Filed 4/2/12 Advent, Inc. v. Ashland Ave. Apartments CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ADVENT, INC., Plaintiff and Appellant, v. ASHLAND AVENUE APARTMENTS, LLC, et al. Defendants and Respondents.	B230182 (Los Angeles County Super. Ct. No. BC396815)

APPEAL from a judgment of the Superior Court of Los Angeles County. Holly E. Kendig, Judge. Affirmed.

Advent Companies, Treg A. Julander; Edward M. Picozzi for Plaintiff and Appellant.

Freeman, Freeman & Smiley, John P. Godsil, Jared A. Barry for Defendant and Respondent Ashland Avenue Apartments, LLC.

Troutman Sanders, Dan E. Chambers, Amy A. Hoff for Defendant and Respondent California Bank & Trust.

For purposes of determining priority, a mechanic's lien relates back to the time of "commencement of the work of improvement." (Civ. Code, § 3134.) Following a bench trial, the trial court found that the plaintiff, appellant Advent, Inc. (Advent), failed to establish the priority of its mechanic's lien over a deed of trust held by respondent California Bank & Trust (CB&T). Based on evidence presented at trial, the trial court held that no apparent and visible work occurred prior to the recordation of the deed of trust, and therefore the work of improvement commenced after the deed of trust was recorded. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In the summer of 2006, David Wood purchased the property at 917 North Sierra Bonita Avenue in West Hollywood. At the time, situated on the property was a vacant, old, single-family house. Around the time of purchase, Wood and others formed Stratus Urban 917 Sierra Bonita, LLC (Stratus), for the purposes of developing, building, and selling five townhouses on the property. Wood eventually transferred title in the property to Stratus in furtherance of this plan.

Besides Wood, another investor in Stratus was John Tyson Jacobsen, the president of Advent. Jacobsen put $150,000 into and held a 12.71 percent interest in Stratus.

Stratus hired Advent to be the general contractor for the project. The written owner-contractor agreement between Stratus and Advent was executed on November 3, 2006. However, at trial, both Wood and Jacobsen testified that they came to an earlier oral agreement in September or October 2006 for Advent to act as contractor.

Stratus obtained funding for the construction and development of the project from Vineyard Bank, N.A. (Vineyard). Stratus and Vineyard entered into a construction loan agreement on November 9, 2006, wherein Vineyard agreed to loan up to $3,284,000. Vineyard's deed of trust on the property was recorded on November 20, 2006. Stratus eventually defaulted on the loan, and in June 2008 Vineyard caused to be recorded a notice of default and election to sell under the deed of trust, reflecting an outstanding balance in excess of $3.3 million.

According to Advent, it worked as contractor on the project until June 2008, when it stopped due to lack of payment. In August 2008, Advent recorded a mechanic's lien and filed a lis pendens, stating it was owed approximately $654,000. Soon after, Advent filed a complaint against Stratus for, among other things, foreclosure of the lien. In its complaint, Advent alleged that it entered into an agreement with Stratus in about November 2006, and the complaint attached as an exhibit the November 3, 2006, owner-contractor agreement.

While Advent's foreclosure action was pending, Vineyard nonjudicially foreclosed on its deed of trust, acquiring the property in December 2008. Then, in February 2009, Vineyard sold the property to respondent Ashland Avenue Apartments, LLC (Ashland). Advent amended its complaint to name Vineyard and Ashland in place of "Doe" defendants, alleging that its mechanic's lien on the property was superior to defendants' interests.

Around this time, Vineyard was closed by the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC) was named receiver. CB&T became the assignee of the FDIC for Vineyard, and it substituted into the action in place of Vineyard in August 2009. Stratus never answered the complaint and its default was entered in April 2009. Trial for the purposes of resolving the priority of Advent's mechanic's lien claim was held in June, July, and August 2010.

The Trial

The issue for trial was whether the mechanic's lien had priority over the deed of trust. It was undisputed that Vineyard's deed of trust was recorded on November 20, 2006. The primary issues of dispute were (i) whether "commencement of a work of improvement" on the property occurred prior to November 20, 2006, so that the mechanic's lien would take priority over the deed of trust, and (ii) whether any work done on the property prior to November 20, 2006, was pursuant to the construction contract between Stratus and Advent.

As noted above, the written contract between Stratus and Advent was executed on November 3, 2006. No provision of the written contract referred to any work having

already commenced, and a project schedule attached to the contract contemplated a start date of June 2007. The principals of Stratus and Advent, however, both testified that they reached an oral agreement in September or October 2006, and that work on the project started by October 2006.

Asbestos abatement

Evidence at trial established that a temporary fence was erected on the property by October 2006. Evidence also showed that asbestos was found on the roof of the existing home on the property (which was to be demolished), and that the asbestos was removed on October 23, 2006. Advent hired a demolition subcontractor, DemoCo, which in turn retained an asbestos abatement subcontractor, Absolute Abatement & Demolition (Absolute Abatement), to do the abatement work. Advent contended that this asbestos abatement was performed pursuant to its agreement to work as general contractor on the project.

Three employees of Absolute Abatement worked on the asbestos removal. The asbestos was contained in mastic found under the old house's Spanish-style roof tiles. The crew used large hand tools to remove the asbestos; no heavy machinery was required. They spent about four to five hours removing material from the roof, loading approximately 14 bags with mastic, roof tiles, and other asbestos-contaminated refuse. Absolute Abatement's foreman testified that after he and his crew completed the job, he went inside the house and could see little holes in the roof through the ceiling. The workers hauled away the bags and their equipment and left the site in a clean condition. No tag or sign was left at the property indicating that the work had been done.

Property inspection

In connection with the Vineyard loan application process, Todd Niitsuma inspected the property on behalf of his then-employer, CTI Inspections, a company that verified the condition of properties for title insurance companies. Niitsuma testified that one of the objectives of his inspection was to determine whether any construction work had been done or was in progress. Niitsuma made two trips to the property, one on

October 16, 2006, and one early in the morning of November 20, 2006, just before Vineyard's deed of trust was recorded.

During his first inspection, Niitsuma walked the property, took eight photographs from various locations, sketched the property, and prepared a report summarizing his observations. He did not see any signs of construction on the property.

Niitsuma testified that the primary reason he inspected the property the second time was to look for signs of construction, since the deed of trust was set to be recorded at 8:00 a.m. that morning. He walked the property looking for construction work and looked inside the house through a window. Niitsuma's observations included a visual inspection of the roof from various vantage points on the ground. He saw no sign that any construction (including demolition or similar work) had been done or was in progress anywhere on the property, including the house and the roof. Niitsuma took eight pictures of the property and prepared a report noting that there was no construction in progress. He testified that he observed no changes to the property from the time of his first visit in October.

Loan agreement and other documentary evidence

Stratus entered into several agreements with Vineyard and was required to submit the written owner-contractor agreement in order to obtain the construction loan. On behalf of Stratus, Wood and other managing members signed a construction loan agreement requiring that Stratus "not permit any work or materials to be furnished in connection with the Project until . . . Lender's mortgage or deed of trust and other Security Interests in the Property have been duly recorded and perfected." Wood testified that Stratus "endeavored" to comply with this requirement and that Stratus never told Vineyard it would start work on the project before the loan funded. Stratus also agreed that Vineyard would not be required to make an initial advance until Vineyard received a title insurance policy showing its deed of trust as "a valid first lien on the Property." Moreover, Stratus agreed that it would "commence construction" no later than December 26, 2006.

Other evidence presented at trial also tended to show that, as of November 2006, Stratus did not consider that demolition or other construction work had yet commenced. In addition to the written owner-contractor agreement—which was executed on November 3, 2006, and pointed to a subsequent commencement date—Stratus's own meeting notes repeatedly stated that demolition would commence "after loan funds" and that Stratus was "awaiting permit and . . . loan funding." It appears that the first funds from the construction loan were paid out in January 2007, in part as payment for demolition of the existing house. DemoCo's corresponding invoice showed that the "service date" for demolition was December 6, 2006.

The Statement of Decision

Following trial, the trial court issued a proposed statement of decision, to which Advent objected. The trial court then issued its "final decision" on November 23, 2010. The court found in favor of Ashland and CB&T, ruling that Advent failed to establish the priority of its mechanic's lien over the November 20, 2006 deed of trust.

The trial court's decision (which was detailed and thorough) stated that the "key question" was whether the asbestos abatement performed in October 2006 met the legal requirements to establish priority of Advent's mechanic's lien. The trial court found that it did not for two reasons: (i) the asbestos abatement did not qualify as "commencement" of a "work of improvement" under Civil Code section 3134, and (ii) the asbestos abatement was performed pursuant to a contract for "site improvement" under Civil Code section 3135 separate from the construction contract. The court wrote that Advent had tried to characterize the asbestos abatement as "demolition" so it could plausibly contend that "commencement of the work of improvement" occurred in October 2006. However, the court noted that even if the asbestos removal was "demolition," the mechanic's lien at issue did not necessarily attach in October 2006 since demolition work can "qualify as a separate contract for site improvement under Civil Code sections 3102 and 3135."

In its decision, the court summarized the evidence supporting its finding that Civil Code section 3134 did not apply to Advent's lien. The basis for its finding was that the "visual evidence on site did not clearly reveal that work had commenced on a

construction project. Thus, it did not provide notice to anyone of the commencement of work before the Bank's deed of trust was recorded."

With respect to the determination that the asbestos removal was an independent contract for site improvement separate from the construction agreement, the court relied on the language of the owner-contractor agreement, which did not reference any prior work, as well as Advent's internal meeting notes and other documentary evidence. The court found that Advent's case "involves various arguments and retroactive maneuvers that try to bootstrap the earlier asbestos removal contract into the subsequently-signed written construction contract."

Furthermore, Advent's witnesses were found to have "credibility issues." The decision stated: "Mr. Wood's credibility was impaired when he testified that although he knew that construction had begun, he knowingly misrepresented to the Bank, orally and in the written contract, that no construction had begun in order to obtain the loan in the fall of 2006." The court found that Jacobsen's credibility was impaired because, in addition to being president of Advent, he was also an investor in Stratus.

DISCUSSION

I. Appealability

Advent originally attempted to appeal from the November 23, 2010 "final decision." After we issued an order requiring Advent to submit a final, appealable judgment, Advent responded by filing a judgment that was recently entered by the trial court. This judgment disposes of all claims between Advent, on the one hand, and Ashland and CB&T, on the other. Furthermore, Advent submitted a request for dismissal with prejudice of its claims against Stratus, and this request has been entered by the superior court. Accordingly, since all claims pertaining to Advent have been determined, appeal is appropriate. (See *Justus v. Atchison* (1977) 19 Cal.3d 564, 568, disapproved on

other grounds in *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 171.) We will treat this appeal as if it were taken from the judgment.[1]

II. The Trial Court Properly Found that Advent Failed to Establish the Priority of Its Mechanic's Lien

A. The mechanic's lien law

The California mechanic's lien derives from article XIV, section 3, of the California Constitution, which provides: "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens." At present, the mechanic's lien law is codified at chapters 1 and 2 of title 15, part 4, division 3 of the Civil Code.[2] As the mechanic's lien is the only creditor's remedy arising from the California Constitution, laws pertaining to mechanics' liens are liberally construed for the protection of laborers and materialmen. (*Betancourt v. Storke Housing Investors* (2003) 31 Cal.4th 1157, 1166.)

The overriding issue in this case is when Advent's mechanic's lien for its work as general contractor on the project took effect. The date of recording of a mechanic's lien is not determinative of its priority. (*Wachovia Bank v. Lifetime Industries, Inc.* (2006) 145 Cal.App.4th 1039, 1052.) Rather, a mechanic's lien relates back to the time of commencement of the work of improvement. (*Ibid.*) As provided in Civil Code section 3134, mechanics' liens, "other than with respect to site improvements," are "preferred to any lien, mortgage, deed of trust, or other encumbrance upon the work of improvement

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[1] Both CB&T and Ashland filed cross-complaints, but neither named Advent as a cross-defendant. Trial was bifurcated so that only Advent's claim was heard in the first phase and, following trial, the cross-complaints were severed for all purposes from Advent's complaint. Since no issues remain to be determined with regard to Advent, the cross-complaints do not render this matter nonappealable.

[2] This will change effective July 1, 2012, when new Civil Code provisions take effect.

and the site, which attaches subsequent to the commencement of the work of improvement . . . ." Civil Code section 3106 defines a "work of improvement" as including "construction, alteration, addition to, or repair, in whole or in part, of any building, . . . the filling, leveling, or grading of any lot or tract of land, the demolition of buildings, and the removal of buildings. Except as otherwise provided in this title, 'work of improvement' means the entire structure or scheme of improvement as a whole."

Civil Code section 3135 explains the "site improvements" which fall outside the scope of section 3134: "If any site improvement is provided for in a separate contract from any contract with respect to the erection of residential units or other structures, then the site improvement shall be considered a separate work of improvement and the commencement thereof shall not constitute a commencement of the work of improvement consisting of the erection of any residential unit or other structure." "Site improvement" is defined in Civil Code section 3102 as "the demolishing or removing of improvements, trees, or other vegetation located thereon, or drilling test holes or the grading, filling, or otherwise improving of any lot or tract of land . . . ."

Thus, under this statutory scheme, a mechanic's lien takes priority over a deed of trust if (i) the "commencement of the work of improvement" precedes the recording of the deed of trust, and (ii) the work was not for "site improvement" provided for in a separate contract.

The trial court determined that Advent proved neither of these requirements, and denied Advent's claim on these two separate bases. First, the court found that the work of improvement at the property did not commence before the deed of trust was recorded. Second, it found that the asbestos abatement was site improvement done under a contract separate from the November 2006 construction contract. Since we conclude that the trial court did not err in finding that the work of improvement did not commence prior to recordation, we examine only this basis for denial of Advent's claim.

B. The trial court applied the correct law

Advent contends that the trial court erred by relying on the case of *English v. Olympic Auditorium, Inc.* (1933) 217 Cal. 631 (*English*), to determine what constitutes "commencement" of a work of improvement.

In *English*, property was leased by a corporation. The lease authorized the lessee to construct an auditorium on the property. After the lease was executed, the owners of the property posted a notice of nonresponsibility on the premises. At the time of posting, there had already been delivered to the property six hundred board feet of lumber, and a "test-hole" had been dug in the ground measuring six feet by ten feet by six feet deep; the hole was eventually used as part of the excavation for the auditorium. (*English, supra*, 217 Cal. at p. 634.) The auditorium was constructed, and soon afterward various mechanics' liens were filed. The lessee defaulted on its payment of rent, and the owners filed an unlawful detainer action and retook possession of the property. (*Id.* at p. 635.) Litigation ensued between the mechanic's lien claimants and the property owners. It was held, and the Supreme Court affirmed, that, based on the delivery of the lumber and digging of the test-hole, construction began before the notice of nonresponsibility was posted. (*Id.* at p. 636.) In making this determination, the decision quoted an earlier Court of Appeal opinion, *Simons Brick Co. v. Hetzel* (1925) 72 Cal.App.1, 5 (*Simons Brick*), which held that "commencement of work" means "'some work and labor on the ground, *the effects of which are apparent—easily seen by everybody*; such as beginning to dig the foundation, or work of like description, *which everyone can readily see and recognize* as the commencement of a building.'" (*English*, at p. 637, italics added.) The trial court here relied on this language to determine what type of work qualifies as commencement of the work of improvement.

Arguing that this standard is overly stringent, Advent attempts to distinguish *English* because it involved the posting of a notice of nonresponsibility, not recordation of a deed of trust. We find this distinction immaterial given the issues presented. As in the instant case, in *English* the matter to be resolved was when commencement of work occurred. *English* did not limit its standard of "commencement" only to cases involving

notices of nonresponsibility. Rather, the *English* opinion specifically noted that it was applying the mechanic's lien law. (217 Cal. at pp. 637-638.) Indeed, the case followed by the *English* court, *Simons Brick*, dealt with issues similar to those presented in the current dispute. The court in *Simons Brick*, applying the standard later adopted by *English*, held that trial court was justified in finding that a 60-foot trench dug by subcontractors at the front of the property was sufficiently visible to constitute commencement of work. (*Simons Brick, supra*, 72 Cal.App. at p. 5.) Based on this determination, the *Simons Brick* court found that mechanics' liens were superior to a mortgage recorded after the trench was dug. (*Ibid.*)[3] There was no notice of responsibility at issue in *Simons Brick*.

More recent case law is in line with the rule enunciated in *Simons Brick* and *English*. In *Walker v. Lytton Sav. & Loan Assn.* (1970) 2 Cal.3d 152, 156-157, plaintiff architects, pointing to the statutory definition of "'work of improvement'" as including "'the entire structure or scheme of improvement as a whole,'" contended that commencement of the work of improvement occurred when the plaintiffs prepared plans and specifications for a project. Our Supreme Court disagreed, holding that a mechanic's lien did not attach until construction commenced "by the doing of actual visible work on the land or the delivery of construction materials thereto." (*Ibid.*) *D'Orsay Internat. Partners v. Superior Court* (2004) 123 Cal.App.4th 836, 844, likewise held that the plaintiff was not entitled to a mechanic's lien since "no actual visible work was commenced at the project site and no materials were delivered to the site." (See also *Nat. Charity League, Inc. v. County of L.A.* (1958) 164 Cal.App.2d 241, 247-248 [citing to *English* and *Simons Brick* in holding that digging of trenches was sufficient to find commencement of building]; *Showplace Square Loft Co., LLC v. Primecore Mortg.*

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[3] The statutory provision in effect at the time was Code of Civil Procedure section 1186, which was substantively equivalent to the current Civil Code section 3134. It provided that a mechanic's lien was superior to an encumbrance that attached "'subsequent to the time when the building, improvement, or structure was commenced.'" (*Simons Brick, supra*, 72 Cal.App at p. 5.)

Trust, Inc. (Bankr. N.D.Cal. 2003) 289 B.R. 403, 408 ["Under *Simons* and *English*, because the effects of this work are apparent and visible and of a permanent nature, construction commenced for the purposes of California Civil Code section 3134"].) Case law has further clarified that, in addition to being apparent and visible, the work must be "permanent." (*Howard A. Deason & Co. v. Costa Tierra Ltd.* (1969) 2 Cal.App.3d 742, 753; *United Rentals Northwest, Inc. v. Snider Lumber Products, Inc.* (2009) 174 Cal.App.4th 1479, 1484.)

Thus, to summarize, for work to constitute "commencement of the work of improvement" under Civil Code section 3134, the work must be apparent, visible, and permanent. The trial court did not deviate from this standard in its decision.

C. The trial court's decision was supported by substantial evidence

Whether a work of improvement has commenced has been described as a question of fact for the trial court to determine. (*Arthur B. Siri, Inc. v. Bridges* (1961) 189 Cal.App.2d 599, 601; *English*, *supra*, 217 Cal. at p. 637; *Design Associates, Inc. v. Welch* (1964) 224 Cal.App.2d 165, 174; *Simons Brick*, *supra*, 72 Cal.App. at p. 5.) Although this analysis is probably more appropriately described as a mixed question of law and fact, nevertheless the analysis is predominantly factual, and so we apply a substantial evidence standard of review. (See *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888; *Vine v. Bear Valley Ski Co.* (2004) 118 Cal.App.4th 577, 586.)

Under this standard of review, we determine if there is any substantial evidence, whether contradicted or uncontradicted, to support the trial court's findings. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) We "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." (*Ibid.*) "Substantial evidence" is not synonymous with "any" evidence, but instead is "evidence of ponderable legal significance . . . that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651. "Substantial" refers to the quality, not the quantity, of evidence. (*Ibid*.) Thus,

"[v]ery little solid evidence may be 'substantial,' while a lot of extremely weak evidence might be 'insubstantial.'" (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871.)

The trial court was presented with ample evidence to support a finding that the asbestos abatement work was not apparent and visible, and so did not constitute commencement of the work of improvement under Civil Code section 3134. The asbestos abatement work was completed in about four to five hours.[4] Only hand tools were used and the site was left in a clean condition. All bags and equipment used in the abatement were hauled away upon completion. No sign was left at the property indicating that the work had been done. Although Absolute Abatement's foreman testified that he could see little holes in the roof through the ceiling inside the existing house, the trial court found that his credibility was impaired. This was a determination within the trial court's sound discretion; we do not reweigh the credibility of witnesses. (*Eidsmore v. RBB, Inc.* (1994) 25 Cal.App.4th 189, 195.)

Meanwhile, the trial court found that the inspector, Niitsuma, was "a neutral witness, with no stake in the outcome," and that his testimony was "highly credible." Niitsuma testified that he saw no sign of construction (including demolition or similar work), either to the land, the house, or the roof. Moreover, he saw no visible changes at the property between his October 16 and November 20, 2006 inspections. His testimony supported the finding that no visible and apparent work was done at the property.

This conclusion was also supported by various photographs in evidence at trial. As found by the trial court, the photographs taken by Niitsuma on the date the deed of trust was recorded showed no evident signs of construction. Advent offered a competing photograph of the property, but the trial court found that it was not compelling evidence

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[4] Advent did not contend that erection of the chain link fence constituted commencement of a work of improvement. This is because temporary fencing does not constitute an "improvement," but instead it is personal property that "is temporary and will be removed." (*Lambert Steel Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1043.)

because it was taken in December 2006, after the deed of trust was recorded. Moreover, Advent's photograph merely depicted a small number of Spanish tiles stacked on a limited portion of the roof of the old house. The trial court did not err by finding this photograph did not advance Advent's case.

We also find it highly significant that the lender (at the time, Vineyard) recorded its deed of trust without any notice that Advent may or could later claim that the work of improvement had commenced. Although mechanic's lien laws are to be liberally construed to protect laborers and materialmen, it has also been recognized that the law expressed in Civil Code section 3134 "was designed for the protection of those who take security interests in land as well as for the protection of mechanic's lien claimants." (*Tracy Price Associates v. Hebard* (1968) 266 Cal.App.2d 778, 788; *Walker v. Lytton Sav. & Loan Assn., supra,* 2 Cal.3d at pp. 157-159.) "'[A]ctual visible work on the land notifies potential lenders that mechanic's liens have arisen. [Citation.]'" (*D'Orsay Internat. Partners v. Superior Court, supra,* 123 Cal.App.4th at p. 842; see also *Lambert Steel Co. v. Heller Financial, Inc., supra,* 16 Cal.App.4th at p. 1043 ["the current system . . . requires the lender to inspect the site for visible signs of work before recording its lien and disbursing the funds"; but see *South Bay Engineering Corp. v. Citizens Sav. & Loan Assn.* (1975) 51 Cal.App.3d 453, 456 [stating that the "element of notice . . . is not the critical issue" in finding that stakes and markers placed on the property did not constitute commencement of the work of improvement].)

Prior to the time the deed of trust was recorded, Vineyard did not just have Niitsuma's inspection reports and photographs. Vineyard was also presented with the oral and contractual representations made on behalf of Stratus by its principal, Wood, that no construction had begun. We recognize that these representations were made by Stratus, not Advent. But Advent's relationship with Stratus could hardly be described as typically arm's length. Rather, the evidence showed that Wood had negotiated other projects with Advent, and that Advent's principal, Jacobsen, was himself a significant investor in Stratus, holding a 12.71 percent interest. Of course, a lender cannot simply turn a blind eye to construction that has already begun, but there is no indication that this

occurred here. Instead, if, as Advent now asserts, work had actually commenced by the time the deed of trust was recorded, then it appears that the lender was deliberately misled. In any event, the evidence supported the trial court's finding that, because there was no apparent and visible work at the time the deed of trust was recorded, the work of improvement had not commenced.

In sum, in light of all the evidence, we find that the trial court's decision that Advent failed to establish the priority of its mechanic's lien was not in error.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.