

Tenant Recovers Nearly \$4.2 million for Downtown St. Louis Garage Repairs

by

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Missouri's Eastern District Court of Appeals recently upheld the decision of a St. Louis City judge to award \$4,161,424.76 to Central Parking System of Missouri, LLC. The award covers repairs and related costs for the garage it was leasing from Tucker Parking Holdings, LLC and Tucker Parking Equities, LLC.

The case is *Central Parking System of Missouri, LLC v. Tucker Parking Holdings, LLC*, 2017 WL 1395524 (E.D. Mo. 2017), decided April 18.

The multi-level parking garage is located at 306-310 North Tucker Boulevard in St. Louis, Missouri. The garage was built in 1967, using cast-in-place concrete slabs supported by a button-head post-tensioning ("PT") system. This design was common in the mid-1960s but has since become obsolete because it is vulnerable to water penetration.

In 1998, Central leased the garage from 310 North Tucker, LLC, a predecessor to Central Parking System. The lease provided that Central was solely responsible for maintenance and structural repairs to the garage. It contained an exception for repairs necessitated by normal wear and tear.

The lease also provided that Central was to assume all risks of latent and patent defects in the garage. The owner of the garage made no representation of warranties with respect to the garage's physical condition.

In 2007, Tucker Parking Holdings purchased the garage from 310 North Tucker for \$4,125,000.00. Tucker Parking Holdings did not inspect the condition of the garage's PT system at the time of purchase.

After the purchase, the lease continued between Central Parking System and Tucker Parking Holdings but was set to expire on March 31, 2015. The lease provided that at the time of expiration, Central was to surrender the garage to Tucker Parking Holdings in broom clean, good order and condition, except for any ordinary wear and tear.

In March 2013, Tucker hired Carl Walker, Inc., an engineering firm, to appraise the garage to determine what repairs Central might be required to make prior to the lease's expiration. Walker determined that the garage's concrete slabs showed signs of widespread deterioration resulting from corrosion of the

embedded reinforcing steel. Approximately 21,500 square feet of concrete had delaminated in the garage.

Walker recommended additional testing of the PT system's condition. Walker also recommended a budget of \$2,470,000.00 for concrete repairs. This budget did not include any repairs to the PT system.

At about the same time, Central hired an engineer, Walker Restoration Consultants, to investigate the PT system. Walker Restoration estimated that 55% of the garage's joist PT tendons were broken or under partial tension. Walker Restoration estimated the repairs to the PT system would cost \$2,276,000.00.

This put the combined repair cost at approximately \$4,800,000.00. Central did not disclose the full Walker Restoration report to Tucker, despite repeated requests.

In June 2013, Central offered to pay Tucker \$1,483,500.00 in exchange for release from its obligations under the lease to make garage repairs. Tucker rejected the offer.

In March 2014, Central hired Tarlton Corporation to perform repairs on the garage including the PT system for \$2,892,000.00. During repairs, Tarlton informed Walker Restoration that some of the PT floor joists supporting the garage had cracks.

At Walker Restoration's recommendation, Central completely evacuated the garage and closed it to the public.

Tarlton installed a shoring system consisting of thousands of wood and metal support columns. This prevented the garage from collapsing and allowed Tarlton to make repairs to the PT system.

Ultimately, Walker Restoration recommended to Central that the PT system damage was so extensive that a steel beam support system was required at an estimated cost of \$16,080,000.00 "or more."

Walker Restoration believed that the cause of the PT failure was ordinary wear and tear. Tucker disputed this conclusion.

In late March 2015, Tucker filed a lawsuit claiming that the cost of the shoring system constituted "structural repairs" that were Central's responsibility. On March 31, 2015, the lease ended and Central vacated the garage. The shoring system was kept in place and monitored by Tarlton.

Central argued that the repair costs were due to usual and normal deterioration which under the lease were Tucker's responsibility. The trial and appellate courts agreed with Central.

The trial court found that chloride-laden water, brought into the garage over the years by vehicles, had slowly degraded the PT tendons. At the time of the PT system failure, the garage had exceeded its design life.

The court further found that the PT system failed at multiple locations where the top side concrete was pristine. The court concluded that this condition was not the result of owner neglect.

The PT system, according to the trial court, was beyond repair. The lease did not contemplate a complete replacement or a rebuild of the garage.

The trial and appellate courts also rejected Tucker's position that equitable estoppel precluded Central from pursuing its claim. Tucker argued that when Central made the repairs without asking Tucker for compensation, Central could not later change its position and seek reimbursement.

Both courts concluded that because Central lacked knowledge of the true cause of the garage's failure, Central was not later estopped from its damage claim.

The appellate court concluded that there was sufficient evidence to "infer" that the parties did not expect Central to pay for the garage's shoring system and evacuation costs gratuitously. The Eastern District found that Tucker had acquiesced in the expenses.

From these inferences there was an implied promise (under the theory of quantum meruit) that Tucker would pay Central for the repairs even though Tucker never stated that it would. The Court concluded that Tucker benefited from Tarlton's work and it would be unjust not to pay for this benefit.

While not a factor in the decision of the appellate court, the garage is not presently open for use. At least part of the previous temporary shoring system remains in place.

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