

Subcontractor Denied Bond Claim against St. Louis County

By

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This article appeared in St. Louis Construction News and Review, p. 6, November-December, 2016.

The Supreme Court of Missouri recently ruled that a subcontractor cannot pursue a bond claim against St. Louis County but may pursue its mechanic's lien claim against the leasehold interest of a company that acted as St. Louis County's agent. The Missouri Supreme Court rarely decides construction cases involving bonds and mechanic's liens, making this decision significant in how subcontractors will pursue future claims.

The case is *Brentwood Glass Company v. Pal's Glass Service, Inc., Clayco, Inc., Cornerstone VI, LLC, St. Louis County, National City Bank of the Midwest, N.A., Paul M. Macon, UMB Bank, N.A. and Victor Zarilli*, 2016 WL 4444039, decided August 23.

St. Louis County had purchased property known as Six CityPlace Drive in Creve Coeur, Missouri, which the County had planned to develop as the headquarters of Smurfit-Stone Container Enterprises, Inc.

The County entered into a contract with Cornerstone to construct the project on the County's behalf. Cornerstone acted as the County's agent.

Clayco, Inc. was the general contractor for the project. Clayco entered into a subcontract with Pal's Glass to supply glass and glazing work. Pal's Glass entered into a sub-subcontract with Brentwood Glass for some of this work.

No contractor on the project obtained a bond that would comply with Section 107.170.2 of the Revised Statutes of Missouri. This section provides that all public entities (such as St. Louis County) must require every contractor for work on public property to furnish a bond to cover materials and labor.

Brentwood Glass filed a mechanic's lien on the property in the amount of \$1,061,464.08. Brentwood Glass then filed a nine-count petition against Pal's Glass, Clayco, Cornerstone, St. Louis County, as well as various banks and individuals, seeking recovery on its mechanic's lien and in one count pursuing an action against St. Louis County for its alleged failure to require a payment bond under Section 107.170.

Pal's Glass admitted it owed \$593,261.47. It consented to a judgment for that amount plus costs.

Because the property was owned by St. Louis County at the time Brentwood Glass began working on the building, Brentwood Glass could not pursue its mechanic's lien against the County. Public property is not subject to a mechanic's lien.

Cornerstone, however, held a leasehold interest in the property. Cornerstone is a private company and not a public entity.

The Supreme Court reversed the decision of the trial court and found that Brentwood Glass could pursue its mechanic's lien against Cornerstone's leasehold interest. The Supreme Court of Missouri sent back for further consideration by the trial court whether Brentwood Glass's lien statement properly complied with Missouri law which requires a "just and true" account of any money that is due.

The lien statement included potentially non-lienable items. Brentwood Glass admitted that its statement incorrectly included efforts to recover for payments that Clayco had paid directly to Brentwood Glass's subcontractors and material suppliers.

The Missouri Supreme Court determined that the trial court must decide whether these non-lienable items were included in the lien statement with an intent to defraud or were honest mistakes. If honest mistakes, presumably the trial court will determine that the mechanic's lien is proper.

Regarding the public bond claim against St. Louis County, Section 107.170.1 requires a bond for any "contractor" that "provides construction services under contract to a public entity," but not a party that merely arranges for such services to be provided by others. The Supreme Court decided that Cornerstone did not provide construction services under its contract with the County. Therefore, Cornerstone was not a contractor within the meaning of Section 107.170.1.

The Supreme Court of Missouri also decided that even if this section required a bond, Brentwood Glass's claim must fail because it did not name as a party in its lawsuit any individual officials of St. Louis County, but instead named as the defendant only St. Louis County. The court held: "The decisive fact is that the County—a political subdivision—is immune from suit under the doctrine of sovereign immunity."

The Missouri Supreme Court's decision was far from unanimous. Two of the Justices, including the Chief Justice, filed concurring/dissenting opinions. They believed that Cornerstone was a contractor within the meaning of the

statute and therefore Brentwood Glass should have been able to pursue its bond claim. They also believed that Brentwood Glass should have been given the opportunity when the case is sent back to the trial court to amend its petition to name individual officials as defendants.

Three other Justices filed a different concurring/dissenting opinion. They believed that Brentwood Glass did not demonstrate substantial compliance with Missouri's mechanic's lien statute that requires a "just and true account." These three Justices believed that Brentwood Glass should not have been allowed to pursue its mechanic's lien claim.

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