

## *Rights of Mechanics Lien Claimants vs. Lenders Limited By Recent Illinois Supreme Court Decision*

*by Joseph G. Bisceglia and Ronald B. Grais*

On February 25, 2011, the Illinois Supreme Court issued a significant decision clarifying the rules for determining priority between lenders and mechanics lien claimants in foreclosure proceedings. The decision significantly benefits lenders, and has a potentially significant adverse impact on contractors with mechanics lien claims.

The Court, in *LaSalle Bank National Association v. Cypress Creek I, LP*, ruled that, in Illinois mortgage foreclosure proceedings, where the proceeds of sale are insufficient to satisfy all claims, the lender is entitled to receive a portion of the available proceeds based on the total value of the improved real estate, not just the value of unimproved land as of the date of the mortgage. Conversely, mechanics lien claimants are entitled only to a portion of available proceeds based on the amount of improvements resulting from their own work, not the value of improvements performed by others. This decision significantly benefits lenders in determining its share of available proceeds, and, depending on the circumstances, significantly decreases the amount available for mechanics lien claimants.

In the *Cypress Creek* case, the net proceeds from the foreclosure sale was \$552,214. The court found that the unimproved value of the land was \$1,360,000, the contract value of the improvements was \$2,068,699, and the total contract value of

the improved property was \$3,428,699. Based on this, the court found that the lender was entitled to approximately 40% (1,360,000/3,428,699) of the net proceeds of the foreclosure sale, based on the ratio of the value of the unimproved land to the total contract value of the improved land, or \$215,100. The remaining 60% of the net proceeds, constituting that portion attributable to the value of the improvements, was further apportioned between the lender and the mechanics lien claimants. In determining the lien claimants' percentage shares, however, the court limited them to that percentage of the value of the improvements attributable only to the work they performed (based on the value of their liens) – \$480,934. The court then concluded that the lien claimants share of the total improvements was approximately 24% (\$480,934/\$2,068,699), and the lender's share of the total improvements was approximately 76%. The remaining sale proceeds (\$334,114 according to the court's calculations) was awarded on that basis, with the lender receiving \$256,514, and the lien claimants only approximately \$77,600. The lien claimants' position was that they should be entitled to priority over the lender with respect to the improvements and that their liens should be satisfied in full before the disbursement of any funds attributable to the improvements to the lender.

This decision behooves general contractors and subcontractors to more closely consider other possible protections against owner/developer insolvency, including the protection of a payment bond or similar device. It also behooves general contractors and subcontractors to consider more closely the provisions of the subcontracts between them regarding payment, including “pay if paid” clauses.

For a copy of the Court’s opinion, visit <https://subscriptions.jenner.com/rs/ct.aspx?ct=24F76D1D D6AE4EE0CDD881A4D42A991D91AD5989E2B8 32F6670>.

---

For more information, please contact:

**Joseph G. Bisceglia**

Partner, Chair, Real Estate and  
Construction Litigation Practice  
Tel: 312 923-2784  
Email: [jbisceglia@jenner.com](mailto:jbisceglia@jenner.com)

**Ronald B. Grais**

Of Counsel  
Tel: 312 923-2810  
Email: [rgrais@jenner.com](mailto:rgrais@jenner.com)