

STATEMENT BY STUART S. ZISHOLTZ

Many times when a Mechanic's Lien is filed by a subcontractor or supplier, the lienor receives a telephone call directly from the owner seeking to resolve the lien and pay a portion of the amount due.

In these situations, a Satisfaction of Lien is prepared and releases are exchanged. The question becomes whether the lienor can pursue a claim against the general contractor for the difference remaining outstanding.

The releases executed at the time of payment should specifically carve out language that the release is not intended to include the general contractor. Any ambiguity in the releases could be construed against the lienor and result in a favorable ruling for the general contractor.

In a similar situation, but with different results, if the general contractor pays a portion of the claim and obtains a Satisfaction of Lien and a general release, the subcontractor cannot pursue a claim directly against the owner. The lienor does not have a direct contract with the owner and loses his claim against the owner once the Satisfaction of Lien is filed. Without a Mechanic's Lien, the owner is absolved from any future liability to the subcontractor.

It is essential, therefore, that you review the paperwork and understand the ramifications associated with providing the owner or a general contractor with a Satisfaction of Lien and a general release. You may be losing your ability to collect additional funds that are legitimately due you.

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 or the Association.