

## **STATEMENT BY STUART S. ZISHOLTZ**

There is no question that the law is well settled and established that the only time a subcontractor's lien is valid is if there is a balance running from the owner to the General Contractor.

If you have new construction, you may have a building loan and the proceeds of that loan may be split up into various subdivisions. One part is an acquisition price, another is hard core construction, another is soft costs, etc.

What the subcontractor has to watch out for is the shifting of these figures. Acquisition costs might be \$50,000,000, when in fact, it really should be \$20,000,000. The owner uses the \$50,000,000 for his acquisition costs and puts \$40,000,000 back into the building as part of the construction costs. He then turns around and claims he put \$40,000,000 of his own money into the construction. He will also claim that there is no more money for the construction and, therefore, there is no balance running from the owner to the General Contractor. As a result, no lien can attach to the property.

Do not accept any scenario without a thorough investigation. You need to look at the original budgets, estimates, line items, etc. to find out what actually went into each of the subdivisions of the building loan. You need to determine if there was a shifting of the prices and a shifting of the allocations. If so, the lien may be valid and enforceable. Further, the bank's secured loan may lose priority because of these manipulations. If the bank loses its priority, the liens would be in a first position ahead of the bank. Do not run away because the claim is made that all funds under the construction loan were paid out.

While these scenarios do not occur daily, it is highly recommended that an investigation be conducted to determine if the lien is valid.

NEVER LET YOUR LIEN TIME RUN OUT!!!

For a free copy of a pamphlet pertaining to Mechanic's Liens or payment bond claims,  
please contact me.

**ZISHOLTZ & ZISHOLTZ, LLP**  
200 Garden City Plaza – Suite 408  
Garden City, New York 11530  
(516) 741-2200  
[stu@zzllp.com](mailto:stu@zzllp.com)