

# Insights

## Recent Indiana Decision Reaffirms Priority of Purchase Money Mortgages

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The Indiana Court of Appeals recently reaffirmed that purchase money mortgages enjoy priority over other types of nongovernmental liens on real property. In *Amici Resources, LLC v. The Alan D. Nelson Living Trust*, (January 19, 2016), the Court of Appeals faced a priority battle between a judgment lien creditor, a purchase money mortgage lender, and a lender which had been granted a mortgage as security for renovations to the real property at issue. The dispute arose in the following circumstances: Sabine Matties ("Matties") obtained a judgment against Solid Foundations Investment Properties, Inc. ("SFIP") on December 12, 2012. Thereafter, SFIP purchased realty in Indianapolis via a purchase money mortgage secured from The Alan D. Nelson Living Trust ("Trust"), and later still SFIP granted a secondary mortgage in the same property to Amici Resources, LLC ("Amici") to cover certain renovations. After the mortgages were recorded, Matties moved to execute her judgment lien against the realty, claiming that because she obtained it prior to the Trust's and Amici's mortgage liens, she enjoyed first claim to the realty.

The Court of Appeals sorted-out the priorities among the parties as follows:

First, it found that the Trust's mortgage qualified as a purchase money mortgage under Indiana law because SFIP had granted the mortgage to the Trust in exchange for the Trust's loan of the funds used to buy the realty. Critical to this inquiry was the Court's finding that the mortgage and the purchase agreement were executed by the parties as part of the same transaction.

Second, it noted that Ind. Code §32-29-1-4 provides that a purchase money mortgage enjoys priority over a prior judgment against the purchaser. Accordingly, the Court held that the Trust's purchase money mortgage - even though it was granted subsequent to Matties' judgment lien - nonetheless had priority over the judgment lien. In so holding, the Court cited with approval the Restatement (Third) of Property §7.2 for the proposition that the purchase money mortgage would enjoy this priority over liens that predated the purchase money mortgage, even if the purchase money mortgage was not recorded, but that recording would be required to protect against lien claims arising subsequent to the purchase money mortgage.

Finally, the Court held that under the time-honored principle of 'first in time, first in right,' Matties' judgment lien - which attached to the realty the instant SFIP bought it - had priority over Amici's secondary mortgage, because



Amici's mortgage was not a purchase money mortgage.

Takeaways: (1) while Indiana law protects purchase money mortgages, recordation of the purchase money mortgage still is required in order to protect against subsequent liens that may arise through the borrower, and (2) lending in the face of a judgment lien - even if the lender ultimately prevails (as here, via a purchase money mortgage) - is not a best lending practice.

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