

## Court Addresses Several Mechanic's Lien Issues

by

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A subcontractor's charges for equipment on a jobsite where the equipment stands idle, without operators, and then is removed without further work by the subcontractor cannot be part of a mechanic's lien, the Eastern District Court of Appeals recently decided in a case of first impression in Missouri. The case is *Missouri Land Development Specialties, LLC v. Concord Excavating Company*, Case Number ED89112 and ED89116, decided October 7.

The Eastern District also discussed what constitutes a "just and true account" under Missouri's mechanic's lien act; whether a lien is enforceable when it includes nonlienable items; and whether a court must assess interest on a mechanic's lien claim.

This case provides sweeping updated appellate court thinking on one of Missouri's oldest statutes—the mechanic's lien act—an act that dates back to when Missouri became a state in 1821. The decision will be an important point of future reference for everyone in the construction industry who is involved in mechanic's liens.

The lien claimant was Missouri Land Development Specialties, an excavating and blasting company. Concord Excavating Company, the general contractor, hired Missouri Land Development as a subcontractor on a time-and-materials basis to grade and to excavate land being developed into the Woods Mill Subdivision in St. Charles County.

After being on the job for a while, Missouri Land Development shut down its work due to nonpayment by the general contractor. The subcontractor kept on the jobsite for a period of time various heavy equipment such as a dozer, two thirty-ton trucks, one excavator and a high lift.

The equipment sat idle, with no operators while the subcontractor continued to pay rent on the machinery. There was testimony at trial that the general contractor told Missouri Land Development that it would be paid for the expenses associated with this downtime. Apparently, this did not happen.

Missouri Land Development sued the general contractor for breach of contract and recovered at trial \$953,106 for unpaid invoices plus interest and attorney's fees. Missouri Land Development also had a mechanic's lien claim against the owner of the property and its lender—First Service Bank—for \$628,595. This lien included \$50,538 in charges relating to the equipment downtime.

The trial court awarded the mechanic's lien in the reduced amount of \$574,449. The court also added interest at nine percent (the standard rate under Missouri law) on the \$574,449.

Missouri amended its venerable mechanic's lien act in 2005 to allow under certain circumstances for liens to include rental equipment. The parties argued over application of this change, but the appellate court declined to decide whether this provision applies retroactively. The court concluded that this change offered no guidance on the question whether downtime is lienable.

The Eastern District repeated the general rule that the mechanic's lien act is to be construed favorably to those seeking its enforcement, such as the subcontractor in this case. The court noted that under even the "most liberal of interpretations, however, we cannot," find that idle equipment that is later removed from the job is labor within the meaning of the act and thus properly a part of a lien.

The equipment, the court concluded, during that idle period of time simply did not provide any improvement to the property, a bellwether test of whether the charges for the work are lienable under Missouri law.

The lien was for \$628,595. During discovery, Missouri Land Development stated that it was owed \$615,021. During trial the subcontractor testified to an amount of \$627,987 that it reduced during trial to \$624,987 after recalculating the amount shown on the invoices attached to the mechanic's lien.

First Service Bank argued that this kind of inconsistency left it with "little idea" as to the "true amount" of the subcontractor's lien. Thus, according to the Bank, the lien was not a "just and true account" as required by Missouri statute.

The appellate court decided that the lien had sufficiently detailed invoices attached to it to allow an interested party to undertake an investigation to determine whether the materials in fact had been furnished, whether the listed items were lienable, and whether the amounts charged were proper.

The court also found that the inclusion of a nonlienable item into the lien did not invalidate the lien when this occurred through honest mistake or inadvertence and there was no intent to defraud. This result is possible when the nonlienable item can be separated from the lienable items, a valuable tip from the court on how to prepare a proper lien claim through careful itemization.

Finally, the Eastern District affirmed the trial court's award of prejudgment interest at nine percent on the mechanic's lien claim. In fact, the court stated that awarding interest is mandatory under the mechanic's lien act once the lien has been established.

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