

## COA Opinion: After-filed construction lien takes priority over earlier-filed mortgage where work was done as part of multiphase residential development project that began years earlier

3. August 2011 By Jonathan Moore

On August 2, 2011, the Court of Appeals issued a published opinion in *Jeddo Drywall, Inc v Cambridge Investment Group, Inc*, No. 295726, holding that construction liens filed by laborers for construction work on a multiphase residential development project relate back to the first actual physical improvement on the property and therefore take priority over a mortgage that was filed before the lien claimants' work was performed but after the first actual physical improvements.

The question before the court was whether construction liens based on work performed in 2006 and 2007 had priority, under the Michigan Construction Lien Act (CLA), MCL 570.1101 et seq., over AmTrust Bank's mortgage, which was recorded in 2005. In an opinion written by Judge Saad, on behalf of a panel comprising Judges Wilder, Saad, Donofrio, the Court held that the construction liens had priority over the mortgage because the laborers' work was part of the same multiphase development project that was begun in 2002 with various grading, utility construction, and paving work. A copy of the Court's opinion can be found [here](#).

In *Jeddo Drywall*, Defendant AmTrust Bank was the lender and mortgagee on a parcel of property, Cambridge Meadows Subdivision No. 3, in Brownstown Township, Michigan. AmTrust Bank recorded the mortgage on March 25, 2005. The parcel securing the mortgage comprised several lots for construction of residential housing as part of a multiphase development project, including lot 204. Prior clearing, grading, paving, and utility work had been done in the subdivision in 2002. In February 2006, permits were issued for construction of a single-family home on lot 204. Jeddo Drywall and Stock Building Supply provided construction labor and materials for construction of the house on lot 204 during 2006. After both companies were not paid for their work, each filed construction liens. After AmTrust foreclosed on the mortgage and a sheriff's sale was conducted in late 2008, Jeddo Drywall sued to enforce its construction lien, and Stock Building Supply cross-claimed to enforce its lien. The two lien claimants filed motions for summary disposition against AmTrust Bank, which the trial court granted, holding as a matter of law that the laborers' liens related back to the 2002 construction work and therefore had priority over AmTrust Bank's mortgage.

On appeal, the Court of Appeals affirmed the trial court's order granting summary disposition. Relying on *MD Marinich, Inc v Mich Nat'l Bank*, 193 Mich App 447, 453; 484 NW2d 738 (1992), the court explained that a construction lien under the CLA relates back to the day of the first actual physical improvement to the property and has priority over all interests after that first improvement, regardless of when the work giving rise to the lien was performed. The court rejected AmTrust Bank's argument that there should be no relation back because the 2002 work was performed on other portions of the parcel, not lot 204. The court stated that since the mortgage covered the entire parcel, improvement to any portion of the parcel would be sufficient as to all lots contained within it. The court also held, however, that the lien claimants had submitted sufficient evidence for the court to conclude that the 2002 improvements included lot 204, whereas AmTrust Bank had failed to submit any evidence to the contrary. The court also rejected the argument that the 2006–

2007 work was part of a “different project” than the 2002 work, since there was a considerable time gap and the ownership of the parcel had changed during that time. The court noted that transfers of the property were all made among related entities that had common ownership. The court also found persuasive evidence submitted by the laborers that the Cambridge Meadows Subdivision was designed to proceed in multiple phases, and that the 2002 work was designed to support the subsequent construction of single-family homes such as the one that Jeddo Drywall and Stock Building Supply helped construct. Even though the project had been switched from the original developer to a new one, this did not change the fact that it remained a single project. Construing the CLA liberally, as required by MCL 570.1302(1), the court held that the later liens related back to the earlier physical improvements made in 2002 and thus had priority over AmTrust Bank’s mortgage.

Finally, the court addressed AmTrust’s further argument that Stock Building Supply’s complaint should be dismissed as untimely under MCL 570.1117(1), since it was not filed within one year after it filed its first construction lien arising out of its work on the project. The court rejected this argument, however, holding that the complaint was timely because it was filed within one year after the filing of its last construction lien from the project. The court found persuasive the evidence that each of the liens listed the same starting date for the labor and materials provided, indicating that all the liens arose out of the same project.