

Contractor Lien/Bond Rights in Missouri

AUTHOR: RICHARD A. STOCKENBERG

Either Liens or Bonds or Neither

A CRACK IN THE SEAMLESS CONTINUUM OF PAYMENT PROTECTION

The decision by the Supreme Court of Missouri in *Brentwood Glass Company, Inc. v. Pal's Glass Service, Inc.*, creates a crack in the seamless continuum of payment protection previously afforded to subcontractors on non-residential construction projects in Missouri. Subcontractors have for decades believed – with good cause – that regardless of whether the property on which they worked was privately-owned or owned by a governmental body, they are afforded statutory security for payments due them. This security comes to them in two forms. First, for privately-owned property, subcontractors enjoy the security afforded by Missouri's mechanic's lien statutes, specifically a lien against the owner's fee simple interest. Secondly, for government-owned property, they are the beneficiaries of statutorily-mandated payment bonds pursuant to Missouri's Little Miller Act, patterned after its federal counterpart. For subcontractors, it is an "either/or" proposition upon which they rely for a layer of protection in their high-risk industry.

In *Brentwood Glass*, the Supreme Court ruled that the subcontractor had neither a bond claim, nor a lien claim against the owner's fee simple interest where (1) St. Louis County ("County") purchased and developed property through the issuance of industrial revenue bonds ("IRBs") and leased the property to a private developer who in turn engaged a general contractor; and (2) the property developed was not for a public purpose, but instead was to be used as a corporate headquarters under a lease with the developer.

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