STATEMENT BY STUART S. ZISHOLTZ

Recently, I wrote about the terms and conditions of a liquidating agreement.

A liquidating agreement is used to allow a general contractor to pursue a claim against an owner and avoid the costs associated with defending a claim by a subcontractor. Essentially, the subcontractor must wait for the outcome of the litigation between the general contractor and the owner.

Recently, a decision was rendered by the court where a liquidating agreement existed, but the general contractor failed to timely institute an action against the owner. By the time the general contractor's action was dismissed, the subcontractor's claim against the general contractor was barred by the Statute of Limitations.

The Court found that the subcontractor had an obligation to pursue a claim against the general contractor within the six year Statute of Limitations. Since it failed to do so, even though it entered into a liquidating agreement, it cannot collect from the general contractor for breach of contract.

The one claim that the Court allowed to remain was a cause of action for an alleged breach by the general contractor in acting in good faith and fair dealing in pursuing the recovery against the owner. How that claim is addressed in the litigation, remains to be seen.

The lesson to be learned here is that a subcontractor or supplier should not sit back and wait for the general contractor to do all of the work. You need to be proactive and aware of the actions and claims asserted by the general contractor when you enter into a liquidating agreement. Failure to follow up or confirm the actions taken by the general contractor could be detrimental to your claim.

NEVER LET YOUR LIEN TIME RUN OUT!!!

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