

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**FIRST BANC REAL ESTATE, INC.**

**v.  
IVAN L. JOHNSON, ET AL.**

**RESPONDENT,**

**APPELLANTS.**

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DOCKET NUMBER WD70741

DATE: June 1, 2010

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Appeal From:

Jackson County Circuit Court  
The Honorable W. Stephen Nixon, Judge

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Appellate Judges:

Division One: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

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Attorneys:

Eric G. Kraft, Overland Park, KS, for respondent.

Ronald K. Barker, Lee's Summit, MO, for appellants.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**FIRST BANC REAL ESTATE, INC.,**

**RESPONDENT,**

**v.**

**IVAN L. JOHNSON, ET AL.,**

**APPELLANTS.**

No. WD70741

Jackson County

Before Division One Judges: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Ivan and Marie Johnson appeal from the trial court's judgment denying enforcement of their mechanic's lien and equitable lien against residential property they had at one time been under contract to purchase. The Johnsons contend that the trial court erred: (1) in holding that the Johnsons did not have a valid and enforceable mechanic's lien due to their failure to provide a "notice to owner" in the form and style required by section 429.012.1; (2) in holding that the Johnsons did not have a valid and enforceable equitable lien for earnest money deposits and additional sums paid to assist with construction of a residence they were under contract to purchase; and (3) in holding that even if the Johnsons did have a valid and enforceable equitable lien, it was foreclosed by Gold Bank's foreclosure of one of its deeds of trust.

**AFFIRMED.**

**Division One holds:**

(1) Although the stated legal basis for the trial court's judgment declaring the Johnsons' mechanic's lien invalid and unenforceable is erroneous, the judgment must nonetheless be affirmed as the Johnsons, as equitable owners of the property at the time they provided the labor and materials described in their mechanic's lien, were not eligible mechanic's lien claimants.

(2) Because the Johnsons could not have asserted a valid mechanic's lien, they were not barred from asserting an equitable lien. The trial court erroneously held that the Johnsons did not have a legally recognizable equitable lien against the property in the total amount paid by them toward the purchase price for the property. Given the trial court's findings of fact, the Johnsons had a legally recognizable equitable vendee's lien against the property, as a matter of law.

(3) In the absence of evidence that a lender waived the priority of its deed of trust, an issue neither raised nor preserved by the Johnsons, the trial court's conclusion that foreclosure of a deed of trust recorded prior to creation of the Johnsons' equitable lien extinguished the equitable lien is not erroneous.

**Opinion by: Cynthia L. Martin, Judge**

June 1, 2010

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