

NEWSLETTERS

Indiana Court Of Appeals - Mechanic's Lienholder Has The Right To Remove Improvements

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In a June 26, 2015, finding, the Indiana Court of Appeals reaffirmed the priority of a mortgage lien over a subsequently recorded mechanic's lien, reaffirmed the right of the mortgagee to credit bid at a foreclosure sale, and clarified that a mechanic's lienholder may remove from the real estate any improvements the mechanic made which can be removed without damage to the underlying real estate.

Most of the material facts were not in dispute. The secured lender (the Mortgagee) recorded the Mortgagee's mortgage before the mechanic's lien claimant (the Mechanic) commenced work on the real estate encumbered by the Mortgagee's mortgage. The Mechanic commenced a foreclosure proceeding as it was required to do before one year after filing its Notice of Mechanic's Lien. The Mechanic named the Mortgagee as a party, and the Mortgagee asserted the priority of its lien. The trial court determined that the Mortgagee had priority, but ordered the Mortgagee to deposit an amount sufficient to satisfy the indebtedness owed to the Mechanic before credit bidding all or part of the amount owed to the Mortgagee. The Court of Appeals reversed. The Court of Appeals held that the Mortgagee may use all of its judgment against the mortgagor as a credit toward the purchase price of the mortgagor's property at the sheriff's sale.

The court then turned its attention to the rights of the Mechanic under Indiana's Mechanic's Lien Statute. That statute provides:

"If the land is encumbered by mortgage, the lien, so far as concerns the buildings erected by the lienholder, is not impaired by the forfeiture of the lease for rent or foreclosure of mortgage. The buildings may be sold to satisfy the lien and may be removed not later than ninety (90) days after the sale by the purchaser."

In this case, the Mechanic had paved an entire parking lot for which it was owed \$335,000. The Mechanic asserted it had the right to remove the parking lot. The Mortgagee argued that a parking lot does not constitute a "building" as referenced in the statute. The court, following a review of other sections of Indiana's Mechanic's Lien Statute and the statute's history, concluded that a parking lot qualifies as a "building." Accordingly, the court held that the Mechanic may remove the parking lot if the Mechanic is able to do so without injuring the underlying real estate. The court stated:

"Therefore, to the extent that removal of the parking lot is practical – meaning that its removal will not substantially impair the value of the land beyond that which it would have been had the parking lot never been paved – we believe it falls within the category of things that [the statute]

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allows to be removed to satisfy a mechanic's lien."

This holding expands the rights of mechanic's lien claimants in Indiana, and enhances their bargaining position when dealing with mortgagees.

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