

STATEMENT FROM STUART S. ZISHOLTZ, ESQ.

I have advised clients over the years to be careful when performing work for a tenant. In the event the tenant fails to remit payment and vacates the property, it may be extremely difficult to hold the landlord responsible.

The Lien Law allows a contractor to file a Mechanic's Lien after it performs work and furnishes materials. This law applies even when a landlord/tenant relationship exists. However, since the work is being done for the benefit of the tenant, the question arises as to whether the contractor can hold the Landlord responsible if the tenant never opens up and fails to pay.

In a recent Court of Appeals decision, the Court held a landlord responsible for the work performed by a subcontractor and permitted the Mechanic's Lien to remain on the property because the Court found actual consent from the landlord. The consent consisted of the Lease Agreement between the tenant and the Landlord which authorized the work to be performed and effectuated the purpose of the Lease, i.e., the opening of the store and the hours of operation. In addition, the Landlord retained a close supervision over the work and authorized some of the work by reviewing, commenting and revising the design drawings.

As I mentioned in the past, the more involved a Landlord is in the construction of the tenant's space, the more likely it can be held liable under the Lien Law. However, if the Landlord does not partake in the construction or simply approves the drawings to confirm the work meets the Building Code, then the lien will fail and your claim will be reduced to a breach of contract claim against a defunct tenant.

It is imperative, therefore, you understand the roles of each party to the Project.

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 and the Association.