

BUSINESS

07.29.08



Teterboro flight museum has high hopes for the future of its programs and exhibits.

2

Another insurance pay-a-wago

DOW

239.61

Close: 11,131.08

S&P 500

23.39

Close: 1,234.37

46.

ASK A LAWYER

Contractor's lien waiver unenforceable

Q. I am a subcontractor on an industrial construction project in the Meadowlands and completed my work more than a month ago, but I'm still owed more than \$100,000 from the general contractor, who refuses to pay me. I want to file a construction lien on the project in the amount I am owed, but the general contractor made me sign a form before I started work on the project that says I waived my right to file a lien. Can I still file a lien?

Yes, you can. As part of New Jersey's Construction Lien Law, the Legislature, recognizing the inequality of bargaining power between those at the top of the contracting chain and those below them, determined that a waiver of construction lien rights is against public policy and that, therefore, any purported waiver of lien rights is void and unenforceable.

A lien waiver is enforceable, however, to the extent you actually received payment, which makes sense since you cannot and would not be filing a lien including amounts already paid to you anyway.

Often an owner will require that its general contractor provide written lien waivers from all of the general contractors' subcontractors and suppliers before the owner will issue payment to the general contractor. Those lien waivers, however, will be unenforceable to the extent the subcontractor or supplier has not actually been paid.

Despite its potential unenforceability, a party signing a lien waiver must still carefully review the statements contained in the lien waiver. If the statements made in such a form are false, they could expose the party signing the form to a fraud claim, especially if the form was signed under oath.

As always, if you are concerned about retaining your lien rights on a construction project in the face of a "lien waiver" form, it is best to consult with legal counsel.

Adam Sklar is an attorney in the construction services and litigation departments of Cole, Schotz, Meisel, Forman & Leonard PA, the largest law firm in Bergen County. He can be reached at asklar@coleschotz.com, or 201-525-6234. This is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.

Do you have a business question for a lawyer? Send it to BusinessNews@northjersey.com.