

## Insights

### Mechanic's Liens Remain Unavailable to Certain Construction Suppliers

June 23, 2019

By: Christopher W. Bloomer and Robert S. Schein

#### Introduction:

Indiana's mechanic's lien law ("Lien Statute") [1] allows contractors, lessors of equipment, laborers, and others to place a mechanic's lien on the project should the property owner or the owner's general contractor fail to pay for the work or material provided. If a laborer or materialman is covered by the Lien Statute, the Lien Statute is liberally construed to accomplish its purposes – chiefly, to ensure those who improve real property are paid for their services. [2] However, not all who improve real property are entitled to a mechanic's lien. Specifically, suppliers to other suppliers are considered too remote to enjoy the Lien Statute's protections.

#### Indiana courts have made clear that mechanic's liens are unavailable to certain suppliers:

Under the Lien Statute, a mechanic's lien is available to contractors, subcontractors, mechanics, lessors of equipment, journeymen, and laborers, "or any other person performing labor or furnishing materials or machinery." [3] While the language "any other person" may at first blush appear to permit suppliers to suppliers the ability to lien real property, Indiana courts have long held otherwise. The Court of Appeals addressed this issue in *City of Evansville v. Verplank Concrete & Supply, Inc*, 400 N.E.2d 812 (Ind. Ct. App. 1980).

In *Verplank*, a supplier ("Supplier 1") agreed to provide certain prestressed concrete beams and "T's" for a parking garage project in Evansville. To produce the beams, Supplier 1 required concrete, which it procured from another supplier ("Supplier 2"). Supplier 1 ran into financial difficulty, and when it failed to pay Supplier 2, Supplier 2 filed a mechanic's lien on the project. The Court of Appeals found that suppliers who directly supply the property owner or the general contractor of a project are permitted to file a mechanic's lien, but that those who only supply materials to other materialmen on the project are "outside the ambit of the [Lien] statute." [4]

Under the Court of Appeals' ruling in *Verplank*, suppliers such as Supplier 2 are too remote to reap the benefits of the Lien Statute and cannot enforce a mechanic's lien on the project. This rationale has not changed in the nearly forty years since *Verplank* was decided and, indeed, has been embedded elsewhere in Indiana law. For example, the Court of Appeals has held that the Personal Liability Notice Statute, which is a cousin to the Lien Statute and permits subcontractors and other providers to hold the property owner responsible for amounts due and owing, is also

unavailable to remote suppliers using the same reasoning expressed in *Verplank*. [5]

### Conclusion

Lenders, property owners, general contractors, and subcontractors should be aware of the supplier-to-supplier principle, and recognize when such a relationship is present on a project. In the event a mechanic's lien is placed on the project by such a remote supplier, or a personal liability notice is issued to the property owner, appropriate action should be taken to remove the improper encumbrance from the real estate and preserve the parties' rights pursuant to Indiana law.

Suppliers to suppliers, on the other hand, can reduce their risk by implementing standardized policies and procedures before agreeing to provide certain materials for a project. Steps suppliers in this situation can take include: requiring other forms of security, outside of the Lien Statute, such as bonds or letters of credit; requiring joint payments to be issued whenever the "prime" supplier is paid by the property owner, general contractor, or subcontractor; and establishing shipping schedules so that portions of the material are shipped only after invoices for previous orders are paid.

[1] Ind. Code § 32-28-3-1, *et seq.*

[2] *Abbey Villas Dev. Corp. v. Site Contractors, Inc.*, 716 N.E.2d 91, 98 (Ind. Ct. App. 1999).

[3] Ind. Code § 32-28-3-1.

[4] *Verplank*, 400 N.E.2d at 819 (citing cases dating back to the turn of the twentieth century, and earlier, for the same proposition).

[5] *R.T. Moore Co. v. Slant/Fin Corp.*, 966 N.E.2d 636 (Ind. Ct. App. 2012) (analyzing the Personal Liability Notice Statute embodied in Ind. Code § 32-28-3-9).