

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

H. A. SMITH LUMBER & HARDWARE CO.,  
a Michigan corporation,  
Plaintiff/Counter-Defendant/Appellee,

v

Court of Appeals Docket No. 238521

JOHN DECINA,  
Defendant/Cross-Defendant/Appellant,

Oakland County Circuit Court  
Case Number 99-015436-CZ

v

JOHN DECINA DEVELOPMENT CO., a  
Michigan corporation,  
Third Party Defendant/Cross-Defendant/  
Counter-Plaintiff/Appellant,

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v

LINAS P. GOBIS, and LYDIA K. GOBIS,  
Defendants/Cross-Plaintiffs/  
Cross-Defendants/Counter-Defendant/Appellees,

v

WILLIAM GARDELLA,  
d/b/a WILLIAMS GLASS COMPANY,  
Defendant/Counter-Plaintiff/Cross-Plaintiff/  
Third Party Plaintiff/Appellees.

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**APPELLEE, WILLIAM GARDELLA D/B/A WILLIAMS GLASS COMPANY'S  
SUPPLEMENTAL BRIEF REGARDING ATTORNEY FEES**

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## STATEMENT OF JURISDICTION

Jurisdiction is proper as the parties have received an Order from this Honorable Court directing said parties to schedule this case for Oral Argument to address the issue of whether the Lien Claimants, Plaintiff H.A. Smith Lumber & Hardware Company and Defendant William Gardella d/b/a Williams Glass Company, were entitled to attorney fees as prevailing parties under MCL 570.1118 (2),

**STATEMENT OF QUESTION ON APPEAL**

- 1. WHETHER THE TRIAL COURT AND COURT OF APPEALS WERE CORRECT IN HOLDING THAT WILLIAM GARDELLA D/B/A WILLIAMS GLASS COMPANY WAS ENTITLED TO ATTORNEY FEES WHERE WILLIAM GARDELLA D/B/A WILLIAMS GLASS COMPANY WAS A PREVAILING PARTY.**

Trial Court's Answer: Yes.

Defendant/Appellant's Answer: No.

Appellee, William Gardella d/b/a Williams Glass Companys' Answer: Yes.

## STATEMENT OF ARGUMENT

Appellee, WILLIAM GARDELLA D/B/A WILLIAMS GLASS COMPANY, by and through its attorneys, FACCA, RICHTER & PREGLER, P.C., for its Supplemental Brief Regarding Attorney Fees states as follows:

### ARGUMENT

The Construction Lien Act is a remedial statute and should be construed liberally to “Secure the beneficial results, intents, and purposes” of the act. *Solution Source, Inc v LPR Assocs Ltd Partnership*, 252 Mich App 368, 373; 652 NW2d 474 (2002), MCL 570.1302 (1). One of the purposes of the Construction Lien Act is to protect the rights of lien claimants to payment for expenses. *Id* at 373, 374.

With Regard to the specific issue before this Honorable Court, this issue has been addressed in an unpublished opinion in the case of *Panelclad, Inc. v LaFarge Corporation*, Docket No. 204494, 1999 Mich App Lexis 641 (1999). (A copy of which is attached as **Exhibit 1**, pursuant to MCR 7.215 (C)(1)). In *Panelclad*, the case was submitted to a special master who found for the Plaintiff pursuant to some of the contractual claims but did not address the construction lien foreclosure count. The Trial Court awarded attorney fees under the Michigan Construction Lien Act, holding that the contractual claims and the construction lien foreclosure claims were sufficiently “intertwined.” *Id* at 3. The Court of Appeals, affirming the decision of the trial court, stated:

“Here, Watkins and LaFarge were both Defendants in Count II, the foreclosure of lien count, and both were represented by the same counsel. The issues were intertwined in the sense that in order to determine the amount of the Plaintiff’s lien, if any, it was necessary to determine the amount owed under the contract. Although the validity of the lien was not the subject matter of the proceedings before the special master, the parties stipulated in those proceedings that “the procedural requirements of the lien filed by Panelclad against the LaFarge property were proper.” The disputed issue concerned the amount of permissible back charges, and because that dispute apparently was between Plaintiff, the subcontractor, and Watkins, the contractor, the property owner did not participate in the proceedings before the master. Nevertheless, the foreclosure count remained pending as a means of securing payment, and a release of lien

was not filed until after the amount he special master determined was owing was paid. Under these circumstances, the Circuit Court did not err in awarding attorney fees under the act.” (*Id* pg 3).

The Court went on to cite *VanZanten v H. Vanderlaan Co., Inc.*, 200 Mich App 139 (1993) for the premise that a Plaintiff need only recover on one theory to be considered a prevailing party.

The court went on to hold:

“Although the complaint alleged two distinct claims and Plaintiff’s claim seeking foreclosure on a construction lien was never addressed, Plaintiff prevailed on the whole record and was therefore a “prevailing party” who had “sought” enforcement of a lien within the meaning of the act.” (*Id* at 8).

Accordingly, the Court determined that the Plaintiff subcontractor was a prevailing party for the purpose of being awarded attorney fees under the Construction Lien Act, even though the lien count was not adjudicated and Plaintiff did not recover the full amount of damages prayed for. In the instant case, the Trial Court specifically ruled that Williams’ lien was valid.

Interestingly, the *Van Zanten* Court determined the meaning of “prevailing party” with regard to the Michigan Consumer Protection Act;

“Although plaintiff did plead three different theories of why she was entitled to recover damages against defendant, each of those theories sought to recover for the same injury and recovery under any theory would have allowed plaintiff to recover the full measure of damages. Accordingly, it was necessary for plaintiff to prevail only on one theory in order to be considered a prevailing party.” (*Id* at 141).

The *Van Zanten* holding is consistent with the Court of Appeals decision in *Old Kent Bank of Kalamazoo v Whitaker Construction Co.*, 222 Mich App 436, 566 NW2d 1 (1997), in which the Court Held that allowing a party to pursue both a construction lien and other in personam actions merely gives the plaintiff a better chance of recovering what it is owed. *Id* at 438, 439.

The *Van Zanten* holding is clear, it is necessary for a plaintiff to prevail on one theory of recovery in order to be considered a prevailing party. This has occurred in this case. As the Court of appeals eloquently stated in its opinion in this matter:

“Smith and Williams sought recovery for unpaid labor and materials under the CLA and, in the alternative, under a breach of contract claim. The trial court found that Smith and Williams had valid liens that did not attach to the property because the Gobises paid the entire contract amount the Decina Co. But the trial court determined that Decina breached the contracts with Smith and Williams and so awarded them damages on their breach of contract claims. Therefore, they were “prevailing parties” for the purposes of the CLA.

There can be no doubt, Williams is a prevailing party in this action in accordance with the definition of prevailing party explicitly laid out by the Court of Appeals. As such, Williams is a “prevailing party” who has sought enforcement of its lien within the meaning of the Michigan Construction Lien Act.

Decina Co. never disputed its contractual obligation to Williams. However, John Decina, individually, disputed his liability throughout the entire proceeding. Because John Decina disputed his individual liability, Williams incurred attorney fees. Further, Williams expended attorney fees to foreclose its claim of lien. Appellants’ breach of the contract with Williams led to the proceedings and Appellants’ continuous refusal to pay Williams sustained the proceedings through trial. As in *Panelclad*, the breach of contract and lien foreclosure claims were so closely related in the instant case that the counts were “intertwined” and do not lend themselves to a separation of attorney fees. Indeed, Williams would certainly not have been permitted to recovery twice under its Contract and lien foreclosure claims, respectively. Rather, Williams pled alternate theories of liability to recover for the same injury it had received—Decina’s failure to pay. As in *Van Zanten*, it was necessary for Williams to prevail only on one theory in order to be considered a prevailing party. *Van Zanten*, at 141. Williams has done this and is entitled to payment.

**CONCLUSION**

WHEREFORE, WILLIAM GARDELLA d/b/a WILLIAMS GLASS COMPANY, respectfully requests that this Honorable Court affirm the decision of the Court of Appeals and find that Williams is entitled to Attorney fees as a prevailing party.

**RELIEF REQUESTED**

For the reasons stated herein, Appellee, WILLIAM GARDELLA D/B/A WILLIAMS GLASS CO., respectfully requests that this Honorable Court affirm the decision of the Court of Appeals and find that Williams is entitled to Attorney fees as a prevailing party.

Respectfully submitted,

FACCA, RICHTER & PREGLER, P.C.



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