

Michigan Lien Priority Case - Another Battle Between Mortgage and Mechanic Lien

Lien Priority disputes are always the same: a property is foreclosed, there's not enough money to go around, and the mortgagor and lien claimant fights about whose claim is superior to the other. Whenever we hear about a new lien priority case, we post about it under the [Lien Priority](#) tag (click on it to read).

A recent post from the [Michigan Construction Law Update](#) blog called our attention to a lien priority case out of that state. The Michigan Court of Appeals held in [First Community Bank v. Montainaire, LLC](#), et al that a construction lien has priority over a mortgage regardless of whether the general contractor and project owner's changed during the course of the project.

The general rules about lien priority in Michigan is summarized by the court in [Montainaire](#) with the following:

Construction liens have priority over interests that are recorded "subsequent to the first actual physical improvement." MCL 570.1119(3). However, a "mortgage, lien, encumbrance, or other interest recorded before the first actual physical improvement to real property shall have priority over a construction lien arising under this act." MCL 570.1119(4)

The peculiar circumstance in the Montainaire case, however, was that the construction project sort of stopped and started up again, or at least there was a change in the general contractor and a second notice of commencement filed. The mortgagee argued that the mechanic lien priority traced back to the time of the second notice of commencement's filing, and not back to when the project originally began. The court held contrary to the mortgagee:

We believe that the statutory language does not support First Community's argument that a new project (with new priorities) began when Pioneer filed a second notice of commencement in 2005. Rather, under MCL 570.1119

(3) and (4), priority depends on when the mortgage was recorded with respect to the "first actual physical improvement." MCL 570.1103(1) defines an "actual physical improvement" as "the actual physical change in, or alteration of, real property as a result of labor provided, pursuant to a contract, by a contractor, subcontractor, or laborer *which is readily visible and of a kind that would alert a person upon reasonable inspection of the existence of an improvement.*" (Emphasis added.) A notice of commencement is not mentioned.

Read this article on the Construction Lien Blog here:
<http://constructionlienblog.com/?p=2268>