

STATEMENT FROM STUART S. ZISHOLTZ

When you are involved in any type of lawsuit there is no guarantee that you will be able to establish your claim. This applies whether you are suing somebody or somebody is suing you. There is never a guarantee about the outcome of any piece of litigation. Every judge will tell you that it is better to settle and finalize your dispute than risk a determination from a court or jury. How a court or jury views the witnesses, evidence, testimony, etc. cannot be predicted.

For example, if you are suing someone for \$100,000, your records may only establish \$85,000 or less. You may even lose the case.

If you are being sued, you may have many defenses. You may claim that you do not owe \$100,000 for multiple different reasons. You may win all of it, you may lose all of it or you may be charged with anything between \$0 and \$100,000.

Similarly, if you file a mechanic's lien for \$100,000, the same principles apply. You may get all of it, you may get none of it, or you may get something in between.

Simply getting something in between or none of it does not result in the mechanic's lien being declared exaggerated. An exaggeration means that you willfully and deliberately decided to hurt the owner or the general contractor.

Recently, there was a situation where a contractor was not paid a balance of approximately \$52,000. The contractor knew that the owner was trying to refinance or sell the property and, in an effort, to kill the deal, he filed a mechanic's lien for \$100,000. He added approximately \$50,000 to his claim for no reason but to injure the owner. His theory was that the owner would negotiate with him and at the end of the day, he would be paid in full.

This is not the same situation where a contractor files a lien for \$100,000 based upon previously billings, etc., but cannot establish the claim at trial.

Again, exaggeration and failure of proof are not the same. You have every right to assert a claim for every penny you believe you are entitled to receive.

Many contracts provide that there are to be no change orders unless they are in writing. However, many field conditions prevent the contractor from first obtaining written change orders before the work is performed. A lien which encompasses those change orders would not constitute an exaggerated lien.

Under the Lien Law, if you file an exaggerated lien and get caught doing it, you become responsible not only for the difference between the amount of your lien and the exaggerated amount, but you also become responsible for the owner's legal fees.

The bottom line is be legitimate. If you do a days work, you are entitled to a days pay. Do not be afraid to file a claim for the balance you believe is due and owing. Do not, however, engage in underhanded tricks or underhanded tactics. The Lien Law gives a subcontractor a very strong and powerful weapon. Do not abuse it or the ramifications could be severe.

Never let your lien time run out!

For a free copy of our updated pamphlet pertaining to Mechanic's Liens and Payment Bond Claims, feel free to contact me.

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