

CONSTRUCTION BLOG

Important Ruling on Mechanic's Lien Deadline

AUTHOR: JOSEPH F. DEVEREUX, III

On December 5, 2017, the Missouri Court of Appeals clarified a long-standing question as to when a mechanic's lien action 'commences' pursuant to Missouri Revised Statutes § 429.170, which requires a lien claimant to file a petition to enforce its lien within six months of filing its lien claim. In *Bray v. Sexton, et al.*, Cause No. ED105372, the court addressed whether a claimant commences a mechanic's lien action upon the filing of a petition, or whether a claimant must file a petition *and also* have a summons issued.

The appellant relied on the language of the mechanic's lien statute and Mo. R. Civ. Pr. 53.01 for the proposition that a mechanic's lien action 'commences' upon the filing of a petition. Therefore, the issuance of a summons was not required. The appellee, meanwhile, prevailed at the trial court level by arguing a series of outdated appellate court decisions controlled, which required the filing of a petition and the issuance of a summons.

In reaching its conclusion, the court noted that the court decisions that appellee relied on failed to take into account that Rule 53.01 was amended in 1972 and the requirement of having a summons issued was removed. The amended rule merely requires the filing of a petition to commence an action. The court reasoned that the purpose for the amendment to Rule 53.01 was to create certainty as to when a lawsuit is filed and, in the absence of specific language in the mechanic's lien statute proscribing a different definition for 'commence', Rule 53.01 controls when an action is commenced.

This recent appellate court decision clarifies the law that a mechanic's lien action commences upon the filing of a petition. Thus, as long as your petition to enforce is filed within six months of filing your mechanic's lien claim, you will be in compliance with R.S.Mo. § 429.170 and not run afoul of any statute of limitations defense.