

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-11-00218-CV**

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**SAI ENERGY, L.L.C., Appellant**

**V.**

**GOLDEN BANK, N.A., Appellee**

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**On Appeal from the 260th District Court**  
**Orange County, Texas**  
**Trial Cause No. D-100384-C**

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**MEMORANDUM OPINION**

SAI Energy, L.L.C. appeals a summary judgment in favor of Golden Bank, N.A. SAI entered into a contract to construct a motel. The motel owner secured a construction loan from Golden Bank. Golden Bank required SAI to sign an “Assignment of Rights Under Construction Contract and Subordination Agreement.” SAI certified in the document that no materials were furnished and no labor performed in connection with the construction project on or before the date of the loan. The document stated that as

consideration for Golden Bank's providing the funds to the motel owner, SAI agreed that any liens would be subject and subordinate to the deed of trust lien.

The day SAI signed the subordination agreement, Golden Bank made the construction loan. Four days later, at Golden Bank's request, SAI signed an "Affidavit of Commencement" which stated that SAI had not commenced any construction or preconstruction work on the construction site. More than two years later, SAI filed a constitutional mechanic's lien. After Golden Bank foreclosed on the property under the deed of trust, SAI sued Golden Bank for a determination that SAI's constitutional lien was superior to Golden Bank's lien.

SAI filed a motion for summary judgment asserting that SAI was entitled to judicial foreclosure and an order of sale on the mechanic's lien under section 53.154 of the Texas Property Code. *See* Tex. Prop. Code Ann. § 53.154 (West 2007). Golden Bank filed a response to the motion. Golden Bank also filed a motion for summary judgment, and SAI filed a response. The trial court granted Golden Bank's motion.

To prevail on a summary judgment motion brought under Rule 166a(c), a movant must show that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Little v. Tex. Dep't of Criminal Justice*, 148 S.W.3d 374, 381 (Tex. 2004). A properly perfected mechanic's and materialman's lien generally has preference over other prior liens, encumbrances, or mortgages upon the property. *See* Tex. Prop. Code Ann. § 53.123(a) (West 2007). A

mechanic's and materialman's lien, however, will not affect liens existing on land at the time of the inception of the mechanic's lien. *Id.* § 53.123(b). SAI argues that the time of the inception of SAI's lien relates back to the execution date of the general construction contract. *See McConnell v. Mortgage Inv. Co. of El Paso*, 157 Tex. 572, 305 S.W.2d 280, 283 (1957); *Oriental Hotel Co. v. Griffiths*, 88 Tex. 574, 33 S.W. 652, 662-63 (1895).

The subordination agreement provides that SAI's lien would be subject to and subordinate to Golden Bank's lien. Golden Bank notes that it advanced funds in reliance on the subordination agreement. *See, e.g., Fandel, Inc. v. First of Denver Mortg. Investors*, 522 S.W.2d 721, 724 (Tex. Civ. App.—Dallas 1975, no writ). The affidavit of commencement and the subordination agreement establish that the inception of SAI's lien was not prior to Golden Bank's deed of trust lien. *See Diversified Mortg. Investors v. Lloyd D. Blaylock Gen. Contractor, Inc.*, 576 S.W.2d 794, 800 (“[A] properly perfected mechanic's lien ‘relates back’ to a time referred to as the inception of the lien for the purpose of determining lien priorities.”); *see also* Tex. Prop. Code Ann. § 53.124(c), (d) (West 2007) (Affidavit of commencement filed jointly by owner and original contractor stating the date the work actually commenced is prima facie evidence of the date of the commencement of the improvement, and the time of inception of a mechanic's lien arising from work described in the affidavit is the date of commencement of work stated in the affidavit.). The trial court did not err in granting summary judgment in favor of Golden Bank. We overrule appellant's issue. The trial court's judgment is affirmed.

AFFIRMED.

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DAVID GAULTNEY  
Justice

Submitted on October 26, 2011  
Opinion Delivered December 22, 2011

Before Gaultney, Kreger, and Horton, JJ.