

Illinois Court Holds that Engineering Plat Did Not Improve Land, Rendering Mechanics Lien Invalid

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The Illinois Appellate Court invalidated an engineering firm's mechanics lien for platting of undeveloped land performed as due diligence before a sale, because the services provided by the firm did not increase or improve the condition of the property or enhance the value of the land.

In *Christopher B. Burke Engineering, Ltd. V. Heritage Bank of Central Illinois*, the court invalidated the engineering firm's lien for platting done as due diligence for a party before it purchased the undeveloped land, but the seller was not aware that the platting was being done and did not give permission for the firm to do the work. The sale would eventually be completed, and the purchaser conveyed at least one plot of land before the engineering firm filed its lien.

The purchaser later filed for bankruptcy. After the engineering firm filed to foreclose its lien, the trial court granted summary judgment in favor of a mortgagee, invalidating the engineering firm's lien because:

- a) the property owner at the time the firm started work had no knowledge of and granted no permission to plat the land; and
- b) the firm's design and engineering work had not provided an improvement to enhance the value of the land.

The Illinois Mechanics Lien Act requires that a contract (express or implied) must be in place with the owner of the property or "...[anyone] with one whom the owner has authorized or knowingly permitted to contract, to improve the lot or tract of land or for the purpose of improving the tract of land...". The Act also states that any party that "...perform[s] any services or incur[s] any expense as an architect, structural engineer, professional engineer, land surveyor or property manager in, for or on a lot or tract of land for any such purpose..." can file a mechanics lien.

The court did not address whether seller's actual knowledge of the engineering firm's services was required to validate and enforce of the lien under the Act. Instead, the court reviewed the question of whether the services performed were an improvement to the land sufficient to justify a mechanics lien claim. The court held that labor or materials provided by a lien claimant must increase or improve the condition of the property or enhance the value of the land. In addressing the engineering services provided, the court noted that the platting of the lots and other engineering work performed were for the purpose of furnishing the prospective purchaser with the possibilities of improving the land, which are not sufficient to maintain a mechanics lien claim (citing a 1922 appellate court decision for this principle) and invalidated the lien.

In a dissenting opinion, one judge disputed the majority's decision that the platting work didn't improve the land sufficiently to claim a mechanics lien. The record indicated that not only did the firm perform the plat of subdivision but that it also performed engineering work to establish roads and sewer service for the property.

The arguably more compelling issue in the case – of whether the lien would have been enforceable if the original owner of the property had no knowledge and provided no authority to perform such work – should serve as warning for those who assert Illinois mechanics lien claims. While it may be conclusory boilerplate of all mechanics lien claims that the work performed was with the knowledge or consent of the owner, the lien claimant should be certain it can prove that

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element if a mechanics lien is to be asserted and enforced.

The dissent properly questions the court's majority on the issue of whether Burke improved the land to claim a mechanics lien. The record indicates that not only did Burke perform the plat of subdivision but that it also performed engineering work to establish roads and sewer service for the property. One can discern from the facts as presented in the case that, but for Burke's services, Harkins would not have been able to convey one of the platted lots prior to Burke's recording of its mechanics lien. Due to the integral nature of the services performed by Burke, this case should be viewed as an outlier on the interpretation of Section 1 of the Act and the issue of whether performing surveying or engineering work can be claimed under an Illinois mechanics lien.