

STATEMENT FROM STUART S. ZISHOLTZ

In spite of many previous statements, lectures and articles, there seems to be a dearth in investigation of the parties with whom a contractor does business.

It is easy to find out who the owner is on a particular project. That comes from a title search. It is also easy to know who your contract is with - that comes from your written agreement or your purchase order.

It is between you and the owner that difficulties develop. There is a statutory requirement in the Lien Law which mandates that a lienor name the General Contractor in its Mechanic's Lien. Failure to do so could render the lien void. It is therefore vital that you determine who the General Contractor is on the project.

Recently, we were representing a contractor who had a dispute with its subcontractor. The subcontractor filed a mechanic's lien but failed to name and serve all of the necessary parties as required under the Lien Law. As a result, the lien was vacated.

In addition, you might find yourself too far removed from the owner to file a lien if you are dealing with a General Contractor. For example, you might be a third-tier subcontractor and cannot file a lien. However, if one of the parties between you and the owner is a Construction Manager and an agent for the owner, then you have eliminated one tier and you are that much higher on the totem pole.

In doing your due diligence, therefore, I strongly suggest, in addition to all of the other things I have suggested in the past, such as finding out if the job is bonded, who the General Contractor is, etc., that you find out if the party involved is a Construction Manager or a General Contractor. The distinction could be the difference between collecting and not collecting.

Never let your lien time run out!

For a free copy of our updated pamphlet pertaining to Mechanic's Liens and Payment
Bond Claims, feel free to contact me.

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