

A Study on the Priority Right to Satisfaction of the Payment for the Construction of the Project after Loss of the Project

Senyu Song*

Guangdong University of Foreign Studies, Guangzhou, 510006, China

*Corresponding author: senyu912@163.com

Abstract: *The priority right to satisfaction of the payment for the construction of the project is a statutory priority regime established by Article 807 of the Civil Code to protect the contractor's claim to such payment. Its realization ordinarily presupposes that the construction project is fit for liquidation or auction. Where the project is damaged, destroyed, or expropriated and is transformed into substitute proceeds such as insurance proceeds, damages, or compensation, existing rules do not clearly provide whether the contractor may continue to seek satisfaction in priority from such proceeds, and judicial decisions remain divided. This article analyzes the subrogation effect of the Priority Right after loss of the project. It argues that loss of the project does not necessarily extinguish the Priority Right. A lawfully established Priority Right may extend to substitute proceeds within its original scope, provided that such proceeds correspond to the exchange value of the original project. Where multiple rights compete over substitute proceeds, priority ranking should be coordinated on the basis of identity of value, with procedural safeguards such as identification of proceeds, deposit, and proportional distribution.*

Keywords: *payment for the construction of the project; priority right to satisfaction; priority ranking; identity of value*

Introduction

The priority right to satisfaction of the payment for the construction of the project under Article 807 of the Civil Code of the People's Republic of China (the "Civil Code") is intended to ensure that the contractor's claim to such payment is satisfied in priority from the exchange value of the construction project.^[1] The operation of this regime usually presupposes that the construction project exists and is fit for liquidation or auction.^[2] However, where the project is damaged, destroyed, or expropriated, it may be transformed from a physical subject matter into substitute proceeds such as insurance proceeds, damages, or compensation. Existing law does not specify whether the original effect of satisfaction in priority may continue, and academic views also diverge. One view holds that Article 807 is confined to proceeds obtained from the liquidation or auction of the project and should not be extended after loss of the project. Another view maintains that the Priority Right is directed at the exchange value of the project and that the contractor may still obtain satisfaction in priority where the substitute proceeds possess identity of value.^[3] Taking the real subrogation effect of the Priority Right after loss of the construction project as its object of study, and centering on Article 807 of the Civil Code, this article discusses the survival, extension, and enforcement of the Priority Right after loss of the project, and examines whether the contractor may continue to assert satisfaction in priority from substitute proceeds.^[4]

1. Application Difficulties of the Priority Right after Loss of the Construction Project

1.1 Dispute over Survival of the Priority Right after Loss of the Project

Although the Priority Right is based on the contractor's claim to the payment for the construction of the project, its effect of satisfaction in priority is not directed at the employer's general assets subject to enforcement, but at the exchange value of a specific construction project.^[5] The value of the original project may be transformed into substitute proceeds such as insurance proceeds, damages, or compensation, and, where the contractor has not been paid, the original basis for satisfaction in priority disappears.^[6]

Judicial practice has not formed a unified position on this issue. Some courts, on the ground that the construction project had been lost and the Priority Right therefore lacked a specific object, have rejected contractors' claims to satisfaction in priority from substitute proceeds, as in cases such as

(2021) Yu Min Zai No. 77 and (2025) Su 1003 Min Chu No. 1166. Other courts, proceeding from real subrogation, have held that although the construction project had been lost, its value could be succeeded by substitute proceeds, and have therefore supported the contractor's satisfaction in priority from such proceeds, as in cases such as (2021) Zui Gao Fa Min Shen No. 2026 and (2023) Zhe 0483 Min Chu No. 5843.

These divergent decisions show that whether the Priority Right survives after loss of the project still depends on how the object of satisfaction under Article 807 and the doctrine of real subrogation are understood. Judicial application therefore remains highly uncertain.

1.2 Obstacles to Extending the Effect of Satisfaction in Priority to Substitute Proceeds

Insurance proceeds, damages, compensation, and other substitute proceeds arising after loss of the construction project are, in nature, independent claims for monetary payment.^[7] Their connection with the value of the original construction project does not automatically translate into a legal extension of the Priority Right. When the contractor asserts satisfaction in priority from substitute proceeds, it must still prove that the proceeds actually exist and correspond to the exchange value of the original project. In practice, courts examine whether the substitute proceeds are in fact a substitute for the value of the original project; in (2025) Lu 02 Min Zhong No. 16575, for example, the contractor's relevant claim was not upheld.

Such proceeds do not necessarily correspond only to the exchange value of the construction project itself, and may also include losses arising from suspension of work, business losses, and other property interests.^[8] Whether the contractor may be satisfied in priority therefore depends on whether the portion corresponding to the value of the original project can be identified. Article 390 of the Civil Code expressly provides for real subrogation only in relation to security interests. Existing law still does not make clear whether that rule may be applied by analogy to the Priority Right, nor does it provide standards for identifying the scope of substitute proceeds or limiting their amount.

1.3 Difficulty in Coordinating Succession of Priority Ranking over Substitute Proceeds

The Priority Right generally ranks ahead of mortgages and ordinary claims, but this priority ranking is premised mainly on the existence of the project itself and its fitness for liquidation or auction. After loss of the project, the object of satisfaction changes from proceeds obtained from the liquidation or auction of the project to substitute proceeds such as insurance proceeds, damages, or compensation. Existing law does not clearly state whether the original priority ranking may succeed along with the transformation of the form of value.

In practice, contractors, mortgagees, and other creditors may all assert claims over the same construction value or its substitute proceeds. Guiding Case No. 150 has already shown that the Priority Right may compete with a mortgage over proceeds obtained from the liquidation or auction of the project. After loss of the project, such competition may shift to substitute proceeds such as compensation or damages. Because the amount of substitute proceeds is limited and because their sources, nature, and attribution rules differ, mechanically applying the original priority ranking attached to the project itself may ignore the particular nature of the substitute proceeds. Yet a complete denial of succession in priority ranking may deprive the contractor of priority protection solely because the project has been lost. How priority ranking should succeed and be coordinated with respect to substitute proceeds therefore remains a problem not adequately resolved by existing rules.

In sum, after loss of the construction project, the Priority Right faces significant application difficulties at three levels: the basis for its survival, the extension of its effect to substitute proceeds, and the priority ranking among multiple competing rights. These difficulties arise from the fact that existing rules have not sufficiently addressed the continuation of rights after the value of the project has changed its form. It is therefore necessary, on the basis of clarifying the normative nature of the Priority Right, to further examine the standards for determining the effect of satisfaction in priority over substitute proceeds and the rules for coordinating priority ranking.

2. Normative Causes of the Difficulties after Loss of the Construction Project

2.1 Unclear Legal Nature of the Priority Right

Article 807 of the Civil Code establishes the Priority Right, but does not define its legal nature. The right takes the proceeds obtained from the liquidation or auction of the project as its object of satisfaction and performs a function similar to a security interest in enabling satisfaction in priority from the value of the property;^[9] yet it is located in the Contracts Book and does not require a security agreement or registration as conditions for its creation, which gives it a special classification within the Civil Code system.^[10] Although the Interpretation (I) of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Cases on Construction Contract Disputes (the "Interpretation (I) on Construction Contract Disputes") provides rules on the holder of the right, the scope of satisfaction in priority, priority ranking, and exercise period, it does not clarify whether the right is a statutory mortgage, a statutory priority right, or another special security-type right.

This uncertainty directly affects whether the effect of satisfaction in priority may extend to substitute proceeds after loss of the project. If the right is characterized as a lien, it is difficult for the contractor to assert satisfaction in priority from substitute proceeds because the contractor usually does not retain continuous possession of the project.^[11] If it is characterized as a statutory mortgage, Article 390 of the Civil Code on real subrogation may provide interpretive support.^[12] If it is characterized as a statutory priority right, the basis for extension is relatively weak because existing law has not established a unified priority-right system or a real subrogation rule for statutory priority rights.^[13] Different characterizations therefore lead to different legal consequences.

Viewed from the normative structure of Article 807, the Priority Right is based on the contractor's claim to the payment for the construction of the project and is also directed at the exchange value of a specific construction project. The object of the contractor's satisfaction in priority is not the physical subject matter of the project itself, but the specific exchange value carried by the project. Understanding the right as a statutory priority right based on the claim to the payment for the construction of the project and directed at the exchange value of a specific project therefore better provides an interpretive basis for satisfaction in priority from substitute proceeds.

2.2 Difficulty in Determining Identity of Value between Substitute Proceeds and the Original Project

Even if the Priority Right may be extended after loss of the project, the contractor cannot automatically obtain satisfaction in priority from all substitute proceeds. Whether substitute proceeds can carry the original effect of satisfaction in priority depends on whether they have a definite correspondence with the exchange value of the original project. Only where the substitute proceeds substantively derive from transformation of the original value of the project is there a basis for extending the effect of satisfaction in priority.

Article 390 of the Civil Code provides that a security-interest holder may be satisfied in priority from insurance proceeds, damages, or compensation arising after the secured property is damaged, destroyed, or expropriated. Yet that provision presupposes a security-interest relationship and does not resolve the internal distinction of scope within substitute proceeds. Nor does the Interpretation (I) on Construction Contract Disputes provide standards for identifying substitute proceeds or dividing their scope, leaving the contractor without a direct basis for claiming subrogated satisfaction.

The difficulty in determining identity of value lies mainly in the complex sources, mixed content, and varied calculation bases of substitute proceeds.^[14] Insurance proceeds, tort damages, or expropriation compensation formed after loss of the project may include both the value of the project itself and business losses. Allowing the contractor satisfaction in priority from all substitute proceeds may extend the Priority Right to portions unrelated to the value of the project; categorically denying subrogated satisfaction, however, may deprive the contractor of priority protection merely because the original value of the project has changed form.

2.3 Gaps in Rules on Succession of Priority Ranking over Substitute Proceeds

Even if the Priority Right may extend to insurance proceeds, damages, or compensation, the priority ranking over substitute proceeds remains uncertain. Article 36 of the Interpretation (I) on Construction Contract Disputes provides that the contractor's Priority Right ranks ahead of mortgages and other claims, but that rule presupposes that the project itself exists and is fit for liquidation or auction.^[15]

Substitute proceeds have taken the legal form of a monetary claim or an entitlement to monetary payment, and are not proceeds obtained from the liquidation or auction of the project; Article 36 therefore cannot readily serve directly as the basis for succession of priority ranking.

Although Article 390 of the Civil Code recognizes the real subrogation effect of security interests, it addresses only whether the effect of the right may extend to the substitute object, and does not prescribe the priority ranking among right holders after such extension. Thus, even if the real subrogation rule is applied by analogy, it does not necessarily follow that the contractor retains its original priority ranking over substitute proceeds.

The essence of this gap is that existing priority-ranking rules all presuppose the existence of the project itself or of specific housing. After loss of the project, the rights of consumer purchasers of commodity housing, multiple construction participants, mortgagees, and other creditors may all shift to the same substitute proceeds, which may also become commingled with the employer's general assets subject to enforcement.^[16] Existing law therefore cannot explain whether the original priority ranking continues after transformation of the form of value, nor can it readily resolve conflicts among rights founded on different legal bases.

3. Constructing Rules for the Priority Right after Loss of the Construction Project

Satisfaction in priority from substitute proceeds does not create a new right after loss of the project. Rather, it is a mode of enforcing the original Priority Right after the value of the project has changed its form. Accordingly, the construction of rules should be based on Article 807 of the Civil Code and should clarify, within the existing framework of the Priority Right, the extension of its effect to substitute proceeds.

3.1 Survival Rule for the Priority Right after Loss of the Project

Damage, destruction, or expropriation of the construction project does not necessarily extinguish the Priority Right. Although Article 807 takes proceeds obtained from the liquidation or auction of the project as the object of satisfaction, its normative purpose is to protect the contractor's satisfaction in priority from the exchange value created by construction input.^[17] If, after loss of the project, that exchange value has been transformed into insurance proceeds, damages, or compensation, the value basis of the contractor's Priority Right has not necessarily disappeared.

Satisfaction in priority from substitute proceeds should, however, be subject to the dual limits of the conditions for establishment of the original right and the scope of that right. The contractor may assert extension of the right only if it originally satisfied the requirements of Article 807 and the Interpretation (I) on Construction Contract Disputes. If the contractor does not qualify as the holder of the right, the quality of the project does not meet the relevant requirements, or the exercise period has expired, the contractor cannot acquire priority status anew merely because substitute proceeds have arisen.^[18] At the same time, the contractor may claim satisfaction in priority from substitute proceeds corresponding to the value of the original project only within the scope of the payment for the construction of the project that is entitled by law to satisfaction in priority; overdue-payment interest, liquidated damages, losses caused by suspension and idle work, and similar items should not fall within the scope of satisfaction in priority.^[19]

3.2 Identification Standard Centered on Identity of Value

Whether substitute proceeds may bear the effect of satisfaction in priority should be judged by whether they correspond to the exchange value of the original project. Insurance proceeds, damages, or compensation may be included within the scope of satisfaction in priority only where the object of compensation is the exchange value of the original project and the proceeds are functionally equivalent to proceeds obtained from the liquidation or auction of the project. Losses from suspension of production or business, business losses, or damages for breach of contract should not be subject to the effect of satisfaction in priority.^[20]

The amount recoverable by the contractor must not exceed either the payment for the construction of the project that enjoys effect of satisfaction in priority by law or the portion of substitute proceeds corresponding to the exchange value of the original project.^[21] In adjudication, the contractor should bear an initial burden of proving the correspondence between the substitute proceeds and the exchange

value of the original project, and the court may consider insurance-claim materials, expropriation-compensation documents, appraisal opinions, construction-cost materials, and other evidence. Where substitute proceeds contain both compensation for the value of the project and compensation for other losses, the two should be distinguished; if it cannot be shown that the proceeds include the exchange value of the original project, they should not be included within the scope of satisfaction in priority.

3.3 Coordination of Competing Rights over Substitute Proceeds

Coordination of priority ranking over substitute proceeds does not require constructing an independent priority-ranking order. Rather, it requires a limited extension, to substitute proceeds corresponding to the exchange value of the original project, of the priority ranking formed while the project itself still existed. Only where the substitute proceeds correspond to the exchange value of the original project does the original priority ranking have a basis for continuation.

Specifically, where the contractor's Priority Right has been lawfully established and the substitute proceeds correspond to the exchange value of the original project, the contractor should continue to rank ahead of mortgagees and ordinary creditors as to the corresponding portion. Consumer purchasers of commodity housing who meet the conditions for special priority protection should, in principle, continue to rank ahead of the contractor. Where multiple construction participants coexist, each should be satisfied within the value corresponding to its part of the project if the construction scope and corresponding substitute value can be distinguished. If they cannot be distinguished, distribution should be made in proportion to the payment for the construction of the project entitled to satisfaction in priority. Where substitute proceeds have been completely commingled and can no longer be identified, the effect of satisfaction in priority should not be applied to the employer's general assets subject to enforcement.

Conclusion

The function of the priority right to satisfaction of the payment for the construction of the project is to ensure that the contractor's claim to such payment is satisfied in priority from the exchange value of the construction project. Although Article 807 of the Civil Code takes the proceeds from liquidation or auction of the project as the object of satisfaction, its normative focus lies in satisfaction in priority from the value of the project, rather than the physical project itself. Where the project is damaged, destroyed, or expropriated, and the exchange value of the original project has been transformed into insurance proceeds, damages, or compensation, a lawfully established Priority Right should not be extinguished as a matter of course. The contractor may seek satisfaction in priority from the corresponding substitute proceeds within the original scope of the right.

However, satisfaction in priority from substitute proceeds is not an unlimited expansion of the object of satisfaction under Article 807. Its application should presuppose the lawful establishment of the original right and should be limited to substitute proceeds corresponding to the exchange value of the original project. Insurance proceeds, damages, or compensation may be included within the scope of satisfaction in priority only where they are directed at compensating the exchange value of the original project and are functionally equivalent to proceeds from liquidation or auction of the project. Overdue-payment interest, liquidated damages, losses caused by suspension and idle work, and loss of expected benefits should not be subject to the effect of satisfaction in priority, even if they are factually connected with construction or loss of the project.

Where multiple rights compete over substitute proceeds, priority ranking should be coordinated among consumer purchasers of commodity housing, contractors, mortgagees, and ordinary creditors on the basis that such proceeds have succeeded to the exchange value of the original project. Procedural rules such as identification, freezing, deposit, special-account management, and proportional distribution of proceeds should also be adopted. Accordingly, the rules on satisfaction in priority after loss of the project should be based on the lawful establishment of the original right, centered on value correspondence, and limited by amount and priority ranking, so that the contractor does not lose priority protection merely because the value of the project has changed its form, while preventing improper expansion of the Priority Right.

References

- [1] Shi, J. (2020). *Disputed Issues in the Revision of Construction Contracts in the Civil Code*. *Social Science Journal*, (6).
- [2] Chang, P. (2025). *Special Rules on Objection-to-Enforcement Actions concerning Agreements for Payment in Kind: An Analysis Centered on Article 17 of the Interpretation on Objection-to-Enforcement Actions*. *Journal of Law Application*, (9).
- [3] Li, J. (2021). *Comments on Article 807 (Priority Compensation Right of Construction Project) of Civil Code of People's Republic of China*. *Journal of Nanjing University (Philosophy, Humanities and Social Sciences)*, 58(4).
- [4] Cui, J. (2022). *On Priority of Payment of Construction Project Price*. *Studies in Law and Business*, 39(6).
- [5] Han, Y. (2026). *On the Order of Priority in the Distribution of Bankruptcy Claims*. *Journal of Shanxi University (Philosophy and Social Science Edition)*, 49(2).
- [6] Li, H., & Pan, J. (2016). *Research on Difficult Problems during Judgment of Priority of Construction Project*
- [7] Cheng, X. (2015). *On the Enforcement Procedure of Subrogation Right of Holders of Real Rights for Security*. *Journal of Comparative Law*, (2).
- [8] Wang, Y. (2019). *Several Key Points in the Exercise of the Priority Right in Construction Projects*. *People's Tribune*, (11).
- [9] Song, H. (2021). *A Study on Difficult Issues Related with the Priority Right for Construction Project Prices*. *Journal of Law Application*, (6).
- [10] Xie, Y. (2026). *The Doctrine and Application of the Contractor's Priority Right to Payment for Construction Works: Centered on Article 807 of the Civil Code*. *Journal of Law Application*, (3).
- [11] Jiang, P. (Ed.). (1999). *Explanatory Commentary on the Contract Law of the People's Republic of China* (p. 223). China University of Political Science and Law Press; Li, X. (2006). *Legislative Reflections on Applying the Lien System to Construction Projects*. *Political Science and Law*, (4).
- [12] Liang, H. (2001). *Priority Right or Mortgage: The Nature and Application of the Right under Article 286 of the Contract Law*. *Chinese Lawyer*, (10); Liang, H., & Chen, H. (2007). *Property Law* (4th ed., p. 311). Law Press China.
- [13] Mei, X. (2005). *Legislative Choice between Real-Estate Priority Rights and Statutory Mortgages*. *Journal of Law Application*, (2), 53; Wang, Y., Gao, S., Shi, J., et al. (2020). *Commentary on the Chinese Civil Code: Contracts Book, Typical Contracts, Vol. II* (p. 151). China Renmin University Press.
- [14] Zhang, Y. (2026). *Legal Remedy System for Damage or Loss of Secured Property An Analysis Based on Typology of Liable Parties*. *Peking University Law Journal*, 38(2).
- [15] Li, J. (2021). *Comments on Article 807 (Priority Compensation Right of Construction Project) of Civil Code of People's Republic of China*. *Journal of Nanjing University (Philosophy, Humanities and Social Sciences)*, 58(4).
- [16] Lu, J. (2024). *Theoretical Basis and Normative Application of the Priority Protection of Consumer Rights in Commercial Property*. *The Jurist*, (6).
- [17] Li, J. (2021). *Comments on Article 807 (Priority Compensation Right of Construction Project) of Civil Code of People's Republic of China*. *Journal of Nanjing University (Philosophy, Humanities and Social Sciences)*, 58(4).
- [18] Cui, J. (2022). *On Priority of Payment of Construction Project Price*. *Studies in Law and Business*, 39(6).
- [19] Yuan, Y. (2025). *Differentiated Application of Priority Protection for Real Property Purchasers under the Civil Code*. *Journal of Law Application*, (12).
- [20] Payment. *Journal of Law Application*, (10).
- [21] Wu, Y. (2024). *The Freedom of Disposal of the Priority Right to Compensation by the Construction Contractor: Seeking Truth*, 51(6).