

Summary of SC93915, *Fenix Construction Company of St. Louis and Five Star Ready-Mix Concrete Company and Horstmeyer Enterprises Inc. v. Director of Revenue*

On review from the administrative hearing commission, Commissioner Sreenivasa Rao
Dandamudi

Argued and submitted September 17, 2014; opinion issued November 25, 2014

Attorneys: The companies were represented by Lamar E. Ottsen and J. Matthew Belz of Ottsen, Leggat & Belz LC in St. Louis, (314) 726-2800; and the director was represented by Solicitor General James R. Layton and Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Companies seek review of an administrative hearing commission decision denying their request for refunds of sales taxes they paid on products used in making “tilt-up” concrete wall panels. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the commission's decision. The companies have not proven the tilt-up walls are a “product” qualifying for the sales tax exemption.

Facts: Fenix Construction Company of St. Louis builds “tilt-up” concrete wall panels, which involves casting concrete and reinforced steel wall panels on the ground and then tilting the panels into position as the walls of a building. Due to cost, they are made at the construction site and are custom-made for the specific job in accordance with the customer's specifications. Fenix and two other companies sought refunds of the sales taxes they paid on their purchases of materials used in the tilt-up process. After the director of revenue denied the refunds, the companies sought review in the administrative hearing commission. The commission also denied the refunds, finding that the sales tax exemption under which the companies sought the refund did not apply because the tilt-up concrete walls were not a “product” as that term is used in the state statute. The companies seek this Court's review.

AFFIRMED.

Court en banc holds: The commission correctly determined the companies did not prove the tilt-up concrete walls are a “product” qualifying for the sales tax exemption. Section 144.054.2, RSMo, provides a sales tax exemption for materials used in the manufacturing of any “product.” Although the legislature has not defined “product” as used in the tax laws, this Court for nearly 20 years has held that “product” means “an output with a market value.” To prove that a particular good or service constitutes a “product,” it is incumbent on the taxpayer to prove a market exists for that product – that the price of the alleged product is set primarily by competing buyers and sellers, which necessarily implies the alleged product can be marketed to various buyers. The record demonstrates the companies have not proven the existence of a market for the tilt-up concrete walls. As Fenix's founder testified, because each wall panel is designed for one particular building, the companies could not sell a tilt-up wall to another buyer. As such, there is no demonstrated actual or potential market value to any buyer other than the building owner, and the walls do not constitute a “product.”