult position.

A liquidating agreement, however, attempts to absorb a subcontractor into the General Contractor’s claim against the owner. The General Contractor usually approaches the subcontractor and badmouths the owner claiming that the owner did not pay him and, therefore, he cannot pay the subcontractor. Aside from the fact that pay when paid clauses are illegal and unenforceable in New York, the scam here is that the General Contractor is trying to absorb and avoid paying the subcontractor.

If the General Contractor owes the subcontractor money, the General Contractor has to pay it regardless of whether or not he got paid from the owner. The owner might have defenses against the General Contractor completely unrelated to the subcontractor’s work. To enter into a liquidated agreement, the subcontractor joins forces with the General Contractor and is bound by whatever happens to the claim between the General Contractor and the owner. If the General Contractor exaggerates his bill by 100% and the hapless subcontractor joins with him, the General Contractor can turn around and say that the big bad owner only paid him 50% and, therefore, he can only pay the subcontractor 50%.

There are many other reasons why the liquidated agreement is bad news. The General Contractor will try to get the subcontractor to pay a portion of the legal expenses, make the subcontractor responsible for the General Contractor’s default, and argue over the distribution of any recovery.

Never let your lien time run out!

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