



STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

SEJASMI INDUSTRIES, INC., a Michigan  
limited liability company,

Plaintiff,

vs.

Case No. 2014-4273-CK

A+ MOLD, INC., d/b/a TAKUMI  
MANUFACTURING COMPANY,  
NKL MANUFACTURING, INC.,  
and QUALITY CAVITY, INC.,  
Michigan corporations,

Defendants.

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OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's April 30, 2015 Opinion and Order granting Defendant Quality Cavity Inc.'s ("Defendant Quality") motion for reconsideration in which the Court held that Defendant Quality's liens on certain molds are valid, and ordering Plaintiff to deliver the molds to Defendant Quality in the event it did not pay Defendant Quality the amount of the lien by May 7, 2015.

I. Background

In the interests of judicial economy the factual and procedural statements set forth in the Court's April 1, 2015 Opinion and Order are herein incorporated.

II. Standard of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition

of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

### III. Arguments and Analysis

Defendant Quality contends that it holds liens on five molds currently in Plaintiff's possession. The molds at issue are:

- 1) Job No. 13107- A 2-cavity production mold per supplied date/design to produce frame ("Mold 1")
- 2) Job No. 13108- An 8-cavity production mold per supplied date/design to produce vane ("Mold 2");
- 3) Job No. 13109- A 1-cavity production mold per supplied data and print to produce tube ("Mold 3");
- 4) Job No. 13110- A 1-cavity production mold per supplied data and print to produce Bracket RH ("Mold 4"); and
- 5) Job No. 13111- A 1-cavity production mold per supplied data and print to produce Bracket LH ("Mold 5").

(Molds 1-5 collectively, the "Molds".) Defendant Quality seeks possession of the Molds.

Plaintiff contends in that Defendant Quality's liens were extinguished pursuant to MCL 445.916(5) when it filed its verified complaint stating that it paid the amount for which the liens are claimed and served it upon Defendant Takumi.

The first issue before the Court is to determine whether Plaintiff made a verified statement that it paid the amount for which the lien is claimed. MCL 445.619(5) governs the ways in which a lien under the Michigan Moldbuilder Lien Act (“MMLA”) can be discharged, and provides:

(5) The lien remains valid until the first of the following events takes place:

(a) The moldbuilder is paid the amount owed by the customer or molder.

(b) The customer receives a verified statement from the molder that the molder has paid the amount for which the lien is claimed.

(c) The financing statement is terminated.<sup>1</sup>

Defendant Quality charged Defendant Takumi \$155,000.00 for Mold 1, \$80,000.00 for Mold 2, and \$40,000.00 each for Molds 3-5. See Exhibit E to Complaint, October 29, 2014 Statement from Defendant Quality to Defendant Takumi. Accordingly, the total amount Defendant Quality billed for the Molds was \$355,000.00. In its verified complaint, Plaintiff’s president provided a sworn statement that Plaintiff paid Defendant Takumi \$387,970.00 for certain production molds and fixtures (“Magna Tooling”), the full amount billed by Defendant Takumi for the Magna Tooling. Further, the amount Plaintiff paid exceeds the amount of Defendant Quality’s liens as to the Molds. Moreover, it appears undisputed that a statement made in a verified complaint qualifies as a “verified statement” within the meaning of subsection (5). Finally, as the Court previously held Defendant Takumi, a customer under the MMLA, received a copy of the verified

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<sup>1</sup> As previously concluded, pursuant to the MMLA, the “moldbuilder” in this case is Defendant Quality, the “molder” is Plaintiff, and the “customers” are Defendant Takumi and Magna. See April 1, 2015 Opinion and Order at 3-4.

complaint, as is evidenced by the proof of service.<sup>2</sup>

Defendant Quality nonetheless urges the Court to interpret the statute as requiring the molder (Plaintiff) to state that it has paid the moldbuilder (Defendant Quality) for the amount for which the lien is claimed.<sup>3</sup> The Michigan Supreme Court has set forth the following procedure for interpreting a statute:

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed-no further judicial construction is required or permitted, and the statute must be enforced as written. *Pohutski v Allen Park*, 465 Mich 675, 683, 641 NW2d 219 (2002).

Subsection (5) does not specifically provide that the molder's verified statement must provide that the molder has paid the moldbuilder the amount for which the lien claimed. Rather, the statute merely requires the statement to provide that amount of the lien claimed has been paid. The Court is further not persuaded that such language should be read into the unambiguous language of the statute. A court should not read anything into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute. *McCormick v Carrier*, 487 Mich 180, 209; 795 NW2d 517 (2010). Including such a requirement would lead to illogical results where, as here, the party in possession of the Molds is not the same party that

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<sup>2</sup> This Court held that Plaintiff "satisfied MCL 445.619(5)(b), thereby rendering Defendant Quality's lien on the Molds extinguished." See Opinion & Order dated April 1, 2015. Defendant Quality sought reconsideration of this opinion on April 21, 2015.

<sup>3</sup> This Court granted Defendant's Quality's motion for reconsideration. See Opinion & Order dated April 30, 2015. Plaintiff now seeks reconsideration of the April 30, 2015 Opinion and Order.

contracted with the moldbuilder, and would result in the molder having to pay twice for the Molds.

Interpreting the MMLA in this manner is supported by the Michigan Court of Appeals treatment of similar language in the Construction Lien Act ("CLA"). The CLA, MCL 570.1101 et seq., is an act designed to protect the rights of lien claimants to payment for expenses. *Fischer-Flack, Inc v Churchfield*, 180 Mich App 606, 611; 447 NW2d 813 (1989). Further, the CLA authorizes those performing labor or providing material or equipment for the improvement of real property to file liens in order to help ensure that they will be paid for the services and/or materials they provide. See MCL 570.1107. However, as is the case with the MMLA, the CLA also provides a mechanism by which said liens can be extinguished by the owner of the real property.

Specifically, MCL 570.1118a provides:

- (1) A claim for a construction lien does not attach.....if the owner files an affidavit with the court stating that the owner or lessee has paid the contractor for the improvement....according to the contract, indicating in the affidavit the amount of the payment.

The Michigan Court of Appeals has held that section 118a, and its predecessor MCL 570.1203, operate to protect homeowners from paying twice for improvements to their property. *Ben's Supercenter, Inc v All About Contracting & Excavating, LLC*, unpublished per curiam opinion of the Court of Appeals, decided July 31, 2012 (Docket 302267); *Erb Lumber, Inc v Gidley*, 234 Mich App 387, 393; 584 NW2d 81 (1999). Specifically, the Court in *Erb Lumber*, held: "Section 203 was meant to provide for the payment of subcontractors and suppliers, but also protect homeowners from paying

twice for improvements to their property where the contractor took the payment from the homeowners but did not pay the subcontractor or supplier." *Id.* at 394.

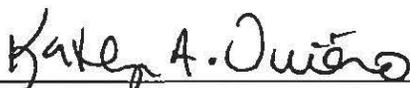
The MMLA and CLA were both enacted to help certain types of subcontractors and suppliers ensure that they will be paid for their goods and services. However, the Michigan Court of Appeals, with respect to the CLA, has also recognized that the supplier's right to payment does not operate to require the end user to pay twice for those goods and services. See *Erb Lumber* 234 Mich App at 393. While the Michigan Court of Appeals has not specifically addressed this issue in reviewing the MMLA, the Court is persuaded that the same concern is present and that the same result should occur under either statute where the end user has paid for the goods or services at issue and has satisfied the procedure requirements under the Act. Consequently, the Court is satisfied that Plaintiff's motion must be granted and that Defendant Quality's motion for possession must be denied.

#### Conclusion

For the reasons set forth above, Plaintiff's motion for reconsideration of the Court's April 30, 2015 Opinion and Order is GRANTED. Further, Defendant Quality's motion for possession is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Date: JUL 01 2015

  
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Hon. Kathryn A. Viviano, Circuit Court Judge