

## **Mechanic's Lien Decision Affects Contractors, Subcontractors and Architects**

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In a sweeping thirty-five page opinion, the Western District Bankruptcy Court recently ruled on a number of mechanic's lien issues affecting contractors, subcontractors and architects. Everyone involved in mechanic's liens should read this opinion. The case is *Trilogy Development Co. v. BB Syndication Services, Inc.*, 2011 WL 6888479 (U.S.B.C. W.D. Mo.), decided December 21, 2011.

Trilogy Development Company was a real estate development company that owned and developed a site for a hotel, office building and parking garage. The opinion, unfortunately, does not state where the project was located.

Disputes arose during construction and the owner stopped paying the contractor. This caused the contractor (J.E. Dunn) and several of its subcontractors to stop work and file mechanic's liens. The owner then filed for bankruptcy protection under Chapter 11.

The Bankruptcy Court faced a number of decisions regarding the various mechanic's liens that had been filed. The Court decided that one of the contractors could not proceed because its lien was filed with the Recorder of Deeds instead of in the Circuit Court where the property was located.

By contrast, the Court decided that strict compliance was not necessary with Missouri's statute that a contractor provide notice of its claim in 10-point bold type. Instead, substantial compliance was sufficient. The Court did not cite what facts in this case were enough for substantial compliance.

The Court further considered at trial the mechanic's lien claims of Rodriguez Mechanical Contractors for materials for \$356,154.48 and for labor in the amount of \$218,852.25. Rodriguez filed an amended lien claim.

BBSSI, one of the parties to the bankruptcy proceeding, filed an objection and asserted that Rodriguez's last day of work was more than six months after it filed its amended claim. Missouri law requires that all claims must be filed within six months (and not one day later) of the last day of work by that contractor or subcontractor. The Court decided that actual work logs and payroll records were determinative that work was performed within the 6 months of the amended lien and thus it was timely.

The Bankruptcy Court also decided that a supplier's mechanic's lien was valid even though the supplier's specialized glass was not actually incorporated into the project. A general tenant of mechanic's lien law is that the material or labor must actually go into the project.

In this case, the Court concluded that the materials were custom to the project and had no other use. Thus, they were lienable in the total amount of \$349,284.00.

BBSSI also objected to the mechanic's lien filed by Dunn in the amount of approximately \$12,445,963.46. The Court had to determine whether a contract amendment between the owner and Dunn during construction which provided that all disputes would be resolved in arbitration created a waiver of Dunn's right to file a mechanic's lien.

The Court received evidence at trial from Dunn that there was no intention to waive its right to file a mechanic's lien. In fact, the owner continued to require the submission of lien waivers as a condition to payment. Thus, the Court concluded that the contract amendment did not create a waiver of Dunn's right to assert a mechanic's lien.

The Court also rejected an argument that Dunn was not entitled to its mechanic's lien because the arbitration panel had determined that the contract had been abandoned. Thus, BBSSI argued that a contract was a pre-requisite to filing a claim for a mechanic's lien as a prime contractor. Given the arbitration panel's finding that the contract had been abandoned, the claim could not continue to exist. Clearly, the statute requires that there be a contract.

The Court noted that there is no Missouri case to its knowledge that holds a party performing work pursuant to a contract should be denied the right to assert a mechanic's lien because the contract was subsequently abandoned by the parties. The Court concluded that allowing Dunn to assert a mechanic's lien was consistent with the principle that the lien laws are remedial in nature and are to be interpreted as broadly as possible to grant a remedy to those supplying goods and services for the improvement of real property. The Court upheld the lien.

Regarding architects, the Court held that the time an architect spent for the debtor's benefit in an arbitration was not lienable under Missouri law. The Court relied on Florida law to reach this result. An architect's lien must relate solely to work that improves the project in question, the Court concluded.

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