

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**JET STEEL, INC and  
LABELLE ELECTRIC SERVICES, INC,  
Plaintiffs,**

v.

**Case No. 15-147357-CB  
Hon. James M. Alexander**

**BARNETT INDUSTRIAL PROPERTIES, LLC, ET AL,  
Defendants.**

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**AMENDED OPINION AND ORDER RE: SUMMARY DISPOSITION<sup>1</sup>**

This matter is before the Court on several motions for summary disposition. Plaintiffs brought this case to foreclose construction liens on property located at 51100 Pontiac Trail in Wixom. Defendant Barnett Industrial owns the property and contracted with Defendant TMP Group to construct a warehouse and office addition on the property. TMP, in turn, hired several subcontractors for the project.

Relevant to the current motions, Plaintiff Jet Steel, Defendant Energy Electric, and Defendant Denny's Heating & Refrigeration claim construction liens on the property based on work they performed in furtherance of the project. The Court will note that there are numerous disputes over how much was supposed to be paid, which changes were approved or requested, and which subcontractor's work was paid and when.

Despite these factual disputes, all moving parties seek summary disposition under MCR

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<sup>1</sup> This Opinion is amended only to include Section 2.C. on page 12 (a ruling on Energy's motion for summary of its breach of contract claim with respect to TMP).

2.116(C)(10), tests the factual support for a plaintiff's claims.<sup>2</sup> *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Id.* at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

The moving subcontractors claim that Barnett or TMP failed to pay as follows: Jet Steel claims that it is owed \$60,550 for steel work; Energy Electric claims that it is owed \$30,480 for electrical work; and Denny's claims that it is owed \$30,212 for HVAC work.

In their motions, Energy and Denny's seek judgments against TMP and, if unpaid, lien foreclosure and sale to satisfy any outstanding judgment.<sup>3</sup> Both of these parties support their requests with evidence in the form of proposals, estimates, contracts, invoices, affidavits, or checks. And both parties also attach their notice of furnishing and claim of lien.

In its responses to Energy's and Denny's motions, TMP asserts that the Court should grant judgments against Barnett only. The Court notes that, while TMP is silent as to the amount owed to Energy, TMP supports Denny's claim to \$30,212 – characterizing the same as “an extra on the project that has not been paid by . . . Barnett.”

And both in its motions as to Jet Steel and Energy, and in its responses to Energy's and

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<sup>2</sup> Energy also seeks summary under MCR 2.116(C)(9), which tests whether the defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery. *Lepp v Cheboygan Area Schools*, 190 Mich App 726 (1991).

<sup>3</sup> Energy also asserts unjust enrichment claims against both TMP and Barnett. The Court will also note that Jet Steel did not file its own motion for summary disposition. In its response, it claims that resolution of its claims present disputed questions of fact.

Denny's motions, Barnett claims that each party's construction lien claim is barred by various defects under Michigan's Construction Lien Act, MCL 570.1101 *et seq.*

Our Supreme Court has held that the purpose of the Construction Lien Act was "to protect the interests of contractors, workers, and suppliers through construction liens, while protecting owners from excessive costs." *Vugterveen Sys, Inc v Olde Millpond Corp*, 454 Mich 119, 121; 560 NW2d 43 (1997). And "[t]he act is to be liberally construed to effectuate these purposes." *Id.*

While "the act's clear and unambiguous requirements should not be ignored," the Court noted that "substantial compliance is sufficient to meet the provisions of part one of the act." *Id.* citing *Brown Plumbing & Heating, Inc v Homeowner Construction Lien Recovery Fund*, 442 Mich

Under part one of the Act, at MCL 570.1109(1):

a subcontractor or supplier who contracts to provide an improvement to real property shall provide a notice of furnishing to the designee and the general contractor, if any, as named in the notice of commencement at the address shown in the notice of commencement, either personally or by certified mail, within 20 days after furnishing the first labor or material.

This section of the Act, MCL 570.1109, continues (in relevant part):

(5) The failure of a lien claimant to provide a notice of furnishing within the time specified in this section shall not defeat the lien claimant's right to a construction lien for work performed or materials furnished by the lien claimant after the service of the notice of furnishing.

(6) The failure of a lien claimant, to provide a notice of furnishing within the time specified in this section shall not defeat the lien claimant's right to a construction lien for work performed or materials furnished by the lien claimant before the service of the notice of furnishing except to the extent that payments were made by or on behalf of the owner or lessee to the contractor pursuant to either a contractor's sworn statement or a waiver of lien in accordance with this act for work performed or material delivered by the lien claimant.

Barnett first claims that Jet Steel’s, Energy’s, and Denny’s construction liens fail because each failed to file the required Notice of Furnishing within 20 days of their first date of work. Specifically, Barnett claims that Jet Steel’s first day of work was October 21, 2014 – but didn’t serve its Notice of Furnishing until February 27, 2015. Barnett claims that Energy’s first day of work was October 22, 2014 – but never served any Notice of Furnishing. And Barnett claims that Denny’s first day of work was October 11, 2014 – but didn’t serve its Notice of Furnishing until January 22, 2015.

**1. Barnett’s Motion with Respect to Jet Steel.**

In one of its motions, Barnett claims that Jet Steel’s foreclosure claim is barred by the Construction Lien Act and its unjust enrichment claim fails as a matter of law.

A. Lien Foreclosure

As stated, Barnett first argues that Jet Steel failed to comply with the Construction Lien Act such that its foreclosure claim fails. Barnett first claims that Jet Steel did not file its Notice of Furnishing within 20 days of its first day of work.

Jet Steel responds that its Notice of Furnishing is sufficient based on *Vugterveen*’s “substantial compliance” concept. In *Vugterveen*, the plaintiff subcontractor “filed a foreclosure action to enforce a construction lien against property owned by the defendant . . . . [Said defendant] challenged the foreclosure, asserting that it had a defense to the lien.” *Vugterveen*, 454 Mich at 120.

Specifically, the defendant argued that *Vugterveen*’s failure to timely serve a notice of furnishing defeated the lien. *Vugterveen* apparently began work on the disputed project in August

1988 and was fired in late October 1988. For unknown reasons, Vugterveen did not file its lien and notice of furnishing with proof of service until December 7, 1988.

The trial court had found that Vugterveen's and the defendant's owner met before work began and agreed that Vugterveen would begin work on the project – and this meeting “removed any need for Vugterveen to provide a notice of furnishing.” *Vugterveen*, 454 Mich at 130. The Supreme Court agreed – reasoning that “[t]he act is remedial and equitable in nature, and substantial compliance is sufficient to meet the requirements of part one of the act.” *Id.* at 130-131.<sup>4</sup>

As a result, the fact that a subcontractor failed to serve its Notice of Furnishing within 20 days is not necessarily dispositive of the validity of its lien. Rather, the Court must determine whether the owner was sufficiently alerted to the possibility of a lien by said subcontractor.

Jet Steel argues that Barnett knew that it would be performing work on the project such that Jet Steel substantially complied with the Act. In support, Jet Steel points to an October 29, 2014 meeting where its owner (Michael Sova), met with Barnett's owner (Jim Barnett), and TMP's owner (Michael Stark) to discuss the project.

Barnett's main argument on this point is that *Vugterveen* has been “effectively and properly overruled, and is of no precedential value on this issue.” But this isn't the case. Rather, the cases Barnett cites in support of its position are not cases that do not involve substantial compliance with **the 20-Day Notice of Furnishing requirement.**

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<sup>4</sup> The *Vugterveen* Court further reasoned, at page 131:

The purpose of the notice of furnishing is to notify the owner that a contractor is improving the property, and to alert the owner to a possibility of a lien. *Id.*, § 4.13, pp. 4-13. A notice of furnishing requires a contractor to identify itself, describe the work it is to perform, and describe the property to be improved. M.C.L. § 570.1109(4); M.S.A. § 26.316(109)(4). In this case, Mr. Vugterveen supplied all this information to Mr. Hornbach [the defendant's owner] at their meeting. The owner knew the identity of the subcontractor, the work that was to be performed, and the property to be improved.

In fact, one case cited by Barnett, *Big L Corp v Courtland Const Co*, 482 Mich 1090; 757 NW2d 852 (2008), reaffirmed the notion that “the Construction Lien Act (CLA) is to be liberally construed to effectuate the purposes of the act and that substantial compliance is sufficient” citing MCL 570.1302(1).

While the Court would normally follow the stated intent of MCL 550.1109, MCL 570.1302 muddies the waters.

In any event, Barnett cites to no published opinion that expressly overrules *Vugterveen* for purposes of substantial compliance with the 20-Day Notice of Furnishing requirement. As a result, the Court rejects Barnett’s argument that *Vugterveen* no longer has precedential effect for this precise issue.

Jet Steel cites to evidence in the form of emails and deposition testimony to establish that, at this meeting, Barnett and Jet Steel talked about the project, proposed changes, extras, and cost increases for Jet Steel’s portion of the project. This evidence establishes that a question of fact exists as to whether Barnett knew that Jet Steel’s identity, what work it was to perform, and that it was working on the disputed project. As a result, Barnett’s motion for summary on this ground is DENIED.

Barnett also argues that it paid TMP for all steel work based on a sworn statement or waiver of lien in May and October 2014. As a result, Barnett claims that any claim by Jet Steel for any unpaid work after these dates is invalid.

Indeed, the *Vugterveen* Court reasoned that “[a] subcontractor’s failure to provide a notice of furnishing within the twenty-day time frame does not serve to defeat its right to a lien. However,

failure to comply with the twenty-day time limit may reduce the value of the lien.” *Vugterveen*, 454 Mich at 122 (internal citations omitted).

This is so, the Court reasoned, because subsection (6) provides that “a subcontractor’s delay in providing the notice of furnishing will reduce the lien by the amount that the owner had already paid for the subcontractor’s work before the notice was provided. However, these payments must have been made pursuant to a contractor’s sworn statement or waiver of lien.” *Vugterveen*, 454 Mich at 123 (internal citations omitted).

On this issue, the parties present competing evidence making it difficult to determine how much, for what, and when Barnett paid TMP on the Jet Steel portion of project. The parties can’t even agree on the date that Jet Steel last worked on the project. There are also disputes about whether any payments actually preceded the alleged sworn statement or waiver of lien. And the parties dispute whether certain changes were approved or requested. In any event, because of the numerous factual disputes, summary disposition of Denny’s lien foreclosure claim is inappropriate and DENIED.

#### B. Unjust Enrichment

Barnett next argues that Jet Steel’s unjust enrichment claim fails because Jet Steel fails to allege that Barnett received any benefit from Jet Steel or misled Jet Steel.

“[I]n order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant.” *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006); citing *Barber v SMH (US), Inc*, 202

Mich App 366, 375; 509 NW2d 791 (1993).

The *Morris Pumps* Court further reasoned:

[a] third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party benefited **has not requested the benefit or misled the other parties** . . . . Otherwise stated, the mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. *Morris Pumps*, 273 Mich App at 196 (emphasis added); quoting 66 Am Jur 2d, Restitution and Implied Contracts, § 32, p 628.

In *Morris Pumps*, a supplier provided equipment and materials to a subcontractor for use on a large wastewater treatment project. When the subcontractor went out of business and abandoned the construction project, the suppliers' equipment and materials remained on the worksite.

The general contractor then hired a replacement subcontractor to complete the work, and that subcontractor used the supplier's materials that were previously provided. The replacement subcontractor, however, did not bill for said materials because they were already there, and neither the general contractor nor the replacement subcontractor ever paid for the materials. The supplier then sued the general contractor on an unjust enrichment theory.

The Court first rejected the contractor's argument that "[the supplier's] unjust enrichment claims against it were barred by the existence of express contracts executed between [it] and [the original subcontractor], which covered the same subject matter." *Morris Pumps*, 273 Mich App at 194. In so doing, the *Morris Pumps* Court reasoned that only express contracts **between the same parties** will preclude an unjust enrichment claim. *Morris Pumps*, 273 Mich App at 194-195.

But this was not the end of the analysis, because the Court reasoned that it must address the merits of the claim itself. The *Morris Pumps* Court reasoned:

[a] third party is not unjustly enriched when it receives a benefit from a contract between two other parties, **where the party benefited has not requested the benefit**

or misled the other parties . . . . Otherwise stated, the mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. *Morris Pumps*, 273 Mich App at 196 (emphasis added); quoting 66 Am Jur 2d, Restitution and Implied Contracts, § 32, p 628.

The Court of Appeals concluded that the supplier’s unjust enrichment claim was valid because the general contractor’s “retaining and using the materials, without ever ensuring that plaintiffs were compensated for the materials, [was not] innocent, just, or equitable.” *Morris Pumps*, 273 Mich App at 197.

In this case, Jet Steel claims that “Jim Barnett directed Sova [Jet Steel’s owner] to complete the work and provided assurances Barnett will pay Project costs over and above the Original Contract Sum.” In support, Jet Steel attaches evidence in the form of emails and deposition testimony.

Because Jet Steel has presented evidence in support of its claim that Barnett **requested a benefit** from Jet Steel with assurances of payment, the Court finds that summary disposition of Jet Steel’s unjust enrichment claim is inappropriate and DENIED.

## **2. Barnett’s Motion with Respect to Energy & Energy’s Motion**

In its motion, Barnett claims that Energy Electric’s foreclosure claim is barred by the Construction Lien Act and Energy’s unjust enrichment claim fails as a matter of law. And Energy moves for summary of its claims against both Barnett and TMP – including a judgment for \$30,480.

A. Lien Foreclosure

Barnett first claims that it never received any Notice of Furnishing from Energy on the project and Energy failed to include a proof of service on its Claim of Lien.

But Energy claims that it delivered its Notice of Furnishing to Tom Bonk of Barnett and Michael Stark of TMP on the same day that it began work on the project – October 22, 2014. To support this allegation, Energy attaches the Affidavit of its owner, Harian Raikany, wherein he claims that he personally delivered a copy of the same. Energy’s assertion is bolstered by the Affidavit of Michael Stark (TMP’s owner), who admits receiving the same on that day. Energy also attaches copies of the Notice of Furnishing (dated October 22, 2014) and Claim of Lien.<sup>5</sup>

On this issue, Barnett offers no **evidence** to refute Energy’s claims that it delivered a Notice of Furnishing to Barnett. Instead, Barnett simply alleges that it “has no record of receiving any such Notice of Furnishing, and no proof of service and not Notice of Furnishing was attached to the filed Claim of Lien.” But bald assertions, alone, are insufficient to defeat a summary disposition motion. The only evidence before this Court is that Energy delivered its Notice of Furnishing to Barnett on October 22, 2014.

Barnett also argues that Energy’s filed Claim of Lien is defective because it did not include a proof of service of the Notice of Furnishing. Indeed, MCL 570.1111(4) provides: “A claim of lien by a subcontractor, supplier, or laborer **shall** have attached to it a proof of service of a notice of furnishing described in section 109.”

Because Energy did not include a proof of service of the Notice of Furnishing with its recorded Claim of Lien, Barnett argues that Energy’s Claim of Lien is invalid. Barnett fails to cite to

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<sup>5</sup> The Claim of Lien was recorded on April 28, 2015 – within 90 days of the date that Energy last performed work on the project (March 18, 2015).

any case interpreting MCL 570.1111(4)'s proof of service requirement as falling under "strict compliance" or "substantial compliance." And our appellate courts have been inconsistent with application of these two principles to other parts of the Act. Further, Energy completely fails to address this argument – making disposition of this issue more difficult.

On this issue, the Court finds that our legislature's use of the word **shall** is dispositive. By failing to include a proof of service of a notice of furnishing, Energy's claim of lien is invalid. This finding is consistent with the *Vugterveen*'s Court's caution that "the act's clear and unambiguous requirements should not be ignored." *Vugterveen*, 454 Mich at 120.

Because Energy's Claim of Lien is invalid, the Court GRANTS Barnett's motion for summary disposition of Energy's claim for foreclosure of construction lien, and the same is DISMISSED. For the same reasons, Energy's motion for summary of this claim is DENIED.

B. Unjust Enrichment.

Barnett next seeks dismissal of Energy's unjust enrichment claim – arguing that it had no part in negotiating with Energy. Further, Barnett claims that Energy "has never alleged that Barnett either requested the benefit from Energy Electric or misled them."

In response, Energy claims that "on October 22, 2104, Thomas Bonk of Barnett, Michael Stark of TMP, and Harian Raikany of [Energy] . . . met and negotiated the contract price." Energy further claims "Barnett even went as far as contracting [Energy] for additional electrical work on the Project and promised to pay the original price when TMP failed to do so."

In support of these claims, Energy attaches the Affidavit of its owner, Harian Raikany, and an email between it and Barnett.

Because Energy has presented evidence in support of its claim that Barnett requested a benefit from it and assurances of payment, the Court finds that summary disposition of Energy's unjust enrichment claim is inappropriate and DENIED.

Because there are factual questions, Energy's motion for summary of this claim with respect to both TMP and Barnett is similarly DENIED.

C. Breach of Contract against TMP

In support of its breach of contract claim, Energy claims that it performed work totaling \$50,480 on the project, but it was only paid \$20,000 – leaving a balance of \$30,480. As a result, Energy seeks a judgment against TMP for this amount.

In its Response, TMP admits that Energy completed the work and does not dispute the claimed amount owed. Rather, TMP focuses on the argument that it has not yet been paid by Barnett. But TMP does not explain why it should not be liable to Energy for the unpaid work. At best, TMP's argument establishes that it should be able to recover any amount payable to Energy from Barnett.

For the foregoing reason and viewing all evidence in the light most favorable to TMP, the Court finds that there are no material questions of fact in dispute with respect to Energy's breach of contract claim against TMP. As a result, the Court GRANTS Energy's motion for summary on this claim and enters judgment in Energy Electric's favor against TMP for \$30,480.

### **3. Denny's Heating, Cooling & Refrigeration's Motion.**

Next, Denny's Heating, Cooling & Refrigeration moves for summary disposition of its breach of contract claim against TMP and its foreclosure claim against Barnett.

#### **D. Breach of Contract against TMP**

In support of its breach of contract claim, Denny's claims that it performed work under two separate agreements – one for \$27,280 and one for \$30,212 – and it was only paid on the first (\$27,280) agreement.<sup>6</sup> As a result, Denny's seeks a judgment against TMP for this amount.

In its Response, TMP admits that Denny's completed the work and is owed the amount alleged, but TMP focuses on the argument that it has not yet been paid by Barnett. But TMP does not explain why it should not be liable to Denny's for the unpaid work. At best, TMP's argument establishes that it should be able to recover any amount payable to Denny's from Barnett.

For the foregoing reason and viewing all evidence in the light most favorable to TMP, the Court finds that there are no material questions of fact in dispute with respect to Denny's breach of contract claim against TMP. And TMP does not dispute Denny's claimed amount. As a result, the Court GRANTS Denny's motion for summary on this claim and enters judgment in Denny's favor against TMP for \$30,212.

#### **B. Lien Foreclosure against Barnett**

Denny's next claims that it is entitled to summary of its lien foreclosure claim against Barnett because it has complied with the Construction Lien Act.

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<sup>6</sup> Denny's attaches the agreements totaling \$57,492 (\$30,400, \$26,660, and \$432) and two checks totaling \$27,280 (\$13,330 and \$13,950) – leaving a balance of \$30,212. Denny's also attaches an unsigned Affidavit that the Court

In Response, Barnett claims that Denny's lien claim is defeated, in part, by its failure to timely serve a notice of Furnishing. As stated, Denny's began work on the project on October 11, but it did not serve its Notice of Furnishing until January 22, 2015. As a result, any claim by Denny's is reduced by the amount that Barnett paid to TMP for Denny's work pursuant to a sworn statement.

Indeed, as stated earlier, the *Vugterveen* Court reasoned that "[a] subcontractor's failure to provide a notice of furnishing within the twenty-day time frame does not serve to defeat its right to a lien. However, failure to comply with the twenty-day time limit may reduce the value of the lien." *Vugterveen*, 454 Mich at 122 (internal citations omitted).

And it is entirely unclear to this Court how much, for what, and when Barnett paid TMP on the project. This is particularly true when it comes to services allegedly performed by Denny's. For the foregoing reasons, summary disposition of Denny's lien foreclosure claim is inappropriate and DENIED.

#### **4. Third-Party Defendant Michael Sova's Motion.**

Finally, Third-Party Defendant Michael Sova moves for summary disposition of Barnett's Builders Trust Fund Claim and for sanctions.

After this lien foreclosure action was filed, Barnett filed a Third-Party Complaint against Sova and Michael Start, as the principals of TMP, for violations of the Michigan Builders Trust Fund Act, MCL 570.151, *et seq.* Under said Act:

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cannot consider.

In the building construction industry, **the building contract fund paid by any person to a contractor**, or by such person or contractor to a subcontractor, **shall be considered by this act to be a trust fund, for the benefit of the person making the payment**, contractors, laborers, subcontractors or materialmen, **and the contractor or subcontractor shall be considered the trustee of all funds so paid to him for building construction purposes.** MCL 570.151.

Barnett alleges that it paid monies to TMP for the project, and TMP “did not pay \$293,000 to subcontractors and suppliers on the Barnett project. To the extent any of that \$293,000 was used for anything other than to pay for TMP labor on the project, TMP violated the Act and is liable to Barnett and the subcontractors and suppliers not paid.”

The Court of Appeals has reasoned “The MBTFA applies to funds paid to contractors and subcontractors for products and services provided to them under their construction contracts. **Officers of a corporation may be held individually liable when they personally cause their corporation to act unlawfully.**” *Livonia Bldg Materials Co v Harrison Const Co*, 276 Mich App 514, 519; 742 NW2d 140 (2007) (emphasis added).

The *Livonia Bldg* Court held, “If a defendant **personally** misappropriates funds after they are received by the corporation, he or she can be held **personally** responsible under the MBTFA.” *Livonia Bldg*, 276 Mich App at 519.

Sova claims that Barnett’s claim fails because (1) he “is not a principal or officer of TMP, and (2) he “has never had responsibility for the day-to-day financial decisions of TMP.” As a result, it is impossible to establish that Sova **personally** caused TMP to violate the MBTFA.

In response, Barnett argues that, throughout the course of the project, Sova represented himself to be a principal of TMP. Barnett further claims, in many communications, Sova was referred to as a principal and partner in TMP, and Sova told Jim Barnett that he was a “silent

partner” in TMP. Barnett supports these claims with affidavits of Jim Barnett and Thomas Bonk and several emails. Barnett also alleges that TMP paid Sova’s wife or her company some monies during the project.

While Barnett offers some evidence as to Sova’s relationship with TMP, Barnett offers **no evidence** that Sova **personally** caused TMP to act unlawfully. In other words, while Barnett’s affiants’ claims may create a question of fact as to Sova’s position in TMP, they fail to allege any wrongdoing by Sova. At best, Barnett offers mere speculation. And mere speculation is insufficient to survive summary disposition.

For the foregoing reasons and viewing all evidence in the light most favorable to Barnett, the Court finds that there are no material facts in dispute and Defendant Sova is entitled to judgment as a matter of law. As a result, the Court GRANTS Sova’s motion for summary disposition and DISMISSES Barnett’s Builders Trust Fund Claim against him only.

Finally, accepting Barnett’s claims as true, based on Sova’s representations of ownership interest in TMP during the project, the Court will exercise its discretion to DENY Sova’s request for sanctions.

## **5. Summary/Conclusion.**

To summarize, Barnett’s motion for summary with respect to Jet Steel is DENIED in its entirety.

Barnett’s motion for summary disposition of Energy’s claim for foreclosure of construction lien is GRANTED, and the same is DISMISSED. And Energy’s motion for summary of this claim is DENIED.

Both Barnett's and Energy's motions with respect to Energy's unjust enrichment claim are DENIED.

Energy's motion for summary of its breach of contract claim against TMP is GRANTED, and judgment is entered in Energy's favor against TMP for \$30,480.

Denny's motion for summary on its breach of contract claim against TMP is GRANTED, and judgment is entered in Denny's favor against TMP for \$30,212.

Denny's motion with respect to its claim for foreclosure of construction lien, however, is DENIED.

Finally, Sova's motion for summary disposition of Barnett's Builders Trust Fund Claim against Sova is GRANTED, and said claim is DISMISSED as to Sova only.

**IT IS SO ORDERED.**

April 13, 2016  
Date

/s/ James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge