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Illinois court rules that engineering firm that prepared and recorded plat for new subdivision is not entitled to a mechanic's lien

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An Illinois appellate court recently had an opportunity to decide whether an engineering firm hired to plat undeveloped land for a new subdivision was entitled to file and enforce a mechanic's lien after the firm was not paid in full for its work. *Burke Engineering v. Heritage Bank*, *et al.*, 2015 IL App (3d) 140064, Appeal No. 3-14-0064, January 27, 2015.

Burke Engineering was hired in mid-2008 to perform work on a tract of real property that developers intended to purchase and subdivide for a residential development. At the time, the property consisted of unplatted land and two platted lots. Some of the work was performed prior to the developers' purchase of the property and some was performed after the purchase. Burke Engineering replatted the property and recorded a final plat for the planned subdivision in September of 2008. Only one lot was actually sold and the project was ultimately abandoned in 2009. Burke Engineering was not paid in full for its work and sought to record and enforce a mechanic's lien on the property.

The Illinois Mechanics Lien Act, 770 ILCS 60/1 *et seq.* (the "Act") provides in general that a party who provides services, material or labor that enhances the value of real property is entitled to a mechanic's lien. 770 ILCS 60/1(a). The Act expressly includes services provided by professionals, including architects, structural and professional engineers and land surveyors. The issue before the court was whether Burke Engineering had in fact enhanced the value of the property by preparing and recording a plat for a new subdivision.

In what strikes me as a harsh result, the *Burke* court said no. It placed great reliance on the lack of a previous case finding that the preparation and recording of a final plat enhanced the value of land. The court did find prior authority it found persuasive – a case holding that preliminary work necessary to begin construction of a coal gasification facility did not enhance the value of the land. The court also likened the work to real estate development, and noted that developers were not expressly identified in the Act. It is not clear from the *Burke* court's holding if it reached this result because the planned development was ultimately abandoned. Facts I found compelling included that the work was necessary for the developers to secure financing for the project and was required by the local municipality prior to work being completed.

I am not alone in finding the *Burke* court's decision harsh – Judge Lytton filed a lengthy, somewhat impassioned, and in my view, persuasive dissent. He argued the appropriate inquiry was not whether the value of the property was improved, but rather, whether the services were provided for the purpose of improving the property. He also noted that the Act expressly includes the services of engineers in addition to architects and pointed to case law in other jurisdictions that treat engineers and architects the same under mechanic's lien statutes. He argued the majority construed that Act so narrowly in this case it defeated its intent and purpose. Ultimately, he opined that Burke Engineering should be entitled to a mechanic's lien on the property because the work was clearly provided for the purpose of enhancing the value of the land.

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