

CONSTRUCTION BLOG

# Liens Survive: The Apple Cart is Restored

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It has long been established law in Missouri that subcontractors, under certain circumstances, may enforce mechanics' liens against the owner's interest in a shopping center (or other real estate leased to tenants) even where the prime contract is between the tenant and a general contractor, not the owner of the real estate. However, this well established body of law was temporarily upset when a St. Louis County Court ruled that two subcontractors who worked for the general contractor on the build-out of an Allen Edmonds Shoe Store (tenant) at Plaza Frontenac did not have mechanic's lien rights. The two subcontractors, Crafton Contracting Co. (demo, framework, drywall and carpentry for \$67,000) and Vogel Sheet Metal & Heating (HVAC for \$16,000) filed liens because the general contractor, Swenson Construction, did not pay them, even though Swenson was paid by Allen Edmonds. (Failing to pay its subcontractors, was not enough to prevent Swenson from going out of business.)

After the trial court rejected the subcontractors' liens, they appealed to the Missouri Court of Appeals. Fortunately, in April 2016 the Court of Appeals reversed and remanded the decision because the Court of Appeals found that the trial court's reasoning amounted to a "fundamental misinterpretation of the law." The trial court's decision was flawed because the trial judge failed to recognize that "mechanic's lien statutes are to be construed favorably to uphold the rights of laborers and materialmen." The trial judge ruled against the two subcontractors on the mistaken positions that (1) Allen Edmonds, the tenant, was not the agent of the owner of the mall for mechanic's lien purposes, and (2) the value of the work of the subcontractors did not rise to the level of "substantial and permanent" improvements as compared to the entirety of the mall.

### Tenant is Owner's Agent

The Court of Appeals reviewed the record and found Allen Edmonds was indeed Plaza Frontenac's agent for lien purposes. The strict terms of the lease inextricably tied the owner to the project and thus as a matter of law subjected the owner's interest to the real estate to the liens. Under prior Missouri law, it would be almost impossible to predict that Allen Edmonds was not the owner's agent for lien purposes considering the practice of sophisticated landlords to place great restrictions and requirements in their leases on their tenants. In doing so, the landlord is, as a matter of law, appointing the tenant as the owner's agent even if there is no explicit language saying the tenant is the agent for the owner. Based on past court decisions, what made Allen Edmonds the agent for the owner were the following facts:

- The premises were leased for a specific purpose which purpose could not be accomplished except by the making of improvements;
- The lease required Allen Edmonds to submit plans for the work to the owner, and the owner approved the plans;
- The lease required, as opposed to permitted, Allen Edmonds to perform a complete build out;
- Allen Edmond's contractor was required to give Plaza Frontenac a security deposit so Plaza Frontenac could complete the work if it was not finished;
- Plaza Frontenac had the right to approve the prime contractor and subcontractors;
- Allen Edmonds was required to have its contractors cooperate with Plaza Frontenac and correct deficiencies;
- All improvements became the property of Plaza Frontenac at the end of the lease.

### The Improvements were Substantial and Permanent

The trial court further misapplied the law by finding the improvements made by the two subcontractors were not "substantial and permanent." According to the Court of Appeals, the trial court made the mistake of attempting a mathematical computation. In other words, legally speaking, it did not matter that the improvements were in an area comprising less than 1% of the mall's space and the value of the improvements were no more than 2% of the value of the mall. Citing numerous cases and changes to Missouri statutes allowing for an expansion of lien rights, the Court of Appeals found Missouri law does not require the lien claimant's work to rise to a certain value or size in relation to the size and value of the overall property.

### The Apple Cart Returns to its Upright Position

Had the Court of Appeals sustained the reasoning of the trial court, there would have been seismic repercussions for subcontractors and contractors needing to file liens against leased property. However, the court's decision does not make new law; it simply reaffirms existing law by rejecting faulty reasoning. Bullet dodged.

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