

**Contractor Cannot Recover Where
Cost Exceeds Property Value**

by

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Missouri's Western District Court of Appeals recently affirmed a trial judge's decision to deny a contractor from recovery of \$153,166.16 in additional unpaid work on property that sold for only \$100,000.00. The project was a new multiple screen theater in Bethany, Missouri.

The case is *Miller v. Horn*, 2008 WL 2414847 (Mo. App. W.D.), decided June 17.

The contractor, Mark Miller and Bob Mahlandt d/b/a M&M Building ("M&M"), had entered into a contract with Miles Horn to build a new theater. Mr. Horn and his wife, Mary, arranged a bank line of credit for \$475,000, pledging as security another piece of property they owned to finance the project.

The contract referred to Miles Horn as the owner of the property. In reality, Mr. Miles and his wife actually owned the property as a married couple and thus, legally speaking, as tenancy by the entirety.

M&M was part way through the construction when Mr. Horn suddenly died. He had paid to that point \$193,000 to M&M for invoiced construction work.

There were additional unpaid invoices of \$153,166.16 for work prior to notice of the death. These unpaid invoices created this dispute and lawsuit.

Shortly after the death, Mary Horn sent notice to M&M to stop work immediately. Apparently, they did. She then sold the property with its partially completed movie theatre for \$100,000.

M&M sued Mary Horn in quantum meruit for the unpaid invoices, claiming she benefited from M&M's work and it was entitled under the law to payment. M&M did not sue her for breach of contract, most likely because M&M did not have a formal contract with her.

At trial, M&M tried to imply that Mary Horn was active in the project. The court found, however, to the contrary even though she occasionally sold popcorn and candy from the concession stand and tickets at the front entrance at other theaters they owned.

The evidence showed that Miles Horn “did not discuss business with his wife” and that he “rarely talked to her about business decisions.” Mary Horn did not discover the extent of the contract with M&M until after her husband’s death.

Thus, the trial court concluded that Miles Horn was not acting as an agent for his wife and that M&M’s work did not add value in excess of the amount already paid to it. The court denied M&M’s quest to receive more money for unpaid work and found that it would be “equitable and just” to allow Mr. Horn to retain the proceeds of the sale of the property.

In a court-tried case such as this, the appellate court will uphold the judge’s decision unless it is against the weight of the evidence, there is no substantial evidence to support it, or it erroneously declares or applies the law. The disagreement in this case was over whether Mrs. Horn was unjustly enriched.

To prove this, M&M had to establish that Mary Horn received a benefit without paying for it, the amount of the benefit and that it would be unjust for her to keep the proceeds of the sale.

The sale of the property was an arm’s length transaction. The \$100,000 sale price seemed to establish the correct, reasonable and true value of the property.

Obviously, this price was less than the amount of money already paid to M&M for its work and less than the additional \$153,166.16 it sought in this lawsuit. Added together, M&M was seeking payment in total of \$346,166.16, almost three and a half times more than Mary Horn received for the property through its sale.

Perhaps the sheer disparity in these numbers alone mandated this result. The opinion offered no explanation of why the sale price was so seemingly low.

While this result may seem unusual, it offers at least one important lesson on what to do and not to do. Contracts involving one spouse who is proceeding as an individual may create obstacles to collection of money otherwise due. Prudence may dictate having both husband and wife sign on the dotted line, whenever commercially possible.

Had there been evidence that Mary Horn ratified the contract, the result may have been different. According to the court, “ratification can occur when a spouse confirms or adopts an agreement with knowledge of its

contents.” In this case, there simply was too little if any evidence to support this point.

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