KALTWASSER, J. B. v BAUMAN, GEORGE et als* MARCH 1866. ST. LOUIS LAND COURT 569/4

OLD 654/4 Reversed and Remanded

* GOEBLE, GERT
TODD, ALBERT AND THE CONNECTICUT MUTUAL LIFE
INSURANCE COMPANY OF THE CITY OF HARTFORD
RIGGEN, JOHN & MASON, WM. T + SIBLEY, MARY E.

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State of Missouri
County of St. Louis } S.

Be it Remembered that on the Twenty fifth day of February in the year of our Lord One thousand eight hundred and sixty there was filed in the office of the Clerk of the St. Louis Land Court a petition.

(Which Petition is not inserted, as there is filed in this cause an Amended Petition, for which Amended Petition See this Transcript, Pages 1 to 8 inclusive. Clerk)

Upon the filing of the aforesaid Petition the Clerk then issued to the Sheriff of the County of St. Louis a Summons.

Summons

(Which Summons is in the words and figures following, to wit:

County of St. Louis. S.

The State of Missouri,
To the Sheriff of St. Louis County. Greeting:
We command you to summon George E. Bauman & Gert Goble to appear before the Judge of our St. Louis Land Court, on the first day of the next term thereof, to be held in the City of St. Louis, within and for the County of St. Louis, on the second Monday of March next, then and there to answer the complaint of John J. Kaltwasser as set forth in the annexed petition; and have you then and there this writ.

Seal

Witness, Edward N. Tracy, Clerk of our said Court with the seal thereof hereto affixed, at office in the City of St. Louis this 25th day of Feby in the year of our Lord, eighteen hundred and sixty.

E. N. Tracy, Clerk

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Upon which Summons the Sheriff made his Return in the words and figures following, to wit:

Sheriff's Return

Executed this Writ in the County of St. Louis on the 25th of Feb 1862 by delivering a copy thereof with a copy of the petition as furnished by the Clerk to Gert Goeble one of the within named defendants

Thos. E. Courtenay Sheriff
By Wm W. Weimer

And I did further execute this Writ in the County of St. Louis on the 26th day of Feb. 1862 by leaving a copy thereof as furnished by the Clerk at the usual place of abode of George Bauman with a White person a member of his family over the age of fifteen years.

Thomas E. Courtenay Sheriff
By Jamel L. Guion Deputy.

And afterwards, the following proceedings were had in this cause, to wit:

October Term 1862 — Wednesday December 17th 1862

By leave of Court Amd. Petn. filed

John P. Kaltwasser
vs.
George Bauman et ali

Now at this day, On Motion of Plaintiffs Attorney, It is Ordered by the Court, that the Plaintiff have leave to file an Amended Petition,

Whereupon an Amended Petition is filed in this cause.

Which Amended Petition is in the words and figures following, to wit:

Amd. Petn.

John P. Kaltwasser Pltff.
vs

George Bauman Gert Goeble. Albert Todd & the Connecticut Mutual Life Insurance Company of the City of Hartford State of Connecticut. John Riggin & Wm T. Mason & Mary E. Sibley Defts

In the St. Louis Land Court. Oct Term 1862

Amended Petition

The Plaintiff by leave of Court, first had & obtained, states, that on or about the 28th May 1859 he entered into a written contract with said George Bauman Original Contractor under the Defendant Gert Goeble, owner of the land hereafter described, to erect 7 houses, of which I will be hereafter described, to paint & glaze 7 houses, then intended & then being built upon land of said Goeble, which said contract is now on file in this cause & made part hereof.

And plaintiff states that afterwards & by subsequent agreement, he agreed to paint & glaze 7 of said houses, as set forth in said contract, at the same rate as the seven, & accordingly he did paint & glaze the 7 houses hereinafter described according to the terms of said contracts; and the estimate, account & bill of items of his said work is also on file herein & made part hereof; and Plff says that according to said contracts & also according to the value of extra work ordered by Deft. Goeble & done by Plff, he is entitled to & claims the sum of 1144 $\frac{26}{100}$ Dollars, all of which is still due him, & all of which work was done & the materials were furnished upon 7 houses belonging to Deft. Goeble described as follows; on a piece of ground in Block 372 of St. Louis, St. Louis County Missouri, having a front of 123 feet 7 inches, on the West side of South 7th Street, by a depth running westwardly of said 7th street with said width of 123 $\frac{7}{12}$ feet of 100 ft, which said front line begins on the west line of said south 7th street about 37 feet 7 inches North of Northern line of the North side of Geyer Avenue, as laid out,

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or proposed by the City of St. Louis & runs thence Northwardly along the west line of South 7th street 123 feet & 6 inches and the said houses cover the entire front aforesaid & extend with the width westwardly upon said ground to a depth of 79 feet, each of said houses contains cellars under the front & rear buildings walled up with stone the walls of said houses above the cellar & foundation walls are of brick 2 stories high, each house, having above the cellars one hall, 10 rooms, 2 bath rooms & 2 privies.

And pltff states that his said work & materials done & furnished is well worth the sum of 1144 20/100 Dollars. He further states that he caused a copy of the notice of his claim upon said property, which is now on file herein & which he make part hereof, to be served upon said Deft Goeble, the owner of said property on the 15th day of February 1860, & thereby notifying him of Pltffs claim & the amount thereof & from whom due & he also filed on the 25th day of said February 1860, with the Clerk of the St. Louis Land Court, a just & true account of his said demand due him, after all just credits had been given, together with a description of the property to be charged with said lien, verified by affidavit, as required by law, to which lien reference is hereby made.

Pltff says further that said notice of his demand was given to said Goeble owner, at least 10 days before the filing of said lien & the said lien was filed within 4 months after said demand accrued, & that this suit was brought within 90 days after filing said lien, and further that said houses were begun about 1st April 1859 & were ordered to be built by said Goeble, who was then owner of said land & is now subject to the alleged incumbrances hereinafter stated.

Plaintiffs work was begun about 14 May 1859 & was completed about 9 Feby 1860.

Plff says Deft Bauman did not pay as he agreed nor keep his agreement in other respects & therefore Plff is not bound to the credit named in the agreement.

Plff states further that he is informed & believes & so charges that after the commencement of the work of erecting said row of houses, the said Gert Goeble, being then sole owner of said land conveyed dated August 1st 1859 the same to the Deft Albert Todd, as Trustee of the Connecticut Mutual Life insurance of the City of Hartford, State of Connecticut, to secure an alleged debt of 10,000 Dollars on 5 years time & 10 semi annual interest notes of 500 Dollars each, which conveyance in trust was recorded about 6th August 1859; and said Goeble also conveyed the southern part of the above described tract to wit about 20 feet to John Foiggin and Wm F. Mason Defts, as Trustees of Deft Mary E. Kelley to secure an alleged debt of 3000 Dollars on 4 years time & interest notes — semi-annual — of 250 Dollars each, which conveyance in trust was dated April 1st 1859 but was not recorded till 1st July 1859. Both of said alleged incumbrances were subsequent to the commencement of the work of erecting said houses & therefore are, as Plff claims, subject to his lien thereon, & he prays that said Trustees & Cestui qui trusts, under said Deeds of Trust, may be made Defts herein, and Plff may have judgment for his said demand against said Bauman & that his said lien may be enforced against said land & buildings and may be declared to be a prior lien to said alleged deeds of trust, and the said Trustees & Cestui qui trust, claiming thereunder and for such other & further relief in the premises as Plff may be entitled to.

Spies & Pray Attys for Plff.

John R. Kaltwasser, Plff makes oath and says he believes the foregoing Petition & the matters therein, & in the said exhibits &

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the matters therein as stated are true.

John Ph. Kaltwasser.

Sworn to & subscribed, before me, this 17th day of Decr 1862.

Robert White Clk

By E. P. Walsh Dp

The "contract" and "bill of items" stated in the foregoing petition as being "on file herein & made part hereof" are in the words and figures following, to wit; (Clerk.)

Contract

Articles of agreement made and entered into this day of May 1859, By and between George Baumann party of the first part, and Philipp Kaltwasser, party of the second part, all of the City and County of St. Louis, State of Missouri, in these words and figures, as follows:

The said party of the second part, covenants and agrees to and with the said party of the first part, to furnish all the materials, labor and works necessary for the Painting and Glazing for a certain row of seven houses, which the said party of the first part contracted for to erect, build and finish for Gert Gottlieb Esqr., The work shall be done in accordance with the drawings, plans, and specification furnished for those buildings by the Architects Koenig Brothers, and to the satisfaction and approbation of the superintendents Koenig Bros. who shall have the right to reject the whole or any portion of the works and materials if in their opinion, the same shall not be in strict accordance with the drawings and specification The said parties of the second part agrees to proceed with the work with all reasonable dispatch, and have the different part ready, as no other mechanic, shall be detained in their labor or works by reason of not performing of the works of the parties of the second part. And the said party of the first

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part agrees and binds himself to pay unto the said party of the second part, for and in consideration of the Painting and Glazing described to be done in and for the aforesaid buildings the sum of Thirteen hundred dollars ($ 1300 $\frac{00}{100}$), in the following manner, to wit:

One hundred dollars ($100 $\frac{00}{100}$) when the first tiers of joists are laid

Two hundred dollars ($ 200 $\frac{00}{100}$ when the Roofs are put on.

Seven hundred dollars ($ 700 $\frac{00}{100}$) when the Buildings are finished and delivered.

and thirty two days, after the buildings are finished and delivered notes to the amount of three hundred dollars ($ 300 $\frac{00}{100}$) payable five months after date bearing ten per cent interest.

Provided that the wages of artizans and laborers, and all those employed by or furnishing materials for the said party of the second part shall have been paid and satisfied, so that they shall have no lien upon the buildings or works.

Signed sealed and delivered this 28th day of May 1859.

George Baumann (Seal)

J. Philipp Kaltwasser (Seal)

Bill of items

Estimate of the Painting and Glazing done for six houses done for George Baumann, contractor for G. Goebel Esq. based upon the original contract for seven houses.

St. Louis February 17th 1860

Description of Works.	Deduct		Add		Price		Amount	
Contract price for Glazing & Painting of seven houses. May 28th 1859					1300	00		
Deduct 8 Box window, & Blinds @ 4.15	33	20						

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4 solid frame windows @ 2.25	9	00						
	42	20						
Add two dormer windows — @ 2.50			5	00				
Difference to be deducted —					37	20		
Price of seven houses, all alike					1202	80		
Price of six houses.							1082	40
Extra work, outside of specificates								
Add: 18 cellar windows @ 80 cts			14	40				
12 Privy windows @ 1.00			12	00				
12 Blinds of Basement 1.00			12	00				
48 doors in Rear building grained								
Extra for graining @ 80 cts			38	40				
Deduct 6 dormer windows @ 2.50	15	00						
Add difference	15	00	76	80			61	80
Total amount of Painting & Glazing							$1144	20

Estimated to One thousand one hundred and forty four 20/100 Dollars

Koenig & Bros.

And afterwards, the following further proceedings were had in this cause, to wit;

March Term 1863 — Friday March 13th 1863.

Answr. of M. E. Sibley, filed.

John P. Kaltwasser vs George Bauman et ali } Answer of M. E. Sibley, filed in this cause.

Which Answer, is in the words and figures following, to wit:

Answr. of M. E. Sibley

Kaltwasser.

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Bowman et al vs } No 135 March Term 1883 of St Louis Land Court.

Mary E. Sibley, made Defendant, in above cause, by her Attorney says she has no interest of any kind whatsoever in the premises described in plaintiffs petition nor in the subject matter of this suit, that she does not know nor has she any knowledge or information sufficient to form a belief as to the truth of any one of the allegations in said petition.

Wherefore she asks to be discharged.

Flournoy Atty for Mary E. Sibley

State of Missouri } County of St. Louis } S. John Flournoy Atty for Mary E. Sibley being duly sworn says, he believes the foregoing answer to be true.

John Flournoy.

Sworn to and subscribed before me this 12 March 1883.

Seal

John B. Evans Not Pubc

And afterwards, to wit, at the same term, the following further proceedings were had in this cause, to wit:

Wednesday March 19th 1883.

John P. Kaltwasser, vs. George Bauman et ali } Now at this day comes the attorney for Plaintiff, and moves the Court, for judgment by default against George Bauman, and the Court having heard, and not being fully advised of and concerning the premises, doth Order that said Motion be placed on the Law Docket.

Mo. for judgmt by Default agt. Geo Bauman et al.

And afterwards, to wit; at the same term the following further proceedings, were had in this cause, to wit;

Tuesday March 24th 1903

Affdt of service of Copy filed

John P. Kaltwasser
vs
George Bauman et ali

Affidavit of service of copy, filed in this cause.

Which affidavit is in the words and figures following, to wit;

Affdt of service of Copy.

State of Missouri
County of St. Louis

F. Frederick Pies, being duly sworn, upon his oath says, that on the 24th day of January 1903, he left a true copy of the within second amended petition, at the house which was the usual place of abode of the defendant George Baumann at the time he was in the City of St. Louis State & County aforesaid last, and where his family still resides & ever since continued to reside, with a white person of the family over the age of fifteen years; this affiant being informed that said Baumann left the State of Missouri about the middle part of February 1903 for New Orleans in the State of Louisiana & has never returned since, without indicating his intentions as to whether or not he intended to change his place of abode.

Fred. Pies.

Sworn to & subscribed before me this 24th day of March 1903.

Robert White Clerk
By E. P. Walsh D.C.

And afterwards, to wit; at the same term, the following further proceedings were had in this cause, to wit:

Friday April 3d 1863.

Mo. for default agst Geo Bauman sub. & sus.

John P. Kaltwasser vs. George Baumann et ali } Now at this day the Motion in this cause for Judgment by default against George Bauman, is submitted to the Court, and the Court having heard and being advised of and concerning the premises, doth Order and adjudge that said motion be sustained.

And afterwards, the following further proceedings were had in this cause, to wit:

October Term 1863. Wednesday October 21st 1863.

Ans. of Gert Goebel filed

John P. Kaltwasser, vs. George Bauman et ali } Answer of Gert Goebel, to second Amended petition, filed in this cause.

Which Answer is in the words and figures following, to wit:

Ans. of Gert Goebel

In the Saint Louis Land Court.

March Term 1860

John P. Kaltwasser. Plaintiff

vs.

George Baumann Gert Goebel and others Defendants.

The Defendant Gert Goebel for answer to plaintiff's second amended petition, says he has not knowledge or information sufficient to enable him to form a belief as to whether or not said plaintiff did paint and glaze the houses described in his petition according to the terms and provisions of the contract set forth in his petition; whether or not

the sum of $1144 20/100 is now due to plaintiff from the defendant Baumann for painting and glazing done at the houses described in plaintiff's petition; whether or not the said sum or the prices set forth and charged in plaintiff's account are reasonable; whether or not the said work and labor was done and said materials were furnished as alleged in plaintiff's petition, and if done and furnished whether the said work was done and such materials furnished on the 11th day of February A. D. 1886 as is alleged in plaintiff's petition; whether or not "the plaintiff caused his lien to be filed in this honorable Court against the six houses and the premises in said petition described" as is alleged in plaintiff's petition.

Wherefore defendant asks proof of all said allegations in plaintiff's petition.

Defendant denies that plaintiff is entitled to a judgment against him for said sum of $1144 20/100 or for any other sum, and asks that plaintiff's right to a special judgment against the premises described in the petition be inquired into by this Court.—

And defendant Goebel says that the lot of ground on which said six houses are erected is not properly described by plaintiff and is properly described as follows: Commencing at a point in the Western line of Seventh Street which is thirty nine feet distant from the intersection of 7th Street and Geyer Avenue, thence Northwardly along the western line of 7th Street 31 feet, six inches to a point in the Northern line of T. J. Payne's Addition; thence westwardly along said line one hundred feet to a point where said line strikes a fence running North and South; thence Southwardly along said fence about ninety eight feet to a point which is distant Westwardly seventy one feet from the point of beginning; thence eastwardly and at right angles with said last described line and along a fence running East and West

seventy one feet six inches to the point of beginning.

Defendant denies that the deed executed by him to Mary E. Sibley's trustees and recorded in July 1859 was an incumbrance created subsequent to the commencement of the work of erecting said buildings, and the defendant denies that said incumbrance is subject to any other lien of plaintiff

And defendant denies that plaintiff is entitled to any lien on said premises or to any judgment against this defendant.

James Taussig for defendant Goebel.

County of St. Louis, Sct.

Gert Goebel, defendant, makes oath and says the foregoing answer and the matters therein stated, he believes are true.

Gert Goebel.

Sworn to and subscribed before me this 21st day of October 1863.

Witness my hand & seal

Seal
L. S. Stamp.

Theodore F. Childs Notary Public, St. Louis Co. Mo.

And afterwards, to wit; at the same term the following further proceedings were had in this cause, to wit:

Wednesday October 21st 1863

Default agst several Defts

John P. Kaltwasser vs George Bauman et ali } Default.

Now at this day, comes said Plaintiff by his attorney, but said defendants The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, William T. Mason and John Riggin, although duly summoned and called, come not, but make default, Wherefore on Motion of said attorney, It is Ordered and adjudged by the Court, that the petition of the Plaintiffs be taken against said defendants

as confessed.

And afterwards, to wit; at the same term the following further proceedings were had in this cause, to wit;

Friday December 11th 1863.

Ans. of the Connecticut Mutual Life Ins. Co. filed by consent

John P. Kaltwasser
vs.
George Bauman et al

Answer of the Connecticut Mutual Life Insurance Company, filed by consent in this cause.

Which Answer is in the words and figures following, to wit:

Ans. of Connecticut Mutual Life Ins. Co.

John P. Kaltwasser, Plaintiff.
vs.
The Connecticut Mutual Life Insurance of Hartford impleaded with George Bauman et al Defendant.

In the St. Louis Land Court.

The defendant in answer to the plaintiffs petition, denies that he has any knowledge or information thereof, sufficient to form a belief whether or not the Plaintiff, on the 28th day of May 1859 or at any other time entered into the written contract, sued on, with George Bauman or that Bauman was original contractor with Gerl Goebel or that the plaintiff did perform the work, according to the terms of said contract, or that the estimate account or bill of items filed with the petition is correct, or that he did any extra work, or the value thereof or that said work, was done & finished at the time entered & upon the building described in the petition or that said work is worth the sum alleged or that he served the notice or any notice of such alleged facts on the defendant Goebel at the time stated or at any time or that he caused a just & true account of his alleged demand containing the facts as alleged to be filed in the Clerks office of the Land Court at the time stated

or at any time, or that said notice to said Goebel was given 15 days before the filing of said lien, or that said lien was filed within four months after said demand accrued, or that this suit was brought within 90 days after the filing of said lien, or that said houses were begun at the time stated in the petition.

Defendant denies that said claim of Plaintiff is a prior lien to the deed of conveyance, executed by Gert Goebel to Albert Fold, in trust to secure the payment of the indebtedness therein expressed.-

For further answer the defendant says, that the indebtedness expressed in said deed, remains unpaid & the defendant prays that the Court may declare the same to constitute a prior lien on the premises & for such other & further relief as may deem meet & equitable.

Krum & Decker Attorneys for Deft.

Geo K. Budd, agent of the Plaintiff being duly sworn on oath says that the foregoing answer & the matters therein as stated he believes to be true.

Geo K. Budd

Subscribed & sworn to before me this 8 day of December A.D. 1893.

Witness my hand & notarial seal hereunto affixed the day and year last aforesaid.

Seal

Nicholas A. Mortell Notary Public

And afterwards, to wit; at the same term, the following further proceedings were had in this cause, to wit;

Thursday February 18th 1894

John P. Kaltwasser,

vs.

Jury Waived
Trial By Court

George Bauman, Gert Goebel and the Connecticut Mutual

Life Insurance Company of Hartford, Connecticut, Albert Todd, their trustee, Mary E. Libby, & William T. Mason & John Riggin, her Trustees.

Non suit set aside & cause submitted.

Now at this day comes said Plaintiff and said defendant Gerts Goebel, by their respective attorneys, said George Baumann being in default herein, and the other defendants come not, and thereupon the motion heretofore filed in this cause, to set aside non-suit, is withdrawn, and by consent of parties. It is Ordered and adjudged by the Court, that the Judgment heretofore rendered in this cause, of non-suit, be and is hereby set aside and for naught held and esteemed; and thereupon this cause coming on to be heard and no Jury being required, the cause is tried by the Court, upon the evidence and proofs adduced, and the Court having heard and not being fully advised of, and concerning the premises, takes time to consider thereon.

And afterwards, the following further proceedings, were had in this cause, to wit:

March Term 1864. Monday March 14th 1864

Judgment

John P. Kaltwasser,
vs.
George Baumann, Gert Goebel and the Connecticut Mutual Life Insurance Company of Hartford, in the State of Connecticut and Albert Todd, as their trustee, Mary E. Libby & William T. Mason & John Riggin as her Trustees.

Judgment.

And now at this day, the Court being fully advised of and concerning the premises in this cause heretofore submitted to the Court, doth from the evidence and proofs herein find: that the defendant

George Baumann, is indebted to the Plaintiff, in the sum of Eleven hundred and forty four dollars, and twenty cents, with interest from the commencement of this suit, amounting to two hundred and seventy eight dollars and five cents, making in the aggregate the sum of Fourteen hundred and twenty two dollars and twenty five cents. It is therefore Ordered and adjudged by the Court, that the Plaintiff recover of said George Baumann, the debt and interest aforesaid, in form aforesaid as found, and also his costs and charges herein expended and have execution therefor.

And afterwards, to wit; at the same term, the following further proceedings were had in this cause, to wit:

Friday March 18th 1864.

Mo. for New Trial filed.

John P. Kaltwasser
vs.
George Baumann et al

Motion for New Trial, filed in this cause

(For which Motion for New Trial. See "Bill of Exceptions. Clerk)

And afterwards, to wit; at the same term the following further proceedings were had in this cause, to wit;

Friday March 25th 1864.

Mo. for New Trial overruled

John P. Kaltwasser
vs.
George Bauman et al

Now at this day, the Motion heretofore filed in this cause, for a New Trial, is submitted to the Court, and the Court being fully advised of and concerning the premises, doth Order and adjudge, that said Motion be overruled.

And afterwards, to wit; at the same term the following further proceedings were had in this cause, to wit:

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Aff't for Appeal & Bond filed & Appeal granted

John P. Kaltwasser vs. George Baumann, et ali.

Monday April 4th 1864

Appeal to the Supreme Court. Now at this day, there is filed in this cause, an affidavit for appeal, and also an appeal bond, as required by the Court, which bond being submitted, is approved by the Court, and thereupon an Appeal to the Supreme Court, is granted the Plaintiff from the decision herein rendered.

(For which affidavit for Appeal and Bond. see this Transcript. Pages 26, 27 & 28. Clerk)

And afterwards, to wit; at the same term, the following further proceedings were had in this cause, to wit;

Monday June 20th 1864

Bill of Exc'ps. filed

John P. Kaltwasser vs. George Bauman, et ali

Bill of exceptions, filed in this cause.

Which Bill of exceptions is in the words and figures following, to wit:

Bill of Exc'ps

John J. P. Kaltwasser, Plaintiff

vs.

George Bauman, Gert Goebel, The Connecticut Mutual Life Insurance Company of Hartford in the State of Connecticut & Albert Todd as their trustee, Mary E. Sibley & William T. Mason & John Riggin as her trustees, Defendants

St Louis Land Court

Be it Remembered, that on the 18th day of February 1904, this cause came to be heard for trial, when the following proceedings were had:

Neither party requiring a Jury, the cause was tried by the Court.

After reading the petition & answers, the plaintiff offered in evidence his notice, to defendant Gert Goebel, of his demand due him by defendant George Bauman, for work done & materials furnished by him upon deft. Goebels houses in question, with the return of Henry Kattelman Constable of the 1st & 2d wards of the City of St. Louis in St. Louis County & State of Missouri; and also his Mechanics' lien filed in the Clerk's office of this Hon. Court, being No (972), which is made part of the Record in this cause;

Which notice & Lien are in words & figures as follows, viz:

Gert Goebel Esqr.

Notice

Please take notice, that I hold a claim against your six houses situated in Block No 372 of the City of St. Louis in the County of St. Louis and State of Missouri, fronting on South 7th Street; the ground on which the same stand, begins in the western line of said South 7th Street about 37 feet & 7 inches north of the northern line of the north side walk of Geier Avenue as laid out, or proposed by said City of St. Louis, thence running north along the western line of South 7th Street one hundred & twenty three feet & six inches, and said ground having a depth running westwardly of South 7th Street, with said width of 123 feet & 7 inches, of about one hundred feet, more or less. The said houses cover the entire front of 123 7/12 feet of said ground and all run back to a depth, on the same, of 79 feet; Each of said houses contains cellars under the front & rear buildings walled out with stone; above the foundation and cellar walls, the walls are of brick two stories

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high; each house contains: in the lower story, two rooms in the front, two rooms in the rear building, and a bath house and privy behind the latter; in the second story, three rooms in the front - and two rooms in the rear building, and a bath house & a privy behind the latter; and in the garret of the front building one room. —

That my said claim amounts to one thousand one hundred twenty one dollars & forty eight cents, and that the same is due me for glazing and painting done and materials furnished by me, to and on said six houses under a subcontract with George Baumann, who is the original contractor build said houses for you, by whom said amount is due me.

That unless said demand is paid me within ten days from date, I shall attach a lien on said buildings and on the ground on which they stand as above mentioned.

St. Louis February 15, 1887. J. Ph. Kaltwasser

Served the within notice in St. Louis Feb 15th 1887 by delivering a true coppy thereof to the within named Gert Goebbe

Henry Kattelman Constable

Lien

George Baumann

To John Philip Kaltwasser Dr.

To painting & glazing six new two story brick houses belonging to Gert Goebel in Block No 372 of the City of St. Louis in St. Louis County & State of Missouri, fronting on 7th street & furnishing the materials for said work under a written contract at $1082.40

" Extra work done under subsequent agreement. to wit:

18 cellar windows	@ 80 cts	$14.40
12 bath room & c windows	@ $1.00	12.00
12 blinds in basement	@ 1.00	12.00

48 doors in Rear building grained

Extra allowance for graining 2 doors 38.00 — 76.00

1159.20

By deduction — 37.72

$1121.48

Description of the property:

The above work & labor was done & the material furnished under a written contract with said George Baumann on, to & upon the following described property, to wit:

Six two story brick dwelling houses, lately erected by said George Baumann as contractor for Gert Goebel, in Block No 372 of the City of St. Louis in the County of St. Louis & State of Missouri, fronting on South Seventh street; the ground on which said 6 houses stand, begins in the western line of said South 7th street about 37 feet 6 inches north of the northern line of the north side walk of Geyer Avenue as laid out or proposed by the City of St Louis, thence running north along the western line of south 7th street One hundred twenty three feet & six inches, & said ground having a depth running westwardly of said South 7th street, with the width of 123 feet & 6 inches, of about one hundred feet, more or less. The said 6 houses cover the said entire front of 123 $\frac{6}{12}$ feet of said ground along said 7th street, & each & all extend back Westwardly on the same, to a depth of 79 feet; they form one row, are all built in a similar manner & in dimensions alike, each one having a front or main building & a rear building, each one has cellars under the main & the rear building, the cellar & foundation walls are of stone & the walls above them are of brick two stories high; each house contains a hall in each story; ten rooms, inclusive of the garret-room - besides two bath rooms & two privies; and also two-story porches along & around the rear portions of said buildings.

Said ground is owned in fee Simple by said Gert Goebel.

State of Missouri }
St. Louis County } SS. John Philip Kaltwasser
being duly sworn,

upon his oath says, that the foregoing is a true copy of his account with George Baumann for doing & performing the Painting and glazing & furnishing the materials for said work on, to, & upon the above named buildings erected by said George Baumann for Gert Goebel, the owner thereof; that the above mentioned sum of One thousand one hundred twenty one dollars & forty eight cents is justly due him, after allowing all just credits & offsets; that said demand accrued within four months of this date; and that the foregoing is a true description of the buildings & improvements upon which said work was done & the materials furnished & upon which he claims a lien.

He further states that on the 15th day of February 1860 he gave Gert Goebel, the owner of said buildings & ground, notice of his said demand, therein describing said property & stating by whom said amount is due him.

J. Ph. Kaltwasser

Sworn to & subscribed before me this 25th day of Febry 1860.

E. N. Tracy, Clk.

Bill of Exps. To the reading of which as evidence the defendant Gert Goebel objected on the ground that the allegations of Plff's Petition and the return on the notice showed that the same was served on the 15th day of February 1860, and that the lien showed that it was filed on the 25th day of the same month - maintaining, that this was less than Ten days notice.

The Court sustained the objection & ruled out, as evidence said

notice & Lien, to which ruling of the Court, the plaintiff at the moment excented.

The Plaintiff then for the purpose of obtaining a general judgment against George Baumann and for no other purpose introduced testimony as follows:

Otto R. Koenig Est:

Otto R. Koenig, after being duly sworn, testified as follows: I know the Plaintiff, as well as the defendants Baumann & Goebel; the latter built six new two story brick dwelling houses on the ground in Plff's petition described, each having 10 rooms, cellars under the whole, two privies, bath room, halls & porches, they were built on deft. Goebel's ground on the West side of South 7th Street in the City of St. Louis, in front of the Flora Garden, commencing about 37½ feet North of Geyer Avenue and covering a front of about 123½ feet by a depth of about 150 feet; the defendant George Bauman was the contractor for all said houses, he had a written contract with deft Goebel, and the plaintiff had contracted with deft. Bauman for the painting & glazing on said houses; the plaintiff did all the painting and glazing to said houses & furnish the materials thereto needed; he did it well; I, as superintendent approved it as good; I made a calculation of the work and its value, and found it to be worth 1144 20/100 dollars, according the rates and prices agreed upon between plaintiff & deft. Bauman, which was also according to the prices such work was then worth; the defendant Bauman agreed, to me, that said calculation was correct & just; plaintiff commenced painting of window frames quite early in the Spring, say about March or April 1859, and continued on, according to the progress of the buildings, until the early part of February 1860, when his work was finished; the account mentioned in the petition is the one I made out; When the keys were delivered to Goebel I stated,

in the presence of defendants Bauman & Goebel how much money was due the plaintiff for his work & materials & nobody made any objections to to the amount nor to the work.

Here the Plaintiff closed, this was all the evidence offered & given in the case.

The Court took the cause under advisement.

Afterwards on the 14th day of March 1874, being the first day of the March Term 1874 of this Court, the Court gave the following opinion in writing, as the law governing the case, in lieu of an instruction, viz:

Opinion of Court.

W. H. Hahn & al
vs
Gert Goebel & al

I am of the opinion that the 1st day to wit the 15th, is excluded by the general Law & that the 25th is excluded by the Statute Concerning Mechanics Liens — so that there was in fact but 9 days notice. The judgt will be general.

C. R. Lord

Bill of Excpt.

To which the plaintiff at the moment excepted.

The Court then gave a general judgment for 1429 $\frac{27}{100}$ dollars & costs, against the defendant Bauman and refused to render a special judgment for a lien against said property, to which the plaintiff at the moment excepted.

Afterwards within four days of said judgment the plaintiff filed his motion for setting aside said judgment and for a new trial in words & figures as follows, to wit:

Mo. for New Trial

John J. R. Kattwasser
vs

George Baumann. Gert Goebel & als } St. Louis Land Court.

At this day comes the plaintiff. & moves the Court to set aside the judgment rendered herein & for a new trial:

1st Because said judgment is against the law;

2d It is against the evidence.

3d It is against the law & the evidence & the weight of the evidence;

4th Because the Court excluded legal & proper evidence offered on part of the plaintiff;

5th Because the Court admitted improper testimony on part of the defendants;

6th Because the Court gave an improper & illegal instruction;

7th Because the Court should have given judgment against all the defendants & a special judgment against the property in question giving the plaintiff a lien, for his demand, on the same;

8th Because the Court erred in deciding that the plaintiff had not given the owner of the property & buildings ten days notice of his demand before the filing of his lien;

9th Because the Court erred in deciding that the day on which the notice was served was excluded by the general law & the day of the filing of the lien by Statute;

10th Because the Court erred in deciding that the plaintiff had no lien on the property in question.

Gray & Spiess
Plff's Attys.

Which motion the Court afterwards, on the (Twenty fifth) day of (March) 1869 overruled, to which ruling of the Court the plaintiff at the moment excepted.

And he now presents this his bill of exceptions, praying the Court to sign & seal the same, that the same may be filed as of record herein, and also for an appeal herein to the Supreme Court of the State of Missouri, which is accordingly done.

C. B. Lord.

The affidavit for Appeal and Bond filed as aforesaid in this cause, are in the words and figures, following, to wit:

Aff't for Appeal

John G. P. Kaltwasser, Plff.

vs.

George Bauman, Gert Goebel, the Connecticut Mutual Life Insurance Company of Hartford in the State of Connecticut, and Albert Todd as their Trustee, & Mary E. Sibley, and William T. Mason & John Biggin, Defendants

St Louis Land Court.

John G. P. Kaltwasser the plaintiff and appellant herein, being duly sworn, upon his oath, says, that his appeal herein is not made for vexation or delay, but because the affiant believes himself aggrieved by the judgment and decision of the Court.

J. G. Ph. Kaltwasser.

Sworn to & subscribed before me, this 4th day of April 1869

Robt. White, Clerk

By E. P. Walsh D.C.

Bond

Know, all men, by these Presents, That we John George Philip

Kaltwasser as principal, and William Hahn and Philip Nitz as sureties are held and firmly bound unto Gert Goebel in the sum of five dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our Seals, and dated at St. Louis this fourth day of April A. D. 1864.

The Condition of the above Obligation is such, that whereas said Kaltwasser has appealed from the judgment rendered against him and in favor of Gert Goebel in the St. Louis Land Court, for the sum of ___ dollars and ___ cents, together with costs.

Now, if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal; and shall prosecute his appeal; and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Land Court to give; and shall, if the judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

Approved by the Court
April 4th 1864
Robert White Clerk
By E. P. Walsh D.C.

J. G. H. Kaltwasser (Seal)
Wilhelm Hahn (Seal)
Philipp Nitz (Seal)

St. Louis Land Court. March Term 1864.

Be it Remembered, that on this 4th day of April 1864, personally appeared John G. H. Kaltwasser the principal, and William Hahn & Philip Nitz the securities in the foregoing bond, and acknowledge

that they executed the same for the purposes therein expressed.

In Witness Whereof, I hereto set my hand and affix the seal of said Court, at office, in St. Louis, the day and year last aforesaid.

Seal

Robert White Clerk

State of Missouri }
County of St. Louis } ss.

I, Robert White, Clerk of the St. Louis Land Court, within and for said County, certify the foregoing Transcript to be a true and correct copy of the Record and proceedings (as required) had, in the case of John P. Kaltwasser plaintiff and George Bauman and others defendants, as fully as the same remains of Record in my office.

In Testimony, Whereof, I hereto set my hand and affix the seal of our said Court, at office, in the City of St. Louis, this Twenty fifth day of August, A. D. 1874.

Robert White Clerk.
By Chas. Levy D.C.

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Bill of Items. . . . " 7 & 8.
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M^o. for Judgmt for Default agst Geo Bauman. " 9.
Afft of Service of Copy filed & Afft of service of copy. " 10.
M^o. for Default agst Geo Bauman sub & sust^d. . " 11.
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111.500 words $11.50
Certificate & Stamp .55
$11.05

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March Term, 1866.

John P. Baltwaise
Appelt
vs.
George Bauman, Pert
Goebel et al. Respdts

Appeal from Land Court

Spies & Gray Attys for Aff.

Jas. Taussig Atty for Defr. Gobel

Filed September 19. 1864
A. W. Mead Clk

Fis. Transcript $11.05 bd. by Plaint
Docket fee 10,

Aft'd Error filed
1866 Apr. 25
" Sub. Pr. 8th & Mrs filed in No. 81
May 7th Reversed & Remanded

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John Kaltwasser appell
v
George Bauman et al Respts

IN SUPREME COURT,
Oct TERM, 1864

AND now comes the said John Kaltwasser and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Kaltwasser assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by defendants
2. That said Court rejected proper and legal testimony offered by Plaintiff
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Plaintiff
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Defendants when it should have been rendered for the appellant Plff
10. That said Court overruled the motion for a new trial, made by Plff & appellant

M L Gray &
F Spies attys for appell

And now comes the defendants Gert Goebel by attorney and for joinder in error say, that there is no error in the record and proceedings of said Court below in said cause, as assigned by said appellant

James Laussig
for respondent

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In Sup Court
Oct T. 1864

John B Kattwaner
appel

vs

George Bauman et al
Respts

assignt of errors

Gray & Spies
Filed Oct 26th 1864
A. W. Mead
Clk

Mo F Kaltwasser
vs
George Bauman et al

In Sup Ct Mo
Mch T. 1866

Opinion of the Court.

This case is similar in all respects, and the same question is involved which was presented in Hahn et al vs Dierkes et al, decided at this term.

For the reasons given in that case the judgment is reversed and the cause remanded.

Judge Holmes concurs, Judge Lovelace absent.

David Wagner

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Jno T Kaltwasser
vs
Geo Bauman et al

Opinion of the
Court Wagner

Filed May 17 1866
O. T. Fishback
Clk

Reversed & Remanded

John G. Kallwasser
vs.
George Bauman et. al.

In the Supreme Court
March Term 1866.

The facts and points presented in this cause are the same as they appear in the case of Hahn vs. Durkes submitted at this term of the Court and by leave of Court, respondent submits this cause upon the statement and brief in the case referred to.

James Fawcig
for respondent.

no. 82

March Term 1866

John G. Kaltwasser
vs.
George Baumann et al

Submission of case
by respondents