

Be Certain of Your First Date of Improvement

In a recent unpublished decision, Breidenbach Company, LLC vs. Prosperity Real Estate Investments, LLC (Minn. Ct. App., July 20, 2010), the Minnesota Court of Appeals was asked to determine whether a mechanic's lien was superior and prior to a mortgage held by a bank. The Contractor and the property owner entered into a contract for demolition and new construction of residential property in Minneapolis in April, 2007. The project was financed by a construction loan, which was recorded on June 18, 2007. The bank took photographs on that date, which reflected that the contractor had made no visible improvements as of that date.

The project began behind schedule and over budget, and disputes arose between the owner and the Contractor, and the Contractor quit the job on July 3, 2008, before completion of the Project. The Contractor then filed a mechanic's lien on July 22, 2008, and began a law suit on August 18, 2008. Both the Bank and the Bank eventually moved for summary judgment as to the issue of priority of the mechanic's lien versus the Bank mortgage, and the district court ruled in favor of the Bank.

The rule for when a mechanic's lien will attach to real property, found in Section 514.05 of the Minnesota Statutes, is that the mechanic's lien will attach from the "time of the first item or material or labor is furnished upon the premises for the beginning of the improvement." Priority is critical in any lien or mortgage foreclosure action, as the senior lienholder remains in the driver's seat for sale of the property.

On appeal, the Minnesota Court of Appeals ruled, in part, that boarding up the property and removal of an exterior staircase to secure the property from vandalism was unrelated to the demolition and construction process, and therefore did not constitute a first improvement on the ground of the site. The Court also focused on the photographs taken by the Bank, as reflecting that no improvement had begun at the date of the mortgage being recorded, in rejecting the Contractor's arguments.

The Contractor also argued that the mortgage itself was a split-priority mortgage. If successful, this argument would have made the mechanic's lien junior to the first loan advance made, but senior to subsequent advances. The Court found, however, that the loan advances were obligatory, not optional, giving the entire mortgage priority over the mechanic's lien.

As a practical lesson for contractors, this case demonstrates that a contractor should carefully document not only the first date of work, but also what that first work was, to ensure that priority is not lost. If you should have any questions regarding lien priority, what constitutes an 'improvement' to real property, lien foreclosure, or about mechanic's liens and construction generally, please contact Bart Gernander of Patrick Burns and Associates by telephone at 952-564-6258 or by e-mail at bgernander@patrickburnslaw.com.