

Construction Law Update

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Court Rules Oregon Construction Lien Law Alters General Rule of Recorded Interests

The Oregon Court of Appeals in *SERA Architects, Inc. vs. Klahowya Condominium, LLC*, ___ Or. App. ___ (November 7, 2012), held that an architect's claim of construction lien under Oregon's Construction Lien Law had priority over a lender's deed of trust recorded before the architect's claim of lien was recorded. The court ruled that the statutory scheme of the Construction Lien Law altered the general rule of recorded interests in real property that "first in time is first in right." The court reasoned that the statute provides that the architect's lien relates back to the date that work began on the property, rather than when it was recorded and made a matter of public record. The site preparation began before the lender recorded its trust deed, so the architect's lien had priority.

Part of the lender's loan was used by the borrower to pay off an existing first loan that had been recorded before site preparation had occurred. The lender argued it was equitably subrogated to a priority position before the architect's lien to the extent that money from the lender's loan was used to retire the first loan. In order to rely on equitable subrogation, the lender was required to prove that it was ignorant of the architect's lien and that the ignorance was excusable. The court rejected the lender's argument because (1) the lender was aware before it made its loan that the borrower had contracted with the architect to provide architectural services, (2) the architect was providing the services, and (3) the construction timeline indicated that site preparation would begin prior to the lender's loan being funded. The court ruled that even if the lender was ignorant of the architect's unrecorded lien, the ignorance was not excusable because it was based on a misunderstanding of the Construction Lien Law.

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