

When a Rare Willful Exaggeration Find Allows a Significant Damages Award

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In a recent case in New York State Supreme Court, Onondaga County, Hancock Estabrook, LLP attorneys Daniel Berman and Thomas Cambier successfully defended a local general contractor sued by a supplier on a construction project, receiving a very rare verdict of willful exaggeration. The supplier had sued the general contractor for failing to pay for materials under a written purchase order and had filed a mechanic's lien. The court found that since the mechanic's lien filed by the supplier was significantly more than what was left to be paid by the contractor under the purchase order, the exaggeration was willful, dismissing the supplier's claim, and awarding money damages and attorney's fees to the general contractor. This finding of "willful exaggeration" in the context of a mechanic's lien is both rare and significant.

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In New York, as in most states, a mechanic's lien is a creature of statute. The statute sets out how, when, by whom and against whom the lien may be filed. The statute also provides that the amount of the lien that is filed cannot be greater than the amount that is owed to the filing party. Sometimes, as in the case discussed here, a lien is filed that is greater than the amount owed. Where there has been an error in calculation, or inaccuracy as a result of an honest mistake, the lien will still be valid. However, as the court found here, if the amount of the lien has been willfully exaggerated, the lien will be declared void and no recovery will be allowed. Moreover, the party that filed the lien will be barred from filing a new one for the correct amount.

Not only does the willful exaggeration of a mechanic's lien prevent the filing party from making any recovery for his work or materials, it may end up actually costing him more. A property owner or contractor against which a lien has been filed that is determined by a court to be willfully exaggerated may recover not only its attorney's fees, but also: (1) the

premium it had to pay for a surety bond, or interest on any monies deposited with the court for the purpose of providing security; and (2) the amount by which the lien was exaggerated.

Willful exaggeration is not limited to circumstances where the lienor merely inflates the amount claimed as was the case in **Abra Construction Corp., v 112 Duane Assoc., LLC**. In that case, willful exaggeration was found where a lien was filed for seven times the value of the work performed. It can also apply to situations where a lien was filed without the contract having been fully performed. For example, in **New Day Builders, Inc. v SJC Realty**, an appellate court upheld a finding that a lien had been willfully exaggerated where the evidence established that "due to the aggregate of the defects and the incompleteness of performance, [the party filing the lien] had not substantially performed" the contract.

The important thing to remember is that there is a distinction between a deliberate overinflation of a lien and a lien that is merely misstated. A party filing a lien should take care to make a claim only for the amount that is actually owed. By the same token, a party against whom a lien has been filed should examine the lien carefully and, if it has been grossly overinflated, consult a lawyer about pursuing a claim for damages based on willful exaggeration.

In the case defended by Berman and Cambier, in addition to awarding damages to the general contractor in the amount by which the lien was exaggerated, and attorney's fees which will be determined at a post-trial hearing, the court also awarded the cost of "bonding off" the lien by paying for a surety bond as security.

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