

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

MISSOURI DEPARTMENT OF)	No. ED98458
TRANSPORTATION ex rel.)	
ON POINT CONTRACTORS, LLC,)	
)	
Plaintiff/Appellant,)	Appeal from the Circuit Court of
)	St. Louis County
v.)	
)	
AURA CONTRACTING, LLC,)	Hon. Steven H. Goldman
WESTERN SURETY COMPANY and)	
MISSOURI HIGHWAYS AND)	
TRANSPORTATION COMMISSION,)	
)	
Defendants/Respondents.)	Filed: November 27, 2012

On Point Contractors, LLC (Appellant) appeals from the judgment of the trial court granting Western Surety Company’s (Western Surety) motion for summary judgment on Counts III and IV of Appellant’s petition which asserted a statutory payment bond claim based upon Sections 107.170¹ and 522.300 and a claim of vexatious refusal to pay, respectively, and Missouri Highways and Transportation Commission’s (MHTC) motion to dismiss Count V of Appellant’s petition which pled in the alternative from Counts III and IV that MHTC failed to require a statutory payment bond from Aura Contracting, LLC (Aura) that was in compliance with Section 107.170.

AFFIRMED.

Division One Holds: The trial court correctly granted Western Surety’s motion for summary judgment and MHTC’s motion to dismiss based on the fact that the construction project at issue was a private project funded by a private owner, and the Right of Way Permit issued to Aura by MHTC was not a contract for public works. Therefore, the Permit Surety Bond issued pursuant to the Right of Way Permit by Western Surety on behalf of Aura and in favor of MHTC was not a statutory payment bond pursuant to Sections 107.170 and 522.300.

Opinion by: Sherri B. Sullivan, J.
Clifford H. Ahrens, P.J. and Glenn A. Norton, J., concur.

Attorneys for Appellant: Matthew D. Menghini and Brian E. McGovern
Attorneys for Resps. Aura and Western Surety: Robert Babcock and Robert F. Chandler
Attorneys for Resp. MHTC: John W. Koenig, Jr., Pete Donovan and Rich Tiemeyer

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.

¹ All statutory references are to RSMo 2006, unless otherwise indicated.