

## STATEMENT FROM STUART S. ZISHOLTZ

I have continuously written and lectured on the importance of reviewing and understanding your contract documents. Many times it is the difference between collecting and not collecting. The following scenario is a perfect example of a subcontractor not reviewing the terms of the agreement before commencing with the work.

In a recent case, a subcontractor was issued a term sheet. The term sheet required the subcontractor to sign the subcontract, permitted the general contractor time to execute the subcontract, and excluded the general contractor from being obligated under the contract or have any liability for work performed or anticipated profits if a fully-executed contract was not returned to the subcontractor.

A fully-executed contract was not forwarded to the subcontractor. The subcontractor claimed that the general contractor verbally agreed upon all of the material terms of the subcontract, including the price. The subcontractor argued that it was awarded the subcontract and directed to proceed with the work.

After performing work on the project, the general contractor advised the subcontractor that it was not awarded the subcontract and requested the subcontractor leave the project.

An action was instituted by the subcontractor against the general contractor to recover the balance due as well as anticipated profits. The general contractor argued that it was entitled to terminate the subcontractor because it had clearly stated its' intention to be become bound under the agreement only after a signed

written subcontract was delivered to the subcontractor. Since the term sheet was approved and accepted by both parties, the agreement did not come into effect until such time as a fully executed subcontract agreement was delivered to the subcontractor.

The lower court dismissed the complaint and the Appellate Division affirmed.

The Appellate Division reasoned that the general contractor's conduct after the issuance of the term sheet did not waive or modify the terms of the term sheet, nor did it act as an implied acceptance of the underlying unexecuted subcontract. The Appellate Division found that the term sheet was a pre-contractual notice to the subcontractor and the subcontractor was bound by its terms.

Had the subcontractor reviewed and understood the various terms and conditions of the term sheet and the contract, it would have never commenced with work on the project and been in this situation.

Never let your lien time run out!

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