

ALERTS AND UPDATES

Illinois Supreme Court Clarifies Rights of Lenders and Mechanics Lien Claimants to Proceeds of Foreclosure Sale

March 10, 2011

The Illinois Supreme Court has issued an opinion—in *LaSalle Bank v. Cypress Creek 1, LP*¹—clarifying the relative priorities of a lender and mechanics lien claimants to the proceeds of a foreclosure sale where the lender's mortgage was recorded before the mechanics liens attached. The court held that a lender has priority up to the value of the property when the construction contract underlying the lien was entered, plus the value of the improvements that were paid for out of the construction loan secured by the mortgage. The court concluded a mechanics lien holder has priority only to the value of the improvements for which it has not been paid. This case overruled *Mitchell v. Robinovitz*, which allowed a lien claimant's priority claim to include the value of all improvements, including those provided by others. Also, the dissenting opinion noted the majority opinion "does not apply the statute's plain language."

This case does not address projects encumbered by a mortgage recorded after the construction contract is executed. However, the court left the door open for a mortgagee that records after the date of a construction contract to claim equitable subrogation rights arising from payments that it advances for the work of that contract, and thereby claim priority to that part of the value of the improvements. Despite stating that it avoided reaching the lender's claim of equitable subrogation based on the amounts that it paid for construction, the court's rationale is not at odds with an equitable subrogation claim.

However, a motion for reconsideration is anticipated to be filed shortly, challenging the *Cypress Creek* decision. Illinois Senate Bill 1564, currently pending in the Senate Judiciary Committee, would modify section 16 of the Mechanics Lien Act to, in essence, parallel the reasoning in *Cypress Creek*. Therefore, the law of relative priorities of mechanics liens and construction mortgages remains unsettled and is likely to undergo further changes and interpretations in the coming months.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact [Jeffrey L. Hamera](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. *LaSalle Bank Nat'l Ass'n v. Cypress Creek 1, LP*, 2011 Ill. LEXIS 428 (Ill. Feb. 25, 2011).

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