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Homes in St. Thomas Repaired Under STEP Program Face Foreclosure in 120 Days By Contractor Owed Millions For Hurricane Recovery Work

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Men performing roofing work

TJ Sutton, a construction company hired by Citadel Recovery Services, LLC, a AECOM contractor, said in statement on Wednesday that it has 120 days under Virgin Islands law to serve summons and complaints to St. Thomas homeowners whose homes the liens were placed on. The company on August 19 filed complaints to foreclose on all liens, and had a 90-day window to file the suit to foreclose.

The move comes as the company said in its statement that for all the work it performed following the 2017 storms under the Federal “STEP” Recovery program, including to provide materials for

reconstruction of roofs that were damaged on residences in the U.S. Virgin Islands, it had yet to receive payment from Citadel, which was contracted by AECOM -- which in turn was contracted by the Government of the Virgin Islands.

"TJ Sutton mobilized work crews and came to the U.S. Virgin Islands in order to perform the work under their contract with Citadel. TJ Sutton paid significant sums for travel, lodging, materials, and manpower without payment from Citadel, AECOM, or the Virgin Islands Housing Finance Authority. TJ Sutton has yet to be reimbursed for a single dollar that they have spent," the company said in a statement. "TJ Sutton fully performed its part of the contract. It became apparent that Citadel was unwilling or unable to perform under their part of the subcontract agreement to timely pay TJ Sutton."

TJ Sutton said it was assured by Citadel "that the 'turn around' time for billing was five weeks or less. TJ Sutton relied on this material representation when entering into the subcontract agreement to perform work for Citadel. It turns out that this representation was false."

Without providing details of what was occurring behind the scenes, Governor Albert Bryan [in June](#) chastised TJ Sutton for its actions. "While Sutton knows that these homeowners are not responsible for any payments to any of the almost 100 contractors participating in the federally funded housing repair program, this subcontractor is ruthlessly using storm victims as a means to an end, and I am committed to leading our administration's efforts toward ensuring this practice ends," Mr. Bryan said.

V.I.H.F.A. Executive Director Daryl Griffith also criticized the company: "We are deeply disappointed that some subcontractors, in order to resolve a payment dispute are unjustly using liens against the homeowners whose properties have been repaired by the EHRVI program," he said. "This is an intolerable tactic being used against hurricane survivors who do not owe these contractors any money whatsoever. This matter is a business dispute between a contractor and its subcontractor, and homeowners should not be dragged into the middle of this."

Senator Marvin Blyden recently introduced legislation that would preclude contractors from filing construction liens related to any work done in connection with "an emergency home repair program... administered by the Government of the Virgin Islands".

TJ Sutton's stance, however, has not been shaken by what the company described as grandstanding by politicians. "The problem with the grandstanding by the politicians is that contractors, including TJ Sutton Enterprises, LLC, have been forced to file construction liens in order to protect their ability to be paid for the work they have done, and expenses they have incurred, in connection with the EHRVI Program," the company said in the statement.

TJ Sutton said Citadel has a subcontract performance bond and subcontract payment bond in place with Travelers Casualty and Surety Company of America in the amount of \$10 million to ensure payment to all subcontractors of Citadel, which includes TJ Sutton.

TJ Sutton said construction bonds are guarantees that are required to be put in place so that companies working on construction projects are guaranteed to be paid.

The company said that in order to preserve its rights to make a claim against the bonds and be considered a "claimant", it must:

- 1) Have a contract with Citadel to supply labor and/or materials for the STEP Program and have actually supplied the labor and/or materials;

2) Have an enforceable lien against the property improved under the subcontract for labor and/or materials used.

If a subcontractor, such as TJ Sutton, complies with the prerequisites to become a claimant (actually did work and filed a lien), and remains unpaid ninety days after filing a lien, then TJ Sutton may make a claim against the bonds.

There is also a one-year statute of limitations for which TJ Sutton must make a claim against the bonds, the company said.

The company, citing VI Code, further stated that for a construction lien to exist in the U.S. Virgin Islands, a contractor must actually do work or provide materials for work on a property. "TJ Sutton has performed work as well as provided materials with respect to the properties on which the liens have been filed. A lien must be recorded within ninety (90) days of the last day that materials or services are provided with respect to the property. See 28 V.I.C. Section 264. When there is no fixed amount of a contract price a good faith estimate is to be recorded. See 28 V.I.C. Section 264(c)(4)," TJ Sutton said in its statement.

Even so, TJ Sutton said it has no desire to proceed with any foreclosure. However, it has to protect its rights to get paid for the work that it financed to repair homes in the territory.

"TJ Sutton has valid, enforceable liens recorded against several properties in St. Thomas, USVI in relation to the work performed pursuant to the subcontract agreement with Citadel in conjunction with the STEP Program," the company said.

TJ Sutton said Citadel, AECOM, and/or VIHFA can have the Liens released in a few ways:

1) Pay TJ Sutton the amounts due and owing;

2) Have a payment bond in place that meets the requirements of 28 V.I.C. Section 259 from a surety company authorized to do business in the Virgin Islands which must be recorded under 28 V.I.C. Section 267.

3) Record a Notice of bond in the penal sum equal to 1 ½ times the amount of the claim of lien pursuant to 28 V.I.C. Section 260. The recording of the notice must comply with 28 V.I.C. Section 268.

"Very frankly the situation that TJ Sutton finds itself in is not one which TJ Sutton wishes to be involved. TJ Sutton was forced to file the construction liens in order to protect TJ Sutton's interests under the Bonds. TJ Sutton was forced to file lawsuit to foreclose on the liens in order to maintain valid lien, a prerequisite to making a claim on the Bonds. It is likely that the Bonds that were procured by Citadel were not inspected by the Virgin Islands government, or any Virgin Islands legal counsel, in order to ensure that the Bonds met the requirements of the Virgin Islands Code. This is a failure of Citadel, AECOM, and the Virgin Islands government; not of TJ Sutton," the company said.

It added, "TJ Sutton has continuously stated that TJ Sutton wishes to amicably resolve this matter and work towards getting paid under the subcontract agreement. However, the Bonds obtained by Citadel left TJ Sutton little choice in protecting TJ Sutton's rights to make claims against the Bonds. TJ Sutton was forced, by the terms of the Bonds, to file the construction liens, and to file and serve the lawsuit associated with those liens."

