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Willful Exaggeration of a Mechanic's Lien - A Cautionary Tale? by Michael D. Ganz, Esq., The Sounder, 2-2023

You are a mechanical contractor who has performed work for a commercial owner. The owner repeatedly promises to pay you for your work for several months and you continue to perform work. The clever owner occasionally makes a small payment, just enough to keep you working, but your unpaid balance keeps on growing. What do you do? Of course, each situation is unique. You may decide to allow the owner some wiggle room, especially if the owner has been a good client in the past. On the other hand, your instincts and experience may be leading you towards putting immediate pressure on the owner, perhaps in the form of a mechanic's lien on the owner's property.

First things first — the time limit to file a mechanic's lien on a commercial property is eight (8) months from the date of the last work performed, or last material furnished. Note for single family residences, the time limit is only four (4) months — so time is ticking away.

You now decide to file a mechanic's lien against the owner for the work — using your last unpaid requisition as a guide, you determine that you are owed $45,567.89. However, you are angry that the owner has repeatedly lied to you with promises of payment, so you decide to add an "aggravation factor" and just lien the owner's property for an even $100,000.00. You (hopefully) know what you did is wrong, but you are feeling the inflated lien will put more pressure on the owner to pay you. Unfortunately, this situation happens too often, and the lienor may truly believe his or her course of conduct was fine, since the owner failed to make promised payments. This lienor has potentially committed a willful exaggeration of lien, under New York Lien Law Section 39, 39-a, with dire consequences.

However, before we get to the dire consequences of a willful exaggeration of lien, the law is that the lien must be willfully exaggerated, and not just an "honest mistake". Consequently, the bar is quite high for the owner to prove that you willfully exaggerated. To demonstrate that you willfully exaggerated your lien, the owner will most likely serve a Demand for an Itemized Statement of Lien in which you, as the lienor, must set forth the calculation and components of your lien — under oath. For my example, I purposefully used a round number of $100,000 as the lien amount which often (but not always) indicates some impropriety.

In any event, the owner still refuses to pay you and you hire an attorney to file a lawsuit for the owner's breach of contract and to enforce your lien with a lien foreclosure cause of action. The owner now hires an attorney to file an answer to your lawsuit with a counterclaim for your willful exaggeration of lien.

As stated above, under New York law, the owner has a right to demand an accounting (lien statement) from the contractor setting forth the items comprising the lien. If the owner can prove (not always easy) that the contractor willfully exaggerated the lien because the contractor knew of the improper charges, the owner is entitled to its own damages. The damages may include voiding the lien in its entirety, the owner obtaining a judgment for the difference from the improper and proper lien amount (here, $100,000-$45,567.89 or $54,432.11), the owner's attorney's fees and if the mechanic's lien was "bonded off', the cost of the lien discharge bond. Under New York State law, the issue of a willfully exaggerated lien must be decided at time of trial —although there have been very limited exceptions.

In a very recent case, Adria Infrastructure, LLC v. Henick-Lane, Inc., 207 A.D.3d 604 (2^ Dep't. 2022), the issue of a willful exaggeration of a lien had an interesting twist. In this matter, a subcontractor filed various liens against the mechanical contractor and thereafter, brought a lien foreclosure action. The mechanical contractor filed an answer including a counterclaim that the subcontractor willfully exaggerated its liens. The subcontractor, in an effort to escape liability for its willfully exaggerated liens, discharged the liens and made a motion to amend its lawsuit to remove the lien foreclosure action. Interestingly, in order to preserve its counterclaim for willful exaggeration of lien, the mechanical contractor itself made a motion to reinstate the willful exaggerated lien and oppose the subcontractor's motion to amend its lawsuit to remove the lien foreclosure action. The appellate Court affirmed the lower court's decision and reinstated the subcontractor's lien and preserved the lien foreclosure action so that the mechanical contractor could seek to enforce its counterclaim for willful exaggeration of lien.

This decision is important — and in the author's opinion — justified to thwart unscrupulous lienors from filing willfully exaggerated liens and seeking to enforce those liens in litigation. A lienor must be prohibited from seeking to avoid the consequences at the 11th hour by unilaterally attempting to discharge its lien and withdraw its attendant lien foreclosure action. Justice prevailed!

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