

WELCOME

Message to our Readers

Thank you for reading the Fall 2015 issue of the Welby, Brady & Greenblatt, LLP Construction Report. We are pleased to bring you a summary of new legal happenings related to the construction industry as well as highlight the impact Firm Partners and Associates are making on the Legal Industry and the markets we serve.

In this issue, we are pleased to present Legal Alerts written by our team. Alexander A. Miuccio, CIC & BCA General Counsel, shares Contractor Liable for Failure to Account for Trust Funds; and Associate, Richard T. Ward III, presents an update to Design-Build Jobs in New York State. We are also pleased to announce that Jared A. Hand, Associate, has been named 2015 “Rising Star” by Super Lawyers Magazine.

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Contractor Liable For Failure To Account For Trust Funds

By: Alexander A. Miuccio, Esq., Partner



Alexander A. Miuccio, Esq.

Article 3A of the Lien Law provides that monies received by a contractor or subcontractor for a construction project are trust funds to be held by them as trustees for payment to those performing work or supplying materials for the project. The statute is intended to prevent owners, contractors and subcontractors from either using the trust monies to pay creditors on other projects or keeping the monies for

themselves, rather than paying for the costs of construction on the project. If the trust funds available for a project are diverted from that trust, the owner, contractor or subcontractor may incur personal liability for the trust fund diversion.

Section 76 of the Lien Law allows beneficiaries of the Lien Law, such as unpaid contractors or subcontractors, to demand a verified statement of the trust, itemizing all monies it has received and all monies it has spent on the project. If the contractor’s verified statement fails to fully account for the funds it received on the project, there is a statutory presumption of a wrongful diversion of trust assets, thereby exposing the contractor to liability for the unpaid amount of the subcontractor’s claim.

In the recent case of *Anthony DeMarco & Sons Nursery, LLC v. Maxim Construction Service Corporation*, the contractor, to his peril, faced the consequences of submitting a deficient verified statement under Section 76 of the Lien Law.

Background: LeChase Construction Services, LLC was the general contractor for a construction project

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