

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**R.K. MATTHEWS INVESTMENT,
INC.**

APPELLANT,

**v.
BEULAH MAE HOUSING, LLC**

RESPONDENT.

DOCKET NUMBER WD74567

DATE: September 25, 2012

Appeal From:

Jackson County Circuit Court
The Honorable J. Dale Youngs, Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

Attorneys:

Douglas J. Patterson and Virginia L. Brady, Leawood, KS, for appellant.

David C. Kirk, Overland Park, KS, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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INC.,**

APPELLANT,

v.

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Jackson County

Before Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

R.K. Matthews Investment, Inc. appeals from a judgment entered following a bench trial. The judgment found in favor of Beulah Mae Housing, LLC on RKMI's claims for breach of contract and enforcement of mechanic's lien and for relief under the Missouri Prompt Pay Act.

Affirmed.

Division Three holds:

As the party asserting a right to recover damages for nonpayment on a construction contract, RKMI bore the burden of both proof and persuasion on the subject of the quality of the performance of its work. BMH did not have the burden to prove the cost of repair, or to prove the poor quality of workmanship through expert testimony, as it had not asserted a claim or counterclaim for breach of contract, or a claim for set off or recoupment.

The trial court independently considered and rejected RKMI's claims for contract damages and for enforcement of its mechanic's lien statement.

Section 429.080 requires a lien statement to provide a property owner with sufficient information to investigate whether the material and labor described in the lien has actually been used to improve the property and whether the amount charged is reasonable and proper. The statute imposes distinct requirements depending on a claimant's status as a general contractor or a subcontractor. The trial court erroneously concluded that the lien statement defectively failed to include an itemized statement of material and labor provided as it is uncontested the RKMI was a general contractor. However, the error was harmless as there were several other defects in the lien relied upon by the trial court to conclude that the mechanic's lien was defective, none of which were contested by RKMI on appeal.

The trial court found collective omissions and errors which permitted the trial court to find that the lien statement included intentional and knowing misstatements that invalidate the lien. The trial court's determination is supported by substantial evidence and is not against the weight of the evidence.

Even if the trial court erroneously declared the lien statement to be invalid, RKMI would not prevail on its claim to foreclose the lien. The trial court determined independent of the lien's validity that RKMI failed to sustain its burden to prove that it was entitled to any further payment from BMH. A mechanic's lien will not be imposed on property if the lien claimant fails to establish that it is entitled to payment.

Opinion by Cynthia L. Martin, Judge

September 25, 2012

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