

Bond Case Briefs

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PUBLIC CONTRACTS - MISSOURI

Brentwood Glass Company, Inc. v. Pal's Glass Service, Inc.

Supreme Court of Missouri, en banc - August 23, 2016 - S.W.3d - 2016 WL 4444039

Sub-subcontractor brought mechanic's lien claim against county, county's agent for construction of property development project, general contractor, and subcontractor.

The Circuit Court granted summary judgment to defendants. Sub-subcontractor appealed.

The Supreme Court of Missouri held that:

- Public policy did not prohibit sub-subcontractor from perfecting lien against leasehold interest in property held by agent;
- Genuine issue of material fact as to last date that sub-subcontractor worked on project, as would determine whether sub-subcontractor's mechanic's lien was filed within six months of such date, as required by statute, precluded summary judgment in favor of agent;
- Genuine issue of material fact regarding whether sub-subcontractor's mechanic's lien statement contained a just and true account of demand due, despite statement's alleged inclusion of nonlienable items, precluded summary judgment in favor of agent; and
- Agent was not a "contractor" of whom a bond would be statutorily required to be furnished to county.

Sub-subcontractor could not perfect mechanic's lien against county, after sub-subcontractor allegedly failed to receive payment for glass and glazing work done on county's property development project, where county owned property at time sub-subcontractor began working on building, and contract between county and county's agent for construction of project provided that any improvements installed in building immediately became property of county.

Public policy did not prohibit sub-subcontractor from perfecting its mechanic's lien against leasehold interest in property held by county's agent for construction of development project regarding property. County's contract with agent authorized, under certain circumstances, agent to assign its leasehold interest without county's prior written consent, and thus county anticipated circumstances that would end its control over the leasehold.

Genuine issue of material fact as to last date that sub-subcontractor worked on property development project, as would determine whether sub-subcontractor's mechanic's lien was filed within six months of such date, as required by statute, precluded summary judgment in favor of holder of leasehold interest in property, in sub-subcontractor's action to enforce lien.

Genuine issue of material fact regarding whether sub-subcontractor's mechanic's lien statement contained a just and true account of demand due, despite statement's alleged inclusion of nonlienable items, precluded summary judgment in favor of holder of leasehold interest in property, in sub-subcontractor's action to enforce lien.

Entity with which county contracted regarding property development project was not a "contractor"

of whom a bond would be statutorily required, where entity did not provide construction services under its contract with county but rather merely contracted to be county's agent and arranged for construction services to be provided by others.

Sovereign immunity doctrine barred sub-subcontractor's action against county alleging county failed to require purported contractor to furnish a bond for property development project, where sub-subcontractor sued only the county and not any individual public official.