

STATEMENT FROM STUART S. ZISHOLTZ

Many contracts, including the AIA contract, address the issue of termination for cause. As a subcontractor one of the rights available to you if your requisitions are not paid is to terminate the contract and walk off the project.

The contract usually requires specific notice to the general contractor in the event you refuse to continue to perform work at the project for non payment. Many times, you are required to serve a Seven (7) Day Notice on the general contractor for non payment. If payment is not received after the seven day period then you have the right to terminate the contract and walk off the project.

In a recent decision, a subcontractor who claimed to be owed money for work performed decided to leave the project and pursue a claim. No proper notice was served upon the general contractor.

In response to the lawsuit, the general contractor interposed a counterclaim alleging costs associated with completing the subcontractor's work.

The Court found that the provision in the contract to stop work after serving a Seven (7) Day Written Notice was enforceable. Since there was no evidence that the subcontractor served the proper notice, the Court considered the actions of the subcontractor as abandoning the project and dismissed the complaint. As a result, any costs incurred by the general contractor to complete the work of the subcontractor was valid. Ultimately, the general contractor was successful in its counterclaim against the subcontractor.

The key aspect to this decision is that the subcontractor failed to abide by the terms and conditions of its contract. Had it properly served the notice and then terminated the contract, it may very well have been successful in its claim against the general contractor. Instead, the subcontractor ignored the provisions of the contract and the Court deemed the subcontractor's actions as an abandonment of the project. Rather than collecting an outstanding receivable, the subcontractor was held responsible for the general contractor's excess completion costs.

Never let your lien time run out!!

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