

MEMORANDUM DECISION

ON REHEARING

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Tammy L. Ortman
Lewis & Kappes, P.C.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Richard B. Kaufman
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Timberland Home Center INC.,
d/b/a Timberland Lumber
Company,

Appellant-Plaintiff,

v.

Martinsville Real Property LLC,

Appellee-Defendant,

November 10, 2021

Court of Appeals Case No.
21A-CT-616

Appeal from the Marion Superior
Court

The Honorable Gary L. Miller,
Judge

Trial Court Cause No.
49D03-1910-CT-044548

Robb, Judge.

- [1] This case comes before us on rehearing.¹ In *Timberland Home Ctr. Inc. v. Martinsville Real Prop., LLC*, No. 21A-CT-616, 2021 WL 4468407 (Ind. Ct. App. Sept. 30, 2021), we concluded, in part, that Timberland did not judicially admit their mechanic's lien was untimely. Martinsville petitions for rehearing, raising multiple issues, including that the court misapplied the term "pleadings" in deciding the judicial admission issue. We grant rehearing to re-affirm our original conclusion. The court's reference to motions as pleadings does not change the outcome of the case. The other issues raised by Martinsville were fully discussed in the original opinion and need not be addressed here.
- [2] We grant Martinsville's petition for rehearing, but in doing so we re-affirm our original opinion in all respects.

Bradford, C.J., and Altice, J., concur.

¹ Martinsville filed a Motion to Strike that is being denied by separate order. We did not consider anything improperly before this court and the portions of Timberland's Response to Petition for Rehearing that Martinsville requests be struck do not affect the outcome of Martinsville's Petition for Rehearing.