

## **STATEMENT FROM STUART S. ZISHOLTZ**

Mechanic's liens are an essential tool for every contractor and subcontractor in the construction industry. When done properly and timely, the likelihood of success in collecting the money due and owing is great.

A mechanic's lien is prepared by obtaining information from the contractor and subcontractor. If the information is inaccurate, the consequences could be severe. The results of an inaccurate or wrongfully filed mechanic's lien could be a dismissal of the lien or, worse, a claim for an exaggerated lien which could result in monetary damages against the lienor.

Recently, a case was decided by the Court which addressed an inaccurate public improvement mechanic's lien. In that case, a contractor was terminated on a public project and the subcontractors filed mechanic's liens and instituted foreclosure actions.

A Motion for Summary Judgment was served alleging that the mechanic's liens filed were defective because there were inconsistencies as to the final date the work was performed on the project. The mechanic's liens identified the final date as being approximately two weeks earlier than the dates identified by other project documents. The motion also sought dismissal based upon a claim that the mechanic's liens sought a lesser amount than what was alleged for unpaid labor, materials and services that were alleged in the complaint.

The Court ruled that if a lienor fails to substantially comply with the requirements of the Lien Law, its lien may be summarily discharged. The Court continued by stating that where a lienor fails to accurately include at least two material elements in a lien, it cannot be deemed to have achieved substantial compliance with the Lien Law. The Court denied the motion by stating that the alleged discrepancies of information provided in the liens were not material.

While this decision seems to be difficult to understand since the Lien Law requires strict compliance, it does establish that a lienor must be careful when filing a mechanic's lien.

A public improvement mechanic's lien must include the name and residence of the lienor; the name of the contractor or subcontractor for whom the labor was performed or materials furnished; the amount claimed to be due or to become due; the date when due; a description of the premises improvement; the times of labor performed and materials furnished; materials actually manufactured but not delivered; and the general description of the contract. It is vital that this information be accurate and complete or you risk that the lien will be dismissed or, worse, that damages will be imposed against you.

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.