

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

**UHFA, L.L.C and UHFC, L.L.C.**

**Plaintiffs**

**vs.**

**Case No. 0616-CV23780**

**W.G. SAMUELS CO., INC. and  
REGENTS FLOORING CO., INC., and  
ACE AMERICAN INSURANCE COMPANY,**

**Defendants.**

**ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS COUNTS III AND VII OF  
REGENTS FLOORING CO., INC.'S SECOND AMENDED COUNTERCLAIM**

The Court takes up UHFA, L.L.C's and UFHC, L.L.C.'s Motion to Dismiss Counts III and VII of Regents Flooring Co., Inc.'s Second Amended Counterclaim. The motion was filed on June 15, 2009, and has now been fully briefed and argued by both sides. The court has considered the motion, the suggestions filed by the parties, and the Second Amended Counterclaim filed September 15, 2008.

In Counts III and VII Regent Flooring asserts claims to enforce its mechanic's liens for materials labor and supplies provided for the building and improvements owned by UHFA and UHFC. In each count the mechanic's liens claim names Paragon Construction Services, Inc., H&H Drywall Specialities, Inc., Standard Electric Co., Inc., AA Atlas Fire Inspections, Inc., Building Erection Services Company, Inc., Bazin Excavating, Inc., Professional Building Supply Co., BSPM Trustee, Inc., as Trustee for Lasalle, Hallmark Cards Incorporated, Herb Root d/b/a Herb Root Specialists, David E. Fenley, Trustee for Commerce Bank N.A., Commerce Bank N.A., UHFC, L.L.C., and UHFA, L.L.C. Missing from the named parties in both Counts III and VII is Defendant W.G. Samuels Company, Inc.

In Paragraph 23 of the Second Amended Counterclaim, Regents alleges that it is a subcontractor of W.G. Samuels Co., Inc. The contract between Regents and W.G. Samuels forms the basis for the mechanics' lien. Since W.G. Samuels is a party to the contract which gives rise to the Regents' lien claim, it is a necessary and indispensable party. It is not named as a party to the lien claim asserted in Counts III and VII.

Regents' seeks to distinguish its situation from *Central Wholesale Distributors, supra.*, because here there is no question that W.G. Samuels was already a party to the action, and was therefore already subject to the court's personal jurisdiction. That fact, although true, belies the unmistakable fact that W.G. Samuels was not named as a party, and therefore was not a party to the lien action asserted in Count III of the Second Amended Counterclaim. There was no notice to W.G. Samuels of any lien claim asserted, in which it was named as a necessary party. Time has now lapsed for the proper joinder of W.G. Samuels in the lien claims. For these reasons, the Motion to Dismiss Counts III and VII must be GRANTED.

**IT IS NOW THEREFORE ORDERED** that Plaintiffs' Motion to Dismiss Counts III and VII of Regents' Second Amended Counterclaim is now GRANTED. Counts III and VII of the Second Amended Counterclaim filed September 15, 2008 are now DISMISSED.

**IT IS SO ORDERED.**

2/02/10

Date

/s/ Sandra C. Midkiff

Sandra C. Midkiff, Circuit Judge

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