

### Illinois Mechanic's Liens - An Unpaid Contractor's Best Friend

by: David Arena

The Illinois Mechanic's Lien Act provides a powerful collection tool to general contractors, subcontractors and material suppliers who provide labor or materials for the construction of improvements on private projects. It allows a contractor or material supplier to attach a lien to the improved property and ultimately have the property sold to pay the balance due under the lien claim. Absent a mechanic's lien, a general contractor is limited to a breach of contract action or unjust enrichment claim against the property owner, and a subcontractor or material supplier is limited to an action against the party it contracted with, usually a general or other subcontractor. On the other hand, the Act forces an owner to deal with a balance due to a contractor or a material supplier even though the owner did not directly contract with either party.

The Act is very specific about when liens can be used, and, because the mechanic's lien is a powerful legal tool, the lienor must comply exactly with the Act's requirements. A general contractor, that is the party contracting directly with the owner, must record its claim for lien with the Recorder of Deeds in the county where the property is located within four months of the last day of providing labor or materials for the property. In addition, the general must file suit within two years of the last day of supplying labor or materials to the property. If the general contractor fails to record its claim for lien within the four-month period, it may enforce its lien claim against the owner. However, the lien claim would not take priority over other parties with an interest in the property, such as lenders and other lien claimants.

Because subcontractors and material suppliers do not have a direct contractual relationship with the owner, the Act imposes an additional burden for these parties to perfect their lien claim. The subcontractor or material supplier must serve the owner and owner's lender with a 60-day notice of its intent to lien the property on single family owner-occupied property, and must supply the owner and the owner's lender with

a 90-day notice on all other types of property. If a subcontractor or material supplier has not been paid within 10 days of service of its notice of intent to lien, it may record its claim for lien with the Recorder of Deeds in the county where the property is located. This claim for lien must be recorded within four months of the last day of supplying labor or materials on the property.

Similar to the general contractor, a subcontractor or material supplier must file suit within two years of last supplying labor or materials to the property. Failure to file suit within this two-year period renders the lien claim null and void. If a subcontractor or material supplier fails to serve its 60 - or 90 - day notice, as the case may be, it may still enforce its lien claim but only in an amount which is listed as being due on a sworn statement provided by the general contractor to the property owner.

Once a contractor or material supplier records a claim for lien against the property, that lien becomes a blemish on the title to the property. During the period that the lien is valid, the lien must be addressed in order for the owner to sell or refinance the property. In addition, the owner may be pressured by its lender to address the lien claim, due to the fact that the recording of a lien claim by a contractor or material supplier affects the lender's security position in the property. Under the Act, a properly perfected mechanic's lien dates back to the date of the general contractor's contract with the owner. While unusual, it is possible that the general contractor contracted with the owner for the construction of improvements prior to a lender's security interest attaching to the property. If this is the case, the lien claim takes priority over the lender's mortgage in the property. To the

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### Partner Profile

Those of you who have worked with Riccardo know that he is a passionate and highly-skilled attorney (and outdoors man). But how did he get there? Let's take a look.

**Q:** How did you become interested in a law career?

**A:** My father, Gene Di Monte, is a lawyer and with Chet Lizak founded this law firm. I was born while he was in law school so maybe I became interested in utero. After I was born, my mother and I proudly attended his graduation ceremony at De Paul University College of Law. Actually, I spent many car rides and family dinners hearing about his cases.

**Q:** Which law school did you attend?

**A:** I attended De Paul, as well. My parents were surprised when I announced I had enrolled in law school. I was always attracted to a career outdoors but after operating a landscaping business in Barrington and a logging operation in Michi-



**Riccardo Di Monte**

gan, a career in law appeared more intellectually and financially rewarding.

**Q:** When did you join the firm?

**A:** In the summer of 1983. I became the firm's law clerk, running errands and filing papers in the various courthouses while I was in law school. We were a much smaller law firm then and I learned a lot from our experienced legal secretaries and the lawyers helped me a lot. In 1985, I became the seventh attorney. We now have 18 attorneys.

Q: Any notable accomplishments in law school?

A: I am proud of receiving the American Jurisprudence Award which goes to the highest grade in debtor/creditor relations (bankruptcy and secured transactions) which is now Article 9 of the Uniform Commercial Code. I was recruited by Judges Ginsberg and Schmetterer of the United States Bankruptcy Court in Chicago. I also spent four semesters in the De Paul legal clinic and obtained a Supreme Court Rule 711 License to practice law under the supervision of a licensed attorney/professor. We represented indigent clients pro bono in family law, landlord/tenant, collection, social security and other matters. I loved meeting new people, helping poor people who could not afford an attorney and putting my newly acquired legal education to practical use. After all, the law by itself is interesting but of what value is it if not used to assist people with their problems? I continue to do pro bono work.

Q: Any memorable or interesting cases in your career as a trial lawyer?

A: Several come to mind. In 1989, I had a three-week jury trial in a lender liability case which resulted in an \$18.6 million verdict against our client, a savings and loan association. The verdict was so large that it put the S & L into government receivership and was the largest verdict ever rendered in Du Page County at the time. After the initial verdict, the case was removed to federal court and the judgment was vacated, the case was retried, and the client obtained a favorable verdict which was affirmed on appeal. This case is how I started earning my gray hairs.

Then I had two memorable lottery prize cases. I represented a bakery worker who joined as the 13th member of a 12-member lottery pool at work. The night he joined the pool, he bought the lottery tickets for the pool but he purchased the wrong number combination by deviating from the number combination which the pool regularly played. My client's incorrect number combination won the \$7 million prize that night and the other 12 members refused to recognize his membership in the pool. I argued that if my client had not made the mistake which resulted in the prize, no member would have benefitted. The court agreed and "lucky number 13" got his pro-

portionate share of the \$7 million prize. In another lottery prize case, I represented an oil company which owned a chain of 27 gas stations, one of which sold the winning tickets for a \$12 million lottery prize. The unfortunate lottery player who chose the winning number combination purchased the winning ticket from an impatient gas station employee who printed six identical winning tickets instead of the single ticket which the player purchased. Under State Lottery Regulations, the \$12 million prize was evenly divided between the six winning tickets, one of which was purchased by the player and the other five which were placed in my client's gas station register. Lottery regulations also require lottery agents like my client to pay for "mistake tickets" so my client took the position that it owned five of the six winning tickets and was entitled to \$10 million of the \$12 million prize. The player sued the oil company to recover the prize attributable to the other five tickets. The oil company foolishly declined a settlement offer to split the prize evenly at \$6 million each. Obviously, the judge, the jury, the appellate court, the supreme court, and every other rational person on earth sided with the player even though state regulations favored the oil company.

Q: What are you working on today?

A: I love trial work and my forte is commercial litigation. Most recently I have been actively involved in "business divorce" cases several complex, high stakes, partnership, corporate, and LLC dissolution cases involving disputes between business owners who are no longer capable of "playing nice" with each other. I've handled several law firm dissolution cases. Talk about demanding clients!

Q: What part of practicing law do you enjoy the most?

A: Today is different than years past. When I was younger, I enjoyed the immediate gratification associated with presenting a motion, or trying a case, and winning or losing. Today, I derive enjoyment from watching strategic decisions come to fruition over time. I enjoy assisting associate attorneys and junior partners with their cases and their clients to grow their practices. We have an idea or a plan today which we put into motion and which results in a success many months, usually years later. In addition, I have enjoyed helping grow the firm from a real estate litigation and transactions boutique into a general practice firm.

## David Arena Named Partner

D&L is pleased to announce David Arena's elevation to equity partner. "David continues to display the same dedication to excellence he exhibited when he joined D&L



Gene DiMonte, Bridget and David Arena

in 1996," says Riccardo Di Monte. "He is an integral part of the strategic approach we take to solving our client's problems." David's extensive commercial litigation experience includes contract disputes, construction law, mechanic's liens, business dissolutions, and copyright violations.

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extent there is insufficient equity in the property to pay both the lien claim and the mortgage interest, the lender becomes unsecured in its position. In addition, a lien claimant may take priority over the lender's mortgage to the extent the labor or materials supplied by the lien claimant enhance the value of the property beyond the value of the property at the time the mortgage was recorded. For these reasons, most mortgages contain clauses which provide that it is an event of default under the mortgage if a mechanic's lien is recorded against the property unless the owner provides the lender protection from the lien claim.

Every participant in a private construction project should have a fundamental understanding of the mechanics lien process. Perfecting your lien and knowing what to do once a payment dispute arises is crucial. D&L has been practicing in the area of construction law for over 35 years and regularly counsels parties in the construction industry, including general contractors and subcontractors, homeowners and condominium associations, owners and developers, and material suppliers. Our next issue will address the mechanic's lien process from the private owner's viewpoint.

## Julia Jensen Appointed to ISBA Business Section

Already a member of the Assembly (lower governing body) of the Illinois State Bar Association, Julia E. Jensen has been appointed to the Illinois State Bar Association Commercial, Banking and Bankruptcy Law Section Council by Bar President Elect Robert K. Downs. In appointing Julia to the Council, President Downs told her he believes people serving on Section Councils are the “nuts and bolts” of ISBA’s success in meeting the needs of its members. He added that he was appointing her because he believes the Bar Association must increase its creativity and insight in addressing issues facing the Association, its members, the profession and the public. Julia brings to the Section Council the same energy, enthusiasm and creativity she has dis-



played at D&L in pursuing her active career, taking time out to write for our newsletter, planning our annual client appreciation parties, and speaking at public forums, such as her recent address to an entrepreneurial group in Glenview regarding accounts receivable, mechanic’s liens and collection issues. All while planning her impending wedding!

## New USERRA Poster Requirement

by Margherita M. Albarello

Effective March 10, 2005, all employers, regardless of size, must post notice to all employees of their rights and benefits under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The U.S. Department of Labor (DOL) has developed a model notice, which employers are required to post “where employers customarily place notices for employees.” The model notice is available for download directly from the DOL at <http://www.dol.gov/vets/programs/userra/poster.pdf>.

## D&L Adds Seasoned Bankruptcy Attorney

Ira Goldberg has joined D&L’s bankruptcy group. Ira’s practice focuses on representing debtors, secured and unsecured creditors, landlords, creditor committees, and trustees in Chapter 7 liquidations and Chapter 11 reorganizations. Ira’s broad experience includes preference and fraudulent conveyance litigation and a wide range of asset liquidations and acquisitions including real estate, inventory, equipment, and even a Chicago Board of Trade seat. Before joining D&L, Ira was a member of McGuireWoods Ross & Hardies. Ira earned his J.D., Magna Cum Laude (1983), and his B.S. Summa Cum Laude, finance, from the University of Illinois, Urbana. Ira is an avid baseball fan and player and a balloon sculptor. He and his wife, Kathy, live in Chicago.



USERRA provides reemployment rights to employees called into active military service in certain circumstances, prohibits discrimination and retaliation against service members and provides health insurance protection for service members and their families. The recent changes to USERRA also increased the health insurance continuation coverage requirements. Employers who provide health insurance to their employees must now offer 24 months of continuation coverage to employees on military leave under USERRA. For the first 30 days of military leave, employees may receive the continuation coverage at their normal premium rate. For military leaves greater than 30 days, the employee may be required to pay up to 102% of the full premium rate for the duration of the coverage period, much like coverage offered departing employees under COBRA. For a more comprehensive discussion of your responsibilities to employees on military leave, contact your D&L employment and labor attorney.

## D&L Talks!

Jane Kaminski Simers will speak August 4th through 6th at the annual meeting of the National Advocates Society/National Medical and Dental Association Conference in Santa Fe, New Mexico. Jane will address topics relevant to law for an aging society with an emphasis on improving the quality of life for older Americans.

She will discuss the various legal instruments available to support estate planning and elder care needs, elder patient advocacy, accessing non-liquid assets to provide support for an elderly loved one, and the changing landscape of government benefits as they relate to elder care.

“There are many options available to ensure our loved ones are cared for in their senior years, but there are also many misconceptions that I hope to clear up,” said Ms. Kaminski Simers. “I also hope to educate the participants on matters that should be considered to ensure that their client’s needs and wishes are adequately met as they approach their elder years.”

Lin Hanson recently addressed an American Bar Association-sponsored convocation of Business Bar Leaders from throughout the United States. Lin spoke about his role in drafting business legislation for the Illinois Secretary of State’s Advisory Committee on Business Laws, with particular emphasis on his role in drafting limited liability company legislation dealing with the duties of managers to the company and its members.

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