

## **Material Suppliers' Mechanic's Liens Favored Over All Others in Missouri**

**Material suppliers have favored status over subcontractors and owners when enforcing their mechanic's liens, according to a recent decision from the Western District Court of Appeals. This decision lifts suppliers' rights above subcontractors, contractors and owners. The case is *Bates County Redi-Mix, Inc. v. Windler*, 2005 WL 405846 (Mo. App. W.D.), decided February 22, 2005.**

**This is the first decision to consider and reach this result since the enactment of Missouri's mechanic's lien act, dating back to Missouri's statehood in 1821, 184 years ago. The court's decision is a vote of confidence to suppliers, and according to the appellate court, is based ultimately on their inability to enter into a contract on the project to protect their rights in the same way that subcontractors, contractors and owners can do. Without a mechanic's lien, suppliers typically have no other means to ensure they will be paid for their materials.**

**The full impact of this decision on future enforcement of mechanic's liens in Missouri for suppliers will take some time to evaluate. In the short term, however, the result clearly favors suppliers, also known as materialmen, over others claiming or trying to defeat a mechanic's lien.**

**The project involved the construction of a manufactured house on land that Michelle Cole had purchased in Bates County, Missouri. Bates County Redi-Mix, Inc., acting as a materialman/supplier, delivered concrete to the project for a subcontractor of the general contractor who Cole, the owner, had hired to build the home.**

**The concrete was for the house's foundation. The subcontractor improperly installed the concrete, making the entire foundation unusable. The concrete, supplied by Bates County, had to be removed and replaced.**

**Bates County did not provide the concrete on the second pour. Thus, none of Bates County's concrete actually went into or became a part of the house's final construction and none of it attached to the land. This typically is considered to be a threshold requirement to properly establishing a viable mechanic's lien in Missouri.**

**No one on the project claimed that the materials supplied by Bates County were defective or unusable. Rather, the subcontractor made a mistake in how he set up the concrete forms and during the pouring of**

the concrete into the forms. The subcontractor was to blame for requiring the removal and replacement of Bates County's concrete.

The appellate court concluded that Bates County, an innocent and blameless supplier, had a valid mechanic's lien for the concrete it initially supplied even though the concrete did not become part of the land. Bates County could use this lien to enforce payment for \$2,914, the amount still unpaid by the subcontractor.

At the core of the court's ultimate decision was a choice whether to find for material supplier who did nothing wrong but whose product was removed from the project or the owner who also did nothing wrong for she did not cause or require the concrete's removal. Neither was at fault, yet one of them had to pay the price for the mistake of another, in this case the subcontractor.

Before this case, many in the construction industry experienced in mechanic's liens believed Missouri's mechanic's lien act required that materials had to be integrated into the final structure and thus provide an ultimate improvement to the land before a mechanic's lien was possible. As the court noted, a substantial number of decisions from other states supported this belief.

Surprisingly, no reported decision in Missouri has ever before considered this issue. The lawyers for both sides offered considerable and conflicting case law from other states to support a decision that could have gone either way, given precedents from elsewhere.

After a detailed analysis of decisions from other states, the appellate court noted that it was not going to be influenced by any decision from any other state or how the majority of other states have held. Instead, the appellate court reaffirmed its judicial independence to decide the issue. "Our Supreme Court recognized early the danger of relying upon decisions of other states in interpreting Missouri's mechanic's lien law," the court concluded.

This philosophy marks a sharp contrast from how appellate courts decide most other cases. Typically, appellate courts rely upon the decisions from other states to provide a basis upon which to decide a novel issue and they openly draw upon the experience from other state courts and their reasoning in reaching a decision.

In the end, it came down to this, according to the court: "The owner is in a better position to see that a contractor performs his job properly than the one who supplies the materials. This conclusion is consistent with the statutory intent to protect laborers and materialman."

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