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## **COURT ADDRESSES CIRCUMSTANCES WHEN A MOTION TO DISMISS MUST BE TREATED AS A MOTION FOR SUMMARY JUDGEMENT**

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*Strategic Development and Construction v. 7th & Roosevelt Partners, LLC*  
Ct. Appeals, Div. One, March 18, 2010

Authored by the [JSH Appellate Team](#)

7th and Roosevelt ("Partners") owns commercial property it leases to Rev, LLC. Rev hired Strategic to construct tenant improvements on the property. After Rev failed to pay for the work, Strategic sued Rev and Partners for breach of contract, unjust enrichment and lien foreclosure. Partners moved to dismiss the complaint for failure to state a claim and served its motion by mail. The court granted the motion solely because Strategic failed to respond. Strategic argued that because the motion presented facts outside the complaint, the court had to treat the motion as one for summary judgment, which gives more time for a response.

The court of appeals upheld the dismissal. A motion to dismiss under Rule 12(b)(6) which refers to a contract or other document attached to the complaint need not be treated as a summary judgment motion, because the document referenced is not "outside the pleadings" under the rule. Also, because a lien is a public record, reference to it in a motion to dismiss does not convert the motion for summary judgment.