

▲ **Tax Levies & Mechanics Liens**

Tax levies are often served on construction owners whose contractors are not paying their laborers, subcontractors, and suppliers. The owner who pays the taxing authorities in response to these levies may deduct the amount from the contract or subcontract price. *A.F.A.B., Inc. v. Town of Old Orchard Beach*, 777 A.2d 831 (Me. 2001).

The levy rights of the taxing authorities, however, are subject to the owner's right to withhold money to satisfy the claims of the contractor's unpaid subs and suppliers. *United States v. Durham Lumber Co.*, 363 U.S. 522 (1960); *Victorie Ins. Co. v. City of Bowie*, 23 S.W.3d 499 (Tex. Civ. Ct. App. 2000). Most contracts and subcontracts require the contractor and subcontractor to pay all laborers, subcontractors, and suppliers; and the failure to do so is a breach of contract. Additionally, Minnesota's mechanics lien law entitles a property owner to pay subcontractors and suppliers directly and to withhold payment for

improvements for 120 days to make sure that all potential lien claims have expired. See Minn. Stat. §514.07.

The IRS has acknowledged the priority of mechanics liens: "the mechanic may still be entitled to contract proceeds on the theory that the contractor-taxpayer by failing to pay the mechanic may be deemed to have no

property right in the contract proceeds to which the federal tax lien could attach." See Legal Reference Guide for Revenue Officers, Internal Revenue Manual, at 5.17.2.5.2.3 (10/31/00) (available at www.irs.gov/irm/part5/ch17s03.html). The IRS's position, of course, will depend upon the particular facts. When served with a tax levy for unpaid contract funds, therefore, the owner may usually satisfy mechanics liens (and potential mechanics lien claims) before paying anything to the taxing authority.

Bob Huber
Leonard, Street and Deinard, P.A.
Minneapolis
Bob.Huber@leonard.com



also may try to use lie detectors in other non-litigation proceedings such as unemployment compensation matters before the Department of Employment & Economic Development (DEED) and cases before the Office of Administrative Hearings (OAH) where evidentiary rules are not so demanding as in litigation. A party may undergo a polygraph and, if the outcome is not favorable, not use it. To overcome this advantage, the opposing party may wish to inquire, in pre-hearing discovery, whether the other side has undergone any polygraph testing and, depending on the outcome, consider using it on their own behalf.

Marshall H. Tanick
Mansfield Tanick & Cohen, P.A.
Minneapolis
mtanick@mansfieldtanick.com



▼ **Special Assessments**

If a client wants to appeal a special assessment, the time limits are very short. First, a written objection to the proposed assessment must be filed either with the city clerk before the assessments are adopted, or with the mayor at the hearing when the assessments are adopted. If this objection is filed, then the assessments may be appealed in the 30-day period after the assessments were adopted. Missing either of the deadlines is fatal to a claim.

Karen E. Marty
Marty Law Firm, LLC
Bloomington
kmarty@ix.netcom.com

▲ **Attorney-shopping Clients**

Should you take a client who is searching for their second, third or fourth attorney for their pending family law case? It's best to be very selective.

Inquire in detail about problems the client had with the former attorney so you're confident you can offer something more or different. If you agree with the former attorney's approach, or can see that the client's dissatisfaction is due to misunderstanding, take the time to explain. I encourage such clients to try again with the former attorney, both to save the expense of starting over and out of respect for professional colleagues.

If you do agree to be a subsequent attorney, explain what you will try to do in the representation and be sure to follow through with the plan. Encourage the client to deal with the former attorney directly on any fee disputes, complaints, etc., but make it very clear that you will not get sidetracked into those issues. Focus on the case for which you are retained.

Deborah N. Dewalt
Dewalt Law Office
Burnsville
deborah@dewaltlaw.com

▲ **Lie Detectors**

Results of lie detectors, or polygraphs, generally are not admissible in litigation of civil and criminal cases. The prohibition was reconfirmed recently by the Minnesota Court of Appeals in *Dunham v. Wayzata County Club*, 2006 WL 2673426 (Minn. App. 2006) (unpublished), which described polygraphs as

"of interest ... [but] of limited relevance" because these are "not admissible in criminal or civil proceedings." Despite this proscription, they may be useable in other legal proceedings. In *City of Duluth v. Duluth Police Local*, 2005 WL 1620325 (Minn. App. 07/12/05), the appellate court upheld consideration by an arbitrator of the result of a lie detector test in a discharge proceeding under a collective bargaining agreement. The appellate court pointed out that, while lie detector tests are generally not admissible in civil litigation, there is no "policy" against their use in arbitration proceedings at the discretion of the arbitrator. Because arbitrators have vast discretion in evidentiary rulings, parties in arbitration proceedings may wish to introduce lie detector tests to bolster their positions. Parties

