

Mechanic's Lien takes Priority over Bank's Purchase Money Deed of Trust

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The Supreme Court of Missouri recently decided that a mechanic's lien takes priority over a bank's purchase money deed of trust where the deed of trust was not recorded until after work pursuant to the mechanic's lien had already begun. This decision will have broad implications for lenders, title companies, contractors, suppliers and property owners.

The case is *Bob DeGeorge Associates, Inc. v. Hawthorn Bank*, 2012 WL 4054143, decided September 11. The Supreme Court of Missouri does not often weigh in on cases of this sort, thus providing even more importance for its decision.

Blue Springs Xtreme Powersports had purchased a building and three tracts of land and obtained a loan from Hawthorn Bank in excess of \$2,512,000. Hawthorn Bank secured the loan by taking a purchase-money deed of trust on the property.

Prior to the purchase of the property, Xtreme had entered into a contractual arrangement with DeGeorge, a general contractor, to remodel the building located on the property. Two days after the purchase, DeGeorge began work on the project.

DeGeorge filed a mechanic's lien against the property pursuant to Missouri's mechanic's lien statute, Section 429.080, RSMo. Supp. 2011. The bank recorded its warranty deed and purchase-money deed of trust one day later.

DeGeorge brought a lawsuit to foreclose on its mechanic's lien. The trial court concluded that DeGeorge's mechanic's lien was superior to the bank's lien and therefore granted summary judgment in favor of DeGeorge. This allowed DeGeorge to foreclose on its lien.

The Supreme Court had to consider both Missouri's recording statutes (which protect third parties) and mechanic's lien statutes (which protect contractors and subcontractors).

A purchase-money deed of trust conveys an interest in real estate to secure the balance of the purchase price. It is subject to Missouri's recording statutes. It is not valid against third parties who had no actual notice until the deed is recorded in the proper Recorder of Deeds office.

By contrast, a mechanic's lien attaches to the structure and any improvements as well as the land on which that structure is located from the first day when work is performed even though the lien is not recorded until some later point in time. Under Missouri law, any mechanic's lien must be filed within six months after the last date on which work was performed by that particular contractor or subcontractor.

Thus, the court held that the actual date of the filing of a mechanic's lien is irrelevant in determining who has priority between competing encumbrances on real property. Missouri law applies the "first spade rule" wherein a mechanic's lien relates back in priority to the date when the work first commenced.

The court also noted there could be a distinction between work performed on the land and work performed on a building, structure or other improvement that sits on the land. A mechanic's lien on land is given relation-back priority (Section 429.060), whereas a mechanic's lien for a building, erection or improvement is given complete priority under Section 429.050.

The Supreme Court concluded that a deed of trust recorded after the commencement of work is inferior to any mechanic's lien relating to that work. Given the recording requirements and the first spade rule, DeGeorge's mechanic's lien was superior to the bank's purchase-money deed of trust as to both the land and the building. Even though the bank had obtained its purchase-money deed of trust prior to any work performed by DeGeorge, the bank did not record its interest until later, after work had begun.

The bank contended that its purchase-money deed of trust is superior to any mechanic's liens regardless of when executed or recorded, relying on a previous case from the Missouri Supreme Court, *Westinghouse Electric Co. v. Vann Realty Co.*, 568 S.W.2d 777, 781 (Mo. banc 1978), and three cases that subsequently cited and applied the *Westinghouse Electric* case with approval.

The court noted that its decision in *Westinghouse* determined priority between a deed of trust and a mechanic's lien by holding that the bank recorded the deed of trust prior to commencement of any work and thus the bank had priority. The court concluded that its decision in *Westinghouse* was consistent with the application of Missouri's laws on recording and mechanic's liens and thus consistent with the decision it had just reached in the *DeGeorge Associates* case. The key distinction is that in *DeGeorge Associates* the recording occurred after work had commenced.

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