

Subcontractors' Mechanic's Liens Enforceable
For Work at Allen Edmonds, Plaza Frontenac

by

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Subcontractors Crafton Contracting Company and Vogel Sheet Metal & Heating, Inc. can proceed to enforce their mechanic's liens against Plaza Frontenac Acquisition, LLC, owner of Plaza Frontenac shopping mall, general contractor Swenson Construction Company, Inc. and mall tenant Allen Edmonds Corporation. With this result, the Missouri Court of Appeals for the Eastern District reversed a trial court decision that found the liens were not valid.

The case is *Crafton Contracting Company and Vogel Sheet Metal & Heating, Inc. v. Swenson Construction Company, Inc., Allen Edmonds Corporation, and Plaza Frontenac Acquisition, LLC*, 2016 WL 1469981, decided April 12.

The Eastern District has now made clear that the size of an owner's property (in this case, the entire mall) should not be the deciding factor in determining whether an agency relationship has been established for the purpose of Missouri's mechanic's lien statute.

The parties stipulated to the facts at trial. In 2012, Plaza Frontenac and Allen Edmonds entered into a 10-year lease for space at the Plaza Frontenac mall located at Lindbergh Boulevard in St. Louis County.

The lease required Allen Edmonds to make certain improvements. Allen Edmonds submitted and Plaza Frontenac approved plans for those improvements.

Allen Edmonds accepted the bid of general contractor Swenson Construction Company of \$207,398.40 for construction work. Swenson subcontracted demolition, framework, drywall, carpentry and barricade work to Crafton for \$67,023.00, and heating, ventilating and air conditioning work to Vogel for \$15,975.00. Both subcontractors completed their work.

Allen Edmonds paid Swenson in full. Swenson did not pay Crafton or Vogel. Swenson went out of business in June 2013, prompting Crafton and Vogel to file mechanic's liens and a lawsuit to enforce them.

Section 429.010 of Missouri's Revised Statutes (Missouri's Mechanic's Lien Act) provides that a mechanic's lien may be placed upon an owner's property for "any work or labor" completed upon such land by anyone who contracts with the owner or "his agent." The issue in this case was whether Allen Edmonds was Plaza Frontenac's agent.

The Eastern District decided that the term "agent" as used in Section 429.010 must be interpreted broadly. The level of authority required to create an agency relationship is less for a mechanic's lien action than is otherwise required. This is not a typical principal-agent relationship, but rather, a special, limited agency pursuant to Section 429.010.

The answer to whether there was an agency relationship, according to the appellate court, turned on what the lease required. If the lessee (Allen Edmonds, in this case) was not required to make improvements to the property or to make improvements on its own, no agency relationship exists.

The Eastern District concluded that Allen Edmonds was Plaza Frontenac's agent. The lease required Allen Edmonds to make substantial and permanent improvements to the property, including that the premises could only be used as an Allen Edmonds store, Allen Edmonds was to submit plans for construction requiring Plaza Frontenac's approval, and Allen Edmonds was required to perform a complete build-out of the lease premises to conform with Allen Edmonds' other stores including installation of storefronts and storefront signs, entrance doors, flooring and interior decorating.

The lease also required Allen Edmonds' contractor to post a security deposit with Plaza Frontenac in case the work was not completed, and provided that all of the improvements became the property of Plaza Frontenac upon lease termination.

The trial court compared the subcontractors' work to the value of the entire mall. The improvements comprised less than 1% of the mall's space. The value of the improvements was no more than 2% of the mall's value as a whole.

The appellate court decided that the trial court's use of a mathematical equation and its comparison of the leased space to the entire mall misapplied the law.

Instead, the Eastern District emphasized that the subcontractors' work enhanced the value of Plaza Frontenac's property. They replaced vacant tenant space with a shoe store, improvements the lease required.

Plaza Frontenac relied on a 1986 Missouri case to support the trial court's use of a simple mathematical formula to determine agency. This case did not

apply, the Eastern District decided. The lease in that case did not require improvements.

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