

IN THE MISSOURI SUPREME COURT

No. SC84667

STATE EX REL. SPRINGFIELD UNDERGROUND, INC. ,

Relator,

v.

THE HONORABLE J. MILES SWEENEY,

Respondent.

PETITION FOR WRIT OF PROHIBITION

BRIEF OF RELATOR SPRINGFIELD UNDERGROUND, INC.

(Oral Argument Requested)

40372

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JURISDICTIONAL STATEMENT

This Petition for Writ of Prohibition arises from the denial of Relator Springfield Underground, Inc.'s Motion to Dismiss/Motion for Summary Judgment by The Honorable J. Miles Sweeney, Circuit Judge, Circuit Court of Greene County, Missouri, Division II. Relator alleges that the trial court lacks subject matter jurisdiction to proceed with Pittsburg Steel's action to enforce a mechanic's lien because the land against which Plaintiff Pittsburg Steel seeks to enforce its lien is not on the same land where the labor, materials, and supplies it supplied are located.

Relator first filed a Petition for Writ of Prohibition with the Missouri Court of Appeals, Southern District, in accordance with its jurisdiction under Article V, Section 4 of the Missouri Constitution. The Court of Appeals denied Relator's petition on July 3, 2002. Relator subsequently filed a Petition for Writ of Prohibition with this court in accordance with this court's jurisdiction under Article V, Section 4 of the Missouri Constitution. This court entered a Preliminary Writ of Prohibition on August 27, 2002.

STATEMENT OF FACTS

Springfield Underground, Inc. conducts a quarry operation in Springfield, Missouri, on land that is located generally in an area bounded by U.S. Highway 65 on the west, Kearney Street on the north, Le Compte Road (also known as Farm Road 185) on the east, and Division Street (also known as Route YY) on the south. The land located within these boundaries consists of five (5) separate tracts of land. All of the land is located within the city limits of Springfield, Missouri. (Springfield Underground's Motion to Dismiss/Motion for Summary Judgment, ¶10, Appendix Pg. A4; Pittsburg Steel's Response, ¶10, Appendix Pg. A 67) Springfield Underground contracted with Sesco Conveyors & Engineering, Inc. to erect conveyors on Tract I of Springfield Underground's property. The legal description for Tract I of Springfield Underground's property is as follows, to wit:

All of the south one-half of the northwest quarter of Section 10, Township 29 north, Range 21 west lying south of the right-of-way of the St. Louis San-Francisco Railroad Company, in Greene County, Missouri, except any part thereof deeded, taken or used for road or highway purposes.

(Springfield Underground's Motion to Dismiss/Motion for Summary Judgment, ¶¶11 and 12, Appendix Pg. A4; Pittsburg Steel's Response, ¶¶11 and 12, Appendix Pgs. A67-68)

Pittsburg Steel & Manufacturing, Inc., a Kansas corporation, contracted with Sesco Conveyors and Engineering, Inc. to provide labor, supplies, and materials for the conveyors to be located on Springfield Underground's property.

(Respondent's Answer to Petition for Writ of Prohibition, ¶¶6 and 7) The last day that Pittsburg Steel allegedly supplied labor, materials, and supplies for erection of the conveyors at Springfield Underground was January 10, 2001. (Respondent's Answer to Petition for Writ of Prohibition, ¶8)

On May 15, 2001, Pittsburg Steel served a Notice of Intent to File Mechanic's Lien on John Griesemer, an officer of Springfield Underground. This Notice of Intent to File Mechanic's Lien described the property on which Pittsburg Steel was claiming a lien as 3107-J East Chestnut Expressway.

(Respondent's Answer to Petition for Writ of Prohibition, ¶9)

The corporate offices of Springfield Underground are located at 3107-J East Chestnut Expressway in Springfield, Missouri.

However, Springfield Underground does not own that property.

(Springfield Underground's Motion to Dismiss/Motion for Summary

Judgment, ¶8, Appendix Pg. A4; Pittsburg's Response, ¶8, Appendix Pg. A67)

On June 4, 2001, Pittsburg Steel filed a Statement of Mechanic's Lien with the Circuit Clerk of Greene County, Missouri, against the following-described property, to wit:

70.3 acres more or less, Northwest Quarter lying North of railroad right of way (EXCEPT part lying West of Railroad spur) and (EXCEPT Railroad spur), in Section 10, Township 29, Range 21

(Respondent's Answer to Petition for Writ of Prohibition, ¶11)

The lien filed by Pittsburg Steel was not limited to three (3) acres. (Respondent's Answer to Petition for Writ of Prohibition, ¶13)

The property described in Pittsburg Steel's Statement of Mechanic's Lien is not the property on which the conveyors for which it allegedly supplied labor, supplies and materials are located. The property described in Pittsburg Steel's Statement of Mechanic's Lien is Tract V of Springfield Underground's property and not Tract I where the conveyors are located. (Springfield Underground's Motion to Dismiss/Motion for Summary Judgment, ¶¶11 &13, Appendix Pgs. A4-5; Pittsburg Steel's

Response, ¶¶11 & 13, Appendix Pgs. A67-68)

On July 10, 2001, Pittsburg Steel filed a Petition to Enforce its Mechanic's Lien against the property described in its lien. (Respondent's Answer to Petition for Writ of Prohibition, ¶14)

On November 15, 2001, Springfield Underground filed a Motion to Dismiss/Motion for Summary Judgment with supporting affidavits with the Circuit Court of Greene County, Missouri, requesting Respondent herein to dismiss Pittsburg Steel's Petition because the Statement of Mechanic's Lien did not contain a true description of the property upon which the conveyors for which it allegedly supplied labor, supplies and/or materials are located, as required by **§429.080, RSM., 2000** (Respondent's Answer to Petition for Writ of Prohibition, ¶15).

Pittsburg Steel filed its Response to Springfield Underground's Motion to Dismiss/Motion for Summary Judgment and a Legal Memorandum in Opposition to Springfield Underground's Motion to Dismiss/Motion for Summary Judgment on December 18, 2001. Pursuant to its Response, Pittsburg Steel admitted certain allegations (paragraphs 1, 3, 4, 5, 6, 7, 15, and 17) and, as to all remaining pertinent allegations, Pittsburg Steel stated that it could neither admit or deny the veracity of the

statements because it had not had the opportunity to cross examine witnesses and had no evidence in its possession which would allow it to dispute the allegations. Pittsburgh Steel did not file an affidavit describing any additional discovery needed in order to respond and the trial court was not requested to, and therefore did not, grant any additional time to complete discovery. (Respondent's Answer to Petition for Writ of Prohibition, ¶16)

Respondent held a hearing on Springfield Underground's Motion to Dismiss/Motion for Summary Judgment on January 9, 2002. The court did not take any additional evidence at that time, and a transcript of that proceeding has not been prepared.

(Respondent's Answer to Petition for Writ of Prohibition, ¶17)

Respondent overruled Springfield Underground's Motion to Dismiss/Motion for Summary Judgment on May 15, 2002.

(Respondent's Answer to Petition for Writ of Prohibition, ¶18)

Relator Springfield Underground filed a Petition for Writ of Prohibition with the Missouri Court of Appeals, Southern District, and that Writ was denied on July 3, 2002.

(Respondent's Answer to Petition for Writ of Prohibition, ¶19)

POINT RELIED ON

Relator Springfield Underground, Inc. is entitled to an order prohibiting Respondent from enforcing his order denying Relator Springfield Underground, Inc.'s Motion to Dismiss/Motion for Summary Judgment because Respondent lacks subject matter jurisdiction to hear the matter in that Pittsburg Steel's Petition to Enforce a Mechanic's Lien fails to state a cause of action upon which relief can be granted because the Statement of Mechanic's Lien that Pittsburg Steel seeks to enforce does not describe the tract of land upon which the conveyors for which it allegedly supplied labor, materials and supplies are located.

***Independent Plumbing & Heating Supply Co. v. Glennon*, 287**

S. W. 824 (Mo. App. 1926)

***Chance v. Franke*, 165 S. W. 2d 678 (Mo. 1942)**

Section 429.010, RSM., 2000

Section 429.080, RSM., 2000

ARGUMENT

Standard of Review

Relator Springfield Underground filed a Motion to Dismiss/Motion for Summary Judgment with the trial court in response to the Petition to Enforce Mechanic's Lien that was filed by Pittsburg Steel. The affidavits of John Griesemer, Joel Hood, and Jeffrey Bentley P.E. were attached as exhibits to Springfield Underground's motion. (SOF Pg 7) Pursuant to **Rule 55.27(a)**, the motion was treated as a motion for summary judgment and handled as provided in **Rule 74.04**.

All pertinent facts set forth in Springfield Underground's Motion to Dismiss/Motion for Summary Judgment have been either directly or indirectly admitted by Pittsburg Steel. Pittsburg Steel explicitly admitted many facts in its response to Springfield Underground's motion. Pittsburg Steel neither admitted or denied the remaining facts with a further response that it had no evidence in its possession which would allow it to dispute those allegations neither admitted or denied. Moreover, Pittsburg Steel did not file an affidavit requesting any additional discovery, and it did not seek additional time to respond to Springfield Underground's motion. (SOF Pg. 8)

The writ of prohibition prevents lower courts from acting

without or in excess of their jurisdiction. A writ of prohibition is proper after denial of a motion for summary judgment if it will prevent unnecessary litigation. **State ex rel. Police Retirement System of St. Louis v. Mummert**, 875 S.W.2d 553, 555 (Mo. banc 1994).

In that case, the plaintiff had instituted a cause of action for malicious prosecution against the Police Retirement System and seven of its trustees. **Id at 554.** The Police Retirement System filed a motion for summary judgment, which the trial court denied. A writ of prohibition was sought from the Court of Appeals and it denied relief. The Police Retirement System then sought prohibition in the Supreme Court. **Id at 555.** In its decision, this Court addressed the issue of the applicability of a writ from the denial of a motion for summary judgment. The Court stated the following at page 555 of its opinion:

A threshold issue is whether prohibition is available to relators. The writ of prohibition prevents lower courts from acting without or in excess of their jurisdiction. (Citation omitted.) Prohibition is generally unavailable if appeal would provide adequate relief. (Citation omitted.)

However, prohibition is appropriate to prevent

unnecessary, inconvenient and expensive litigation.

(Citations omitted.) Because prohibition would prevent unnecessary litigation, prohibition may be considered in this case.

The Eastern District Court of Appeals followed this Court's reasoning in ***State ex rel. Anheuser-Busch, Incorporated v. Mumert***, 887 S.W.2d 736 (Mo. App. E. D., 1994), wherein a property owner was a third-party defendant in a personal injury action brought by an employee of an electrical contractor who was electrocuted while working near an electrical junction box on relator's property. Relator filed a motion for summary judgment and to dismiss which was denied by the trial court. ***Id at 737-38.*** The Eastern District accepted the writ and made it absolute by holding that the relator was not liable as a matter of law because the relator did not maintain control over the property. ***Id.***

Also, the Western District Court of Appeals in ***State ex rel. Griffin v. Belt***, 941 S.W.2d 570 (Mo. App. W. D., 1997), issued a writ after denial of relator's motion for summary judgment in a wrongful death suit. Writing for the court, Judge Denvir Stith noted that "[w]hile it is unusual to issue a writ directing a court to grant summary judgment, such a writ is

appropriate where the motion should have been granted because the other party has no cause of action as a matter of law.” **Id at 572.** (emphasis in original)

Thus, a writ of prohibition is proper after the denial of a motion for summary judgment if issuance thereof will avoid unnecessary, inconvenient and expensive litigation. Such is the case here given the undisputed material fact that Pittsburg Steel filed its lien against the wrong property. Very simply, the conveyors for which Pittsburg Steel allegedly supplied labor, materials, and supplies are not located on the property against which it has filed a lien. There remains no genuine issue of fact on this issue and summary judgment should have been entered for Springfield Underground.

Point

Relator Springfield Underground, Inc. is entitled to an order prohibiting Respondent from enforcing his order denying Relator Springfield Underground Inc's Motion to Dismiss/Motion for Summary Judgment because Respondent lacks subject matter jurisdiction to hear the matter in that Pittsburg Steel's Petition to Enforce a Mechanic's Lien fails to state a cause of action upon which relief can be granted because the Statement of Mechanic's Lien that Pittsburg Steel seeks to enforce does not describe the tract of land upon which the conveyors for which it allegedly supplied labor, materials and supplies are located.

Section 429.010, RSM., 2000, in part provides that any person who shall do or perform any work or labor upon or furnish any material for any building, erection or improvements upon land, upon complying with the provisions of §§429.010 to 429.340 shall have for its labor, materials, and supplies furnished "a lien upon such building, erection or improvements **and upon the land belonging to such owner or proprietor on which the same are situated...**" (emphasis added) A mechanic's lien is purely a creature of the statutes. **Patrick V. Koepke**

Construction, Inc. v. Wodsage Construction Company, 844 S.W.2d 508, 512 (Mo.App. E.D., 1992). Without **§429.010** an entity supplying labor, materials, and supplies has no right to a lien.

Further, an entity's lien is limited to the scope of the statute. Thus, an entity claiming a lien as a result of supplying labor, materials, and supplies may only have a lien on the improvement into which the labor, materials, and supplies were incorporated and the specific land upon which that improvement is located.

Further, **§429.080, RSM., 2000**, provides that it shall be the duty of every person seeking to obtain the benefit of the provisions of §§429.010 to 429.340 to file with the clerk of the circuit court a lien statement containing "**a true description of the property, or so near as to identify the same, upon which the lien is intended to apply.**" (emphasis added) In an action to enforce a mechanic's lien the burden is on the entity seeking to enforce the lien to prove reasonable and substantial compliance with the essential statutory requirements.

Patrick V. Koepke Construction, Inc. v. Wodsage Construction Company, 844 S.W.2d at 512. One of the essential statutory requirements that must be proven is that the lien was filed on the specific land where the lien claimant's

labor, materials and supplies were ultimately used in an improvement. Pittsburg Steel cannot meet this burden of proof.

It has not complied with **§§429.010 and 429.080, RSM.**

The Statement of Mechanic's Lien filed by Pittsburg Steel is defective because it does not describe the tract of land upon which the conveyors for which it allegedly supplied labor, materials, and supplies are located. The Statement of Mechanic's Lien describes an entirely different tract of land. Thus, plaintiff's Petition to Enforce its Mechanic's Lien fails to state a cause of action upon which relief can be granted and the trial court lacks subject matter jurisdiction and cannot proceed.

In ***Independent Plumbing & Heating Supply Co. v. Glennon***, 287 S.W. 824 (Mo. App.1926), the plaintiff filed a mechanic's lien against "Lots 1 and 2 in city block 3792, of the City of St. Louis . . ." In the lien, plaintiff further described the property as 1313 Academy Avenue and improved by a building known as St. Mark's School. However, St. Mark's School was actually located on lots 54, 55, & 56 of city block 3792 and was numbered 1327 Academy Avenue. ***Id at 824.***

After plaintiff took a default judgment it attempted to execute on the judgment and defendant Glennon filed a motion to quash the execution on the basis that the mechanic's lien filed

by plaintiff did not properly describe the land on which St. Mark's School was located. In sustaining the order quashing the execution, the court noted that statutory requirements must be complied with in mechanic's lien actions or the trial court acquires no jurisdiction. **Id at 825.** The court stated the following, at page 825:

We recognize the rule that the statutes relating to liens of mechanics and materialmen should receive a liberal construction in order to advance the just and beneficent purpose, in view of their enactment. We observe, too, that the courts have hesitated to hold a misdescription of property (sic) fatally defective to the enforcement of the lien, as between the mechanic or materialman and the owner of the property. **But if a correct description is in any wise essential, the description in the case at bar must be held fatally defective for the reason that, as we have shown above, it was incorrect in every particular.**

Accordingly, we cannot escape the conclusion that the justice acquired no jurisdiction over the subject-matter of the action and that the entire proceeding in such court was a nullity, from which it follows that

the order of the circuit court sustaining defendant Glennon's motion to quash the execution was proper and should be affirmed. [Emphasis added].

This Court subsequently cited ***Independent Plumbing & Heating*** with approval in the case of ***Chase v. Franke***, 165 S.W.2d 678, 680 (Mo. 1942). In ***Chance***, this Court said the following:

The rule is 'that the statutes relating to liens of mechanics and materialmen should receive a liberal construction'; and 'the courts have hesitated to hold a misdescription of property fatally defective to the enforcement of the lien, as between the mechanic or materialman and the owner of the property'; nevertheless, where 'the land described by plaintiff' was not the land on which the improvements were placed, it must be held that the court 'acquired no jurisdiction over the subject-matter of the action and that the entire proceeding in such court was a nullity.'

Id at 680 citing Independent Plumbing & Heating Supply Co. v. Glennon, 287 S.W 824, 825.

The holding of ***Independent Plumbing & Heating*** applies as

strongly today as it did in 1926. This is not a case of a mere typographical error or a misstatement of a portion of a long legal description. Instead, Pittsburg Steel simply filed a lien on the wrong property. The improvements for which it claims to have supplied labor, materials, and supplies are not located on the tract of land charged with its lien. If a correct description is at all essential, as required by statute and as held in ***Independent Plumbing and Heating***, it can only be said that the description in the lien of the wrong property is fatally defective.

Pittsburg Steel seems to be taking the position that Springfield Underground should have known which property Pittsburg Steel was attempting to encumber with a lien and that is all that is required by the statutes. Such a position can be summarized as follows: If an entity owns two or more pieces of land in a county, a lien claimant may file a lien on any piece of property owned by the entity because the entity should know which piece of property is to be charged with the lien.

Such a construction renders **§§429. 010** and **429. 080** meaningless. If this Court adopted such a position, it would be a nightmare for property owners, title examiners and anyone else who wants to be sure that real property is not subject to a

mechanic's lien.

The time for Pittsburg Steel to correct its mistake has long since passed. The last day upon which Pittsburg Steel alleges to have delivered labor, materials, and supplies for this conveyor project was January 10, 2001. Pittsburg Steel was required to properly file its Statement of Mechanic's Lien in compliance with the statutes by July 10, 2001. It has failed to do so.

CONCLUSION

A mechanic's lien is a creature of statute, and Pittsburg Steel cannot have any right greater than that given to it by **§429.010, RSM. Section 429.010, RSM.**, only authorizes a lien on the improvements into which the labor, materials, and supplies allegedly supplied by Pittsburg Steel were incorporated and the specific land upon which those improvements are located.

As the court has seen, Pittsburg Steel filed its Statement of Mechanic's Lien on the wrong property. By virtue of **§429.010, RSM.**, it does not have a right to a lien on the property against which it has filed a Statement of Mechanic's Lien because the conveyors that it supplied parts for are not located on that property. As a result, the Petition to Enforce Mechanic's Lien that it has filed with the Circuit Court of Greene County fails to state a cause of action upon which relief can be granted. Since it filed its lien on the wrong property, Respondent lacks jurisdiction to proceed with this matter. Therefore, Relator Springfield Underground, Inc. respectfully requests this Court to enter an absolute order of prohibition prohibiting respondent from enforcing his order denying the Motion to Dismiss/Motion for Summary Judgment of Springfield Underground, Inc. and directing Respondent to enter judgment in favor of Springfield Underground,

Inc. and against Pittsburg Steel & Manufacturing, Inc. on its
Petition to Enforce its Mechanic's Lien against Springfield
Underground, Inc.

CERTIFICATE OF COMPLIANCE WITH RULE 84.06(c)

This brief complies with the limitations contained in Rule 84.06(b). There are 3,710 words in this brief. Counsel for Relator relied on the word count of his word processing system in making this certification.

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was sent via first class mail, postage prepaid, on the 25th day of October, 2002, to Richard W. Miller and Danne W. Webb, Miller Law Firm, PC, 4310 Madison Avenue, Kansas City, MO 64111, telephone (816) 531-0755, counsel for Pittsburg Steel, and hand delivered on the 25th day of October, 2002, to The Honorable J. Miles Sweeney, Circuit Judge, Greene County, Missouri, Greene County Judicial Center, 1010 Boonville, Springfield, MO 65802, telephone (417) 868-4086.

Warren E. Harris