

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MANNING CONSTRUCTION COMPANY, INC.,**

**Appellant,**

**v.**

**MCI PARTNERS, LLC., et al.,**

**Respondents.**

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DOCKET NUMBER WD75284

**Date: November 5, 2013**

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Appeal from:  
Platte County Circuit Court  
The Honorable Abe Shafer, IV, Judge

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Appellate Judges:  
Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

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Attorneys:  
Danne W. Webb and Amy J. Tillery, Kansas City, MO, for appellant.  
Christopher M. Chugh, Kansas City, MO; Bradley R. Gardner, Lenexa, KS; Carol F. Walsh;  
Douglas D. Silvius and Matthew P. Clune, Kansas City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

**MANNING CONSTRUCTION COMPANY, INC.**

**Appellant,**

**v.**

**MCI PARTNERS, LLC., et al.,**

**Respondents.**

WD75284

Platte County

Before Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Appellant Manning Construction Company was hired by Watkins Development Services, LLC to perform construction work on Ambassador Drive Office Condominiums Project (the "Project") in Kansas City.

Manning performed construction work on Building #2 at the Project. A certificate of substantial completion for Building #2 was executed by Watkins, Manning and the Project's architect in August 2007; Manning completed performance of "punch-list" items on Building #2 in October 2007. Manning submitted twelve pay applications for its construction work between January 25, 2007, and April 14, 2008. Manning received full payment on the first nine pay applications, but received only partial payment on applications ten, eleven, and twelve. Manning contends that the total value of its work (including its 3.5% fee) was in excess of \$3.3 million, but that it was only paid slightly more than \$3.1 million.

In December 2008, Manning expressed concerns to Watkins that it was facing a deadline to file a mechanic's lien for the unpaid work. Watkins did not want Manning to file a mechanic's lien, out of concern that a lien filing would interfere with Watkins' efforts to sell condominium units in the Project, and to obtain financing for further construction. Watkins and Manning instead agreed that Watkins would hire Manning to perform mowing and weed-trimming work on the Project, at a cost of \$1,400, to extend Manning's lien rights. Change of Work Order #10 reflected this additional work.

Manning and Watkins entered into a similar agreement for minor additional work in June 2009. This agreement was documented in Change of Work Order #11.

Manning filed its mechanic's lien on November 19, 2009. Manning's lien filing claimed that \$195,800.45 remained unpaid for its work. The lien filing attached Manning's twelve pay

applications; it did not specifically refer to the work Manning performed under Change of Work Orders ##10 and 11 in December 2008 and June 2009. The lien filing nevertheless claimed that “Manning last furnished labor, materials and services to the Project on June 1, 2009.”

Manning later filed suit to foreclose on its mechanic’s lien. Following a two-day bench trial, the circuit court denied relief. It held that Manning’s lien filing failed to comply with the six-month filing deadline found in § 429.080, RSMo, and that the work performed under Change of Work Orders ##10 and 11 was ineffective to extend the lien-filing period. Manning appeals.

**AFFIRMED.**

**Division One holds:**

Under § 429.080, RSMo, a mechanic’s lien claimant must file “a just and true account of the demand due” “within six months after the indebtedness shall have accrued.” The indebtedness is deemed to “accrue[ ]” when the last labor is performed or the last material is furnished under an agreement. In addition, materials furnished under distinct contracts cannot be mingled in one account and a lien obtained for the aggregate amount. When a job is finished, and whether work was performed under one contract or separate contracts, are questions of fact.

Moreover, a contractor and a property owner cannot agree to extend § 429.080’s lien-filing deadline, and a contractor cannot perform additional work solely for the purpose of extending its lien-filing deadline.

The evidence in this case supports the trial court’s conclusion that Manning performed the work authorized by Change of Work Orders ##10 and 11 after it had completed the performance of the work for which it asserts a mechanic’s lien, and after its lien rights for that work had expired. The evidence also support the court’s finding that the change-order work was the subject of a new and separate agreement between Manning and Watkins, which was motivated solely by Watkins’ desire to delay Manning’s filing of a lien. In light of the trial court’s findings of fact, which are fully supported in the record, the court did not err in concluding that the change-order work did not extend Manning’s lien rights, and that Manning’s November 2009 mechanic’s lien filing was accordingly untimely.

**Opinion by: Alok Ahuja, Judge**

November 5, 2013

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