

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

HAREN & LAUGHLIN CONSTRUCTION COMPANY, INC.,

Appellant

v.

JAYHAWK FIRE SPRINKLER COMPANY, INC.,

Respondent

DOCKET NUMBER **WD72333**

DATE: January 25, 2011

Appeal From:

Circuit Court of Jackson County, MO
The Honorable James Dale Youngs, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

HAREN & LAUGHLIN CONSTRUCTION COMPANY, INC., Appellant,
v. JAYHAWK FIRE SPRINKLER COMPANY, INC., Respondent

WD72333

Jackson County

Before Division One Judges: Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

H & L, a general contractor, paid money through its insurance company to an owner for damages to a facility caused by a sprinkler system that Jayhawk, its subcontractor, had installed. H & L sued Jayhawk for remuneration under several theories including indemnification. Jayhawk argued that it did not have to remunerate H & L because under their contract Jayhawk did not have to pay for damages covered by H & L's insurance policy. Both parties moved for summary judgment. The circuit court found that H & L had waived its rights of subrogation to any claims covered by H & L's insurance under the general contract between H & L and the owner and under the subcontract between the parties via incorporation. Therefore, the circuit court denied H & L's motion and granted Jayhawk's. H & L appeals, raising four points.

REVERSED AND REMANDED.

Division One Holds:

H & L argues that the circuit court erred in granting Jayhawk's motion for summary judgment because it erroneously interpreted the terms of the subcontract. Summary judgment was proper for Jayhawk's affirmative defense of waiver of subrogation if it were shown that: (1) the contract contained a provision waiving H & L's right to subrogation to claims covered by insurance, (2) H & L's contractual obligation to maintain insurance was still effective at the time of property damages, and (3) the property damages were covered under that required property insurance policy. Specifically, H & L argues that the contract did not contain provision waiving H & L's right to subrogation claims against Jayhawk, and that the facts were disputed as to whether the required insurance covered the property damages.

H & L and Jayhawk stipulated that the general contract contained a waiver of subrogation rights. The language of the waiver states that the contracting parties and owner parties waive subrogation rights to claims against each other covered by insurance and defines the contracting parties to include H & L and any of its subcontractors. Case law holds that such language may entitle a subcontractor to a waiver between owner and contractor under a third party beneficiary theory. Jayhawk, one of H & L's subcontractors, was entitled to the waiver contained in the general contract as a third-party beneficiary.

Nevertheless, summary judgment was improper because Jayhawk did not establish undisputed material facts entitling it to judgment as a matter of law. The conditions triggering the waiver were disputed. Therefore, we reverse and remand for proceedings consistent with this opinion.

Opinion by: Thomas H. Newton, Judge

January 25, 2011

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