

Recent Illinois Decision Produces Schizophrenic Lien Law Requirements

Thanks to [Joshua Glazov's Construction Law Today blog](#) for posting about a recent appellate decision that presents a problem for lien claimants in Illinois. In the wake of this particular decision, those filing liens in one portion of the state must identify the date when labor and/or materials were last furnished to a project, and those filing in another portion of the state need not so identify the date.

Huh?

The different requirements can be attributed to a split in the Illinois appeal districts on this question. The First District held (ten years ago) that liens *must* identify the last date a claimant provided work/materials. The Second District (just this October) said that the Mechanic Lien Act doesn't require this, and neither should the courts.

The recent Second District case is [National City Mortgage v. Bergman](#), and I have to say that I completely agree with the Second District. Why? The Berman court says it best:

Section 7 does not command that a lien claim contain a contract completion date. To construe section 7 to require a contract completion date would frustrate those who have, in good faith, relied on the plain language of the statute in submitting their lien claim. Any policy arguments raised by National City need not be discussed at great length. Balancing dueling policy concerns is a more appropriate role for the legislature than for this court.

You can [listen to the oral argument in the Berman](#) case at the 2nd District's website.

This creates a problem for Illinois contractors, because as a justice on the Bergman panel states in the argument, "we don't have the power to overrule Merchants Environmental Industries, Inc. v. SLT Realty Ltd. Partnership (the First District case), we can only disagree with them. In other words, those counties controlled by

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Merchants (Cook) must still follow the Merchants decision. Until of course, the Supreme Court resolves the disagreement.

We'll keep an eye on this case as it crawls up to the Supreme Court (presumably). Stay tuned.

Read this article on the Construction Lien Blog here:
<http://constructionlienblog.com/?p=2166>

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