

INTERROGATORIES

Questions from members of the Bar on any subject are most welcome and should be addressed to "Interrogatories," c/o John L. McCarthy, 130 Orinoco Drive, Brightwaters, N. Y. 11718 or Milton Beech, 2 Lakeview Ave., Lynbrook, N. Y. 11563.

MECHANICS' LIENS — PUBLIC

Prepared by Guest Author, BRUCE J. BERGMAN*

1. Q. Concerning a *public* improvement, who can file a mechanics' lien?
 - A. This category is somewhat narrower than that relating to private projects, and includes a person performing labor for or furnishing materials to a contractor or his subcontractor for the construction (or demolition) of a public improvement under a contract by the contractor with the state or a public corporation. (Lien Law § 5)
2. Q. How does one know whether he is dealing with the "state" or a "public corporation?"
 - A. Other than the obvious examples which do not require a legal interpretation, whether or not there is in actuality a public improvement involved can be a difficult question. There are scores of public benefit corporations and various public entities scattered throughout the state. As to some of them, there has been litigation dispositive of the question. For others there has been no litigation. Some "quasi public entities", for want of a better name, are arms of the state for certain purposes but not for others, and they take whatever position is most advantageous to the particular suit. When the public or private nature of a project is in question, filing of the wrong lien (there are different recitations for public and private liens) in the wrong place (the filing requirements are different) could be fatal to the prospective lienor. [*Application of Edgerton Estates, Inc.*, 78 Misc. 2d 961, 359 N.Y.S. 2d 88 (1974)]. Where there is doubt, clearly each contract must be researched.
3. Q. What is the effect of filing a lien for a public improvement?
 - A. Unlike the private situation, the public improvement lien attaches to the contract sums due or to become due to the contractor. The lien does not in any manner encumber real property. The net effect is that the public entity will make no further payments to the contractor when some subcontractor or materialman (or someone lower down entitled to file) "liens" the job.
4. Q. Is there anything the contractor can do to cause payments to again be made to him after the lien is filed?
 - A. Yes. In addition to the obvious remedies, the same as those available in the private lien situation, the contractor may post a bond to satisfy a potential judgment in a lien foreclosure action.

* Associated with Rivkin, Leff & Sherman, Garden City; member, Editorial Board.

5. Q. When is a lien for a public improvement to be filed?
- A. It may be filed at any time before the construction of the public improvement is completed and accepted by the public entity, but it must be within 30 days after the completion *and* acceptance. When dealing with the various public entities, the problem of when a job is "accepted" is very difficult to determine because of the varying acts and regulations which give rise to an "acceptance."
6. Q. Where is a lien for a public improvement to be filed?
- A. Unlike the private improvement situation, a public improvement must be filed in *two* places. It is to be filed with the head of the department or bureau in charge of the construction of the particular improvement *and* with the Comptroller of the State or with the financial officer of the particular municipal corporation or other person charged with the custody and disbursements of the public entity applicable to the contract for which a claim is made. (Lien Law § 12).
- Again we come to the problem area of defining the character of the various people with whom the notice of lien is to be filed. Accordingly, when there is some question as to whether the Treasurer or Comptroller or Auditor is a proper person, the answer is to serve them all and be safe.
7. Q. What is the duration of a public improvement lien?
- A. Pursuant to Lien Law § 18, it shall not continue for more than *six* months after filing, *unless* an action to foreclose is commenced within that period *and* a lis pendens is filed with the appropriate fiscal officer with whom the lien itself was filed. As with the private lien, extensions of one year can be obtained from the court.

Classified Advertisements

As a service to our members, THE NASSAU LAWYER will publish classified advertisements of not more than 50 words for only \$10 per issue.

The editors reserve the right to modify or reject any ad.

Your ad copy and \$10 check must be received no later than the 10th of the month preceding publication.

Office Space

Office Space for rent, 1,475 square feet. Suite of four private offices, law library, conference room, waiting room and secretarial room. Location 6143 E. Jericho Tpke., Commack, N. Y. 11725. For Information call (516) 864-9624.

Wanted

Capable musicians from the Bench, Bar and Court Personnel interested in forming a Jazz Combo. If interested, call Paul Goldstein (516) 541-2700.