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Attorneys at Law

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## NEW JERSEY COURT REQUIRES CONSTRUCTION LIEN CLAIMANT TO ALLOCATE PAYMENT

Under the New Jersey construction lien law, an owner of real property against which a Construction Lien has been filed cannot be required to pay more than the amount remaining in the "lien fund." The lien fund is defined in the New Jersey lien statute as the difference between the approved contract amount less any payments made to the prime contractor. With respect to a lien claim filed by a material supplier to a subcontractor, the lien fund is the amount of the subcontract less payments made by the prime contractor to the subcontractor.

In the very recent case of *L&W Supply Corp. v Joe DeSilva et al.*, the appellate division of the New Jersey Superior Court clarified the way payments made by an owner and prime contractor are to fit into the lien statute's lien fund formula. In that case, the supplier L&W filed a lien because a subcontractor had not paid it in full for certain building supplies. The subcontractor had filed for bankruptcy. The amount of the lien claim had been computed by L&W based on an allocation of prior payments it had received from the bankrupt subcontractor on multiple projects. This allocation was made by L&W alone. As a result of that allocation, the supplier had determined that \$127,000 was owed on the project which had been lien-ed.

However, based on the amount of the actual payments made by the prime contractor to the bankrupt subcontractor, the owner of the project questioned the supplier's allocation of payment. The owner alleged that if the prime contractor's payments for the project in question were properly allocated, only \$12,000 was owed to L&W, and that was the maximum amount of its claim.

The trial court had granted a motion for summary judgment in favor of the supplier for the \$127,000 amount. However, the appellate division reversed this decision concluding that there was a legitimate factual dispute between the parties as to the proper allocation of the payment to the supplier. The appellate court reiterated that under the lien statute, a supplier lien claimant has the burden to prove that its allocation of payment was justified and proper. It cannot simply determine on its own how to allocate payments. It must either follow the instructions of the party paying it, or in the alternative, make a good faith inquiry into the basis for the payment. If it does not do so, the court held, it may sacrifice its rights under the lien law.

The operation of the New Jersey construction lien law and the application of its rules to specific terms can be confusing as the *L&W Supply* case shows. Those defending or filing lien claims should consult with counsel to ensure the appropriateness of their position.