

Summary of SC90771, *Lucas Stucco & EIFS Design LLC v. Loren L. Landau*

Appeal from the St. Louis County circuit court, Judge Brenda Stith Loftin
Argued and submitted Sept. 7, 2010; opinion issued Oct. 26, 2010

Attorneys: Landau was represented by Andrew J. Scavotto and John W. Moticka of Stinson Morrison Hecker LLP in St. Louis, (573) 863-0080; and Lucas Stucco was represented by Norbert J.J. Glassl of Moser & Marsalek PC in St. Louis, (314) 421-5364.

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: A building owner appeals a trial court's judgment awarding a contractor attorney fees under the private prompt payment act. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment. In a case of first impression, the Court holds that a request for attorney fees only in the prayer for relief may be granted so long as the plaintiff meets the two requirements for pleading a violation of the act, which the contractor did here.

Facts: Loren Landau entered into an agreement with contractor Lucas Stucco & EIFS Design LLC to install stucco finishing on Landau's building. Landau made two payments to the contractor after the work was finished, but Landau still owed a balance of \$4,900. The contractor sued Landau, seeking in its prayer for relief for each of four counts the sum of \$4,900 plus interest and reasonable attorney fees and costs. On the day the trial was to begin, the contractor announced its intent to seek attorney fees pursuant to the state's private prompt payment act, and the court granted Landau a one-week continuance. At trial, Landau argued attorney fees under the act were not appropriate. The trial court issued judgment in the contractor's favor, awarding it \$4,900 plus more than \$10,500 in attorney fees. Landau appeals.

AFFIRMED.

Court en banc holds: The trial court properly awarded attorney fees pursuant to the private prompt payment act. In Missouri, attorney fees generally are not awarded unless a statute specifically authorizes their recovery or the contract provides for attorney fees. The contract here made no such provision. The act, however, provides that a court may award reasonable attorney fees to the prevailing party. The act does not require specific reference to the statute in the petition as a requirement to seek the relief it affords. Instead, the court may award attorney fees under the act so long as the party pleaded the necessary elements of the act and has requested attorney fees in the prayer for relief. To plead a violation of the act, the plaintiff must allege that the parties entered into a private construction contract and that one or more payments were not made pursuant to the contract. *Vance Brothers, Inc. v. Obermiller Construction Services, Inc.*, 181 S.W.3d 562, 564 (Mo. banc 2006). The contractor here pleaded both requirements and requested attorney fees in its prayer for relief. Accordingly, the specific request for reasonable attorney fees in the prayer may be granted.