

**IN THE COURT OF APPEALS OF IOWA**

No. 0-364 / 09-1766  
Filed June 16, 2010

**ACTERRA GROUP, INC.,**  
Plaintiff-Appellant,

**vs.**

**IOWA STATE SAVINGS BANK,**  
Defendants-Appellees.

---

Appeal from the Iowa District Court for Marion County, John D. Lloyd,  
Judge.

A partially unpaid contractor appeals the district court's ruling that certain mortgage advances by a bank had priority over its mechanic's lien. **AFFIRMED.**

Paul D. Burns and Joseph W. Younker of Bradley & Riley, P.C., Iowa City,  
for appellant.

Jon P. Sullivan of Dickinson, Mackaman, Tyler & Hagen, P.C., Des  
Moines, for appellees.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

**MANSFIELD, J.**

This case is a lien priority dispute between a partially unpaid contractor and a mortgagee.

Verista Imaging, Inc., planned to move to Knoxville. It hired Acterra Group, Inc., a design/build contractor, to remodel a building for it. Iowa State Savings Bank (ISSB) agreed to provide financing for the purchase and remodeling of the building.

On June 10, 2008, Verista purchased the Knoxville property with funds provided by ISSB. ISSB's mortgage was recorded the following day, June 11. Subsequently, ISSB advanced additional funds to pay for Acterra's services and for other purposes.

It is undisputed that Acterra performed no work at the building site until after June 11. Acterra did complete some preliminary design work at its own offices in April 2008. ISSB was aware, at least generally, of Acterra's pre-June 11 preliminary work.

Verista subsequently defaulted on its obligations to both Acterra and ISSB. As a result, Acterra filed a mechanic's lien. A dispute then arose as to the relative priority of Acterra's mechanic's lien and ISSB's mortgage.

ISSB argued that its initial advance was a purchase-money mortgage that entitled it to a superpriority. ISSB maintained that the failure of the parties to designate the mortgage as a purchase-money mortgage only eliminated certain statutory rights, and did not affect ISSB's common-law superpriority status. See Iowa Code § 654.12B (2009).

ISSB argued that its second advance, which occurred on August 6 and was intended to fund Acterra's construction work, likewise had priority over Acterra's mechanic's lien. Iowa Code section 572.18(2) provides that "[c]onstruction mortgage liens shall be preferred to all mechanics' liens of claimants who commenced their particular work or improvement subsequent to the date of the recording of the construction mortgage lien." ISSB urged that for purposes of this statute, Acterra did not "commence" work until it showed up at the building site some time after June 11, i.e., after ISSB's mortgage had been recorded. See *In re Estate of Anderson*, 244 Iowa 325, 329, 56 N.W.2d 913, 915 (1953) ("The commencement of the building or improvement within the meaning of mechanics' lien statutes is the visible commencement of actual operations on the ground . . .").

Following a trial, the district court essentially agreed with ISSB's arguments regarding these two advances. On October 28, 2009, the court entered detailed findings of fact, conclusions of law, and a judgment. Acterra now appeals.

The present appeal is very well-briefed by both sides. However, we believe there is little we can add to the thorough and well-written decision of the district court. We approve of the reasons and conclusions therein. Accordingly, we affirm pursuant to Iowa Court Rule 21.29(1)(d).

**AFFIRMED.**