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Legal Briefs from the Attorneys of
Mackall, Crouse & Moore, PLC

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The Minnesota Supreme Court recently issued a decision that significantly affects the mechanic's lien rights of surveyors, engineers and architects. The opinion is entitled *Riverview Muir Doran, LLC, v. JADT Development Group, LLC*, ___ N.W.2d ___, A09-0312 (Minn. 2010). The decision addresses when a mechanic's lien by a surveyor, engineer or architect may claim priority over a mortgage when the lien claimant completed off-site work prior to the recordation of the mortgage but where there was no actual and visible beginning of the project on the ground. The Supreme Court affirmed the decision of the Court of Appeals that such mechanic's liens have priority over subsequently recorded mortgages only if, on the date of recordation of the mortgage, the lender both knew of the lien claimant's work and knew that the lien claimant had not been fully paid for its work.

In *Riverview Muir Doran*, the developer granted its lenders mortgages totaling \$20,358,550.00. The mortgages were dated March 22, 2005 and recorded March 23, 2005. The architect began work on the project prior to the recordation of the mortgages. It submitted a number of invoices to the closer and received \$97,139.33 from the loan proceeds in payment for these invoices. The architect also provided a partial mechanic's lien waiver that did not identify any outstanding debt. However, there were outstanding amounts still owed the architect by the developer, a fact not known to the mortgagees at that time.

The architect timely served and filed a mechanic's lien statement. It claimed a lien in the amount of \$235,996.34. The architect later served and recorded an amended mechanic's lien statement increasing the amount of its claimed lien to \$358,028.34.

The trial court concluded that the lenders had actual knowledge of the architect's mechanic's lien and therefore found the lien prior and superior to the mortgages. The Court of Appeals reversed this decision, interpreting the holding in *Kirkwold Construction Company v. M.G.A. Construction, Inc.*, 513 N.W.2d 241 (Minn. 1994) to mean that the architect's mechanic's lien would be prior to the mortgages only if the

lenders had actual knowledge of an unpaid debt owed to the architect at the time the lenders recorded the mortgages. MINN. STAT. § 514.05 provides that no mechanic's lien shall attach prior to the beginning of actual and visible improvement on the ground, as to a bona fide mortgagee without actual or record notice. The Supreme Court affirmed the decision of the Court of Appeals. It held that "without actual notice" under the statute means without actual notice of an existing lien. The Court stated:

Consistent with our prior case law, when there has been no actual and visible beginning of the improvement on the ground, the priority of the lien claimant and mortgagee under section 514.05, subdivision 1, depends on whether the mortgagee had actual notice of an existing lien. We conclude that an existing lien under section 514.05 contemplates past, lienable services for which a lien claimant has not been paid. In contrast, when a mortgagee has paid all known, outstanding invoices for lienable services at the time the mortgage is recorded, the mortgagee does not have "actual notice" of an existing lien within the meaning of section 514.05.

Riverview Muir-Doran, pages 13-14 (emphasis in original)(citations omitted). Applying this holding to the facts of the case, the Supreme Court held:

Here, respondents paid for all lienable services of which they had actual notice. Therefore, they were bona fide mortgagees "without actual notice" of an existing lien for architectural services and their mortgages enjoy priority over [the architect's] mechanic's lien.

Riverview Muir-Doran, page 16. This decision protects the priority of a mortgagee which pays the invoices of a surveyor, engineer or architect at a closing which occurs before the first visible improvement to the real property, as long as the mortgagee has no notice that additional amounts remain due and owing.

Practice Tip:

If you are a surveyor, engineer or architect, to protect your mechanic's lien rights and priority if you are not paid in full at a loan closing for your services, written notice should be given to the lender that a debt is still owed. In addition, additional security for payment of services provided post-closing should be obtained. Escrow arrangements, ownership of instruments of service and the right to hold deliverables for non-payment are all important to establish.

MCM has attorneys who regularly represent design professionals and assist them, lenders and developers to draft workable agreements.

Practice Tip:

If you are a lender or developer, it is important to get representations and waivers from design professionals who provided pre-closing services which confirm payment in full to preserve first priority of the mortgage. MCM has attorneys who regularly assist lenders, title insurers and developers on construction projects, and can help navigate current law on priority and mechanic's liens.

If you have any questions, please call one of the attorneys in our firm who is knowledgeable about lien rights.

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