

Missouri Supreme Court Favors Subcontractor Overturning 14 Years of Contrary Court Precedence

by

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Surprising to many, the Missouri Supreme Court ruled recently in favor of a subcontractor and overturned established Missouri case law from 1993.

The decision allowed George Weis Company, a subcontractor, to proceed with its separate lawsuit for breach of contract and tort, when a prior mechanic's lien lawsuit involving the same project had been filed. Weis was not a party in the mechanic's lien lawsuit.

Before this decision, no one in Missouri thought this was possible, given prior court opinions. The case is *George Weis Co. v. Stratum Design-Build, Inc.*, 227 S.W.3d. 486 (Mo. 2007).

This result allows subcontractors who have small claims and for those who chose not to file mechanic's liens to pursue their claims in a separate lawsuit. Before this decision, they had to pursue their claims in any already pending and typically much more complicated mechanic's lien case. In reality, they often opted not to file any such claims for they were not cost effective.

Weis was a drywall subcontractor for Stratum Design-Build, the general contractor. The owner was Hurlbut Investments. Hurlbut had financial support from its lender and thus set up a construction escrow agreement to review and pay contractor requests for payment.

The dispute ensued when the owner paid its contractor for 90 percent of Weis' work and withheld 10 percent as retainage. The general contractor did not pay Weis for its work, for reasons not discussed in the court's decision.

Weis then filed a lawsuit, even though a mechanic's lien lawsuit already had been filed by others who had not been paid. Weis sued Stratum, Hurlbut and the escrow agent.

The trial court dismissed Weis' lawsuit, relying on Section 429.300 R.S.Mo. (Missouri's mechanic's lien act), which states: "a contractor or

supplier on a construction project cannot recover in a breach of contract suit if a mechanic's lien suit is filed by a different entity which did work on the same job, unless the breach of contract suit is joined with the mechanic's lien suit.”

Weis' lawsuit was for breach of contract and in tort, so the trial court's decision to dismiss Weis' lawsuit seemed to be based on firm footing—and supported by prior court precedent. Until this decision, the Missouri legal community largely thought that if a contractor or subcontractor had any claim relating to a project, and a mechanic's lien lawsuit had been filed by anyone, that contractor had to bring its claim in the already existing mechanic's lien lawsuit. If the contractor failed to do so, it could not recover in its own lawsuit.

Having to join an existing mechanic's lien lawsuit discouraged many contractors and subcontractors from pursuing their legal rights. They did not want to become embroiled in a complicated and lengthy legal dispute when their claims were relatively minor in nature or monetary amount. Simply put, their own claim, when small, did not merit the money and time necessary to be part of the larger case.

Given this backdrop, the Missouri Supreme Court now has weighed in and decided otherwise. The Supreme Court held that the Eastern District's appellate court “erred (in 1993) in reaching a contrary result.” The Supreme Court chose this opportunity to favor subcontractors.

The court reasoned that if a subcontractor has no lien claim public policy does not favor forcing that subcontractor to consolidate its case with lien claimants. By contrast, the court also decided that anyone who has a lien must join the mechanic's lien case to pursue its lien and all other claims it may have, such as breach of contract.

Beyond this reasoning, the high court did not specifically reconcile the language in Section 429.300 to its decision. Nor did the Supreme Court address exactly what was misplaced about the trial court's reliance on prior case law and on clear statutory language itself.

Instead, the Supreme Court simply stated that the trial court and the prior appellate court in 1993 made wrong decisions.

The Missouri Supreme Court does not decide many cases involving construction law, so any case has impact. Missouri's mechanic's lien statutes are among Missouri's oldest statutes, dating back to a few months after Missouri became a state in 1821. Thus, any decision about them is important, especially when the result favors subcontractors and overturns prior case law.

The statute was put in place to protect contractors and subcontractors even when it might mean that an owner will have to pay twice for work. This case carries that protection another step forward.

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