

Mechanic's Lien Intentionally Misleading
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This article appeared in *St. Louis Construction News and Review*, p. 16-17, - January-February, 2013.

The Missouri Court of Appeals for the Western District recently denied a general contractor's claim against an owner to recover additional money for foundation and other construction work on an uninhabited residence. The case is *R.K. Matthews Investment, Inc. v. Beulah Mae Housing, LLC*, 2012 WL 4344190, decided September 25.

The court noted that the contractor's mechanic's lien contained "intentional and knowing misstatements" and its work was not completed in a "workmanlike manner." The case shows just how much can go wrong when putting together a mechanic's lien and in trying to prove damages for breach of contract.

Although an agreement for the work was not signed by the owner (BMH), there appeared to be no dispute that BMH intended to enter into an agreement with RKMI. The scope of the work included repairing a cracked foundation, tearing out a wall, cutting an opening for an egress window and a metal door as well as preparation of an engineering report.

After work started, the contractor used another contractor's credentials to pull a permit for the project. This other contractor never actually performed any work on the residence, however.

As work progressed, there were two change orders, one for \$4,500 covering the addition of dirt and a swell to control the flow of water away from the house, plastering the foundation wall, removing and installing a drive pad, and related items. The second change order was for \$3,550 and it covered installing a wall and stoop, a sidewalk, replacing part of the basement and other related items. Neither change order was signed, but there was no dispute that the owner had authorized this additional work.

Numerous issues arose about the quality of RKMI's work. The owner attempted to contact the contractor to discuss his concerns, but could not locate him because the address given for his place of business turned out not to be correct.

A city inspection noted multiple deficiencies with the work including failure to repair a handrail or provide a guardrail at the stairs, failure to pull a plumbing permit, failure to provide an egress door, failure to provide a window, and

failure to place headers over a door. Also, the general contractor was not licensed to perform the plumbing work he did.

The original contract called for installment payments to total \$21,580. The evidence showed that the owner paid \$17,466 toward the original contract and some additional money toward the two change orders.

The disputes between the owner and general contractor escalated to the point that the owner ordered RKMI off the job. RKMI responded by filing a mechanic's lien in the amount of \$13,255. RKMI then sued to enforce its mechanic's lien and brought a breach of contract count as well.

The case was tried before a judge, not a jury. The trial court concluded that given the numerous problems RKMI did not perform its work in a good and workmanlike manner.

Regarding the mechanic's lien, the court noted that since RKMI was a general contractor, Missouri law allows it to state in its mechanic's lien a total lump sum that was due without itemization. By contrast, a subcontractor must provide itemization since the owner may be far less familiar with what the subcontractor actually did.

The court found the lien to be defective, however, by including charges for items that had already been paid, such as the engineer's fee and for work never performed, for work that had not passed inspection and for work that needed to be torn out and redone. The trial court found that the lien statement was not a "just and true account" as required under Missouri law. The Western District agreed.

The trial court also found that the lien contained so many shortcomings that it demonstrated intentional and knowing misstatements serious enough to invalidate the entire lien. The Western District noted that the inclusion of nonlienable items does not necessarily make a lien fatal if those items can be separated and removed from the rest of the lien, but in this case it was not possible to separate the nonlienable items.

In addition, the appellate court noted that the trial court's decision was further supported by evidence that the general contractor included in its lien work performed without proper licenses and the general contractor was difficult to reach when the owner had questions about the work.

The trial and appellate courts also concluded that even if RKMI had prepared a proper lien, it could not have been placed on the property because RKMI failed to establish that it was entitled to any additional payment. A proper lien can only exist when additional money is due.

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