

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

Defendant Quality Cavity Inc. (“Defendant Quality”) has filed a motion for enforcement of lien and for immediate possession of molds. Plaintiff Sejasmi Industries, Inc. (“Plaintiff”) has filed a response and requests that the motion be denied.

Factual and Procedural History

In or about May and June 2013, Defendant Quality and Defendant Takumi Manufacturing, Inc. (“Defendant Takumi”), entered into a series of contracts (“Defendant Contracts”). Under the Defendant Contracts, Defendant Quality was to build, fabricate, and manufacture certain molds (“Molds”). Defendant Quality completed the Molds pursuant to the Defendant Contracts, but Defendant Takumi has allegedly not paid Defendant Quality the full purchase price of the Molds. The Molds are currently in Plaintiff’s possession, and are being used by Plaintiff for production of certain automotive components for Magna Modular Systems, Inc.

On February 10, 2015, Defendant Quality filed its instant motion to enforce its alleged lien on the Molds pursuant to the Michigan Mold Lien Act, and for possession of the Molds. On February 20, 2015, Plaintiff filed its response and requests that the motion be denied. On March 9, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

Arguments and Analysis

In order to possess a valid and perfected lien under the Michigan Mold Lien Act (“MMLA”), a moldbuilder must satisfy the requirements of MCL 445.619. MCL 445.619 provides:

Sec. 9. (1) A moldbuilder shall permanently record on every die, mold, or form that the moldbuilder fabricates, repairs, or modifies the moldbuilder's name, street address, city, and state.

(2) A moldbuilder shall file a financing statement in accordance with the requirements of section 9502 of the uniform commercial code, 1962 PA 174, MCL 440.9502.

(3) A moldbuilder has a lien on any die, mold, or form identified pursuant to subsection (1). The amount of the lien is the amount that a customer or molder owes the moldbuilder for the fabrication, repair, or modification of the die, mold, or form. The information that the moldbuilder is required to record on the die, mold, or form under subsection (1) and the financing statement required under subsection (2) shall constitute actual and constructive notice of the moldbuilder's lien on the die, mold, or form.

(4) The moldbuilder's lien attaches when actual or constructive notice is received. The moldbuilder retains the lien that attaches under this section even if the moldbuilder is not in physical possession of the die, mold, or form for which the lien is claimed.

(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.

(6) The priority of a lien created under this act on the same die, mold, or form shall be determined by the time the lien attaches. The first lien to attach shall have priority over liens that attach subsequent to the first lien.

In this case, it appears undisputed that Defendant Cavity has satisfied the requirements of MCL 445.619(1) and (2). Rather, Plaintiff contends that the lien has been terminated/extinguished.

First, Plaintiff contends that Defendant Quality has failed to provide evidence that it has not been paid in full. In support of its motion, Defendant Quality attached the purchase orders for the Molds (Exhibit B), as well as an affidavit of Gary Burke, its general manager (Exhibit C). In his affidavit, Mr. Burke testified that Defendant Takumi has failed to pay for the Molds in full. Moreover, Plaintiff has not provided the Court with any evidence that Defendant Quality has been paid in full. Consequently, Plaintiff's contention is without merit.

Plaintiff also contends that MCL 445.619(5)(b) provides that a lien is extinguished upon the receipt of a verified statement that it paid for the Molds. The section at issue provides that the lien is extinguished upon receipt by the "customer" of a verified statement by the "molder" that the molder has paid the amount for which the lien is claimed. MCL 445.619(5)(b).

The MMLA defines "customer" as "a person who causes a moldbuilder to fabricate, case, or otherwise make a die, mold or form for use in the manufacture, assembly, or fabrication of plastic parts, or a person who causes a molder to use a die, mold, or form to manufacture, assemble or fabricate a plastic product." MCL 445.611(a). The MMLA defines a "moldbuilder" as "a person who fabricates, casts, or otherwise makes, repairs, or modifies a die, mold, or form for use in the manufacture, assembly, or fabrication of plastic parts. MCL 445.611(b). Finally, the MMLA defines "molder" as "a person who uses a die, mold, or form to manufacture,

assemble, or fabricate plastic parts. MCL 445.611(c). In this case, Defendant Quality is the moldbuilder as it is the entity which created the Molds. Plaintiff is the molder as it is the entity which uses the Molds to create the automotive parts. Further, Defendant Takumi and Magna are both customers as Defendant Takumi is the entity which ordered the Molds from Defendant Quality (first portion of MCL 455.611(a)), and Magna is the entity which causes Plaintiff to use the Molds to manufacture the components (second portion of MCL 455.611(a)).

Applying the rule set forth by MCL 445.619(5)(b) to this case, in light of MCL 445.611(a)-(c), MCL 445.619(5)(b) provides that Defendant Quality's lien is extinguished if Defendant Takumi, or Magna, receives a verified statement from Plaintiff that Plaintiff has paid the amount of the lien. In this matter, Plaintiff has filed a verified complaint which, in part, contains a statement that it paid Defendant Takumi for the Molds. Further, the verified complaint was served on Defendant Takumi, a "customer" under MMLA. Consequently, the Court is convinced that Plaintiff has satisfied MCL 445.619(5)(b), thereby rendering Defendant Quality's lien on the Molds extinguished.

While Defendant Quality undoubtedly would argue that subsection (b) requires the molder, Plaintiff, to pay the moldbuilder, i.e. Defendant Quality, such an interpretation would make the inclusion of both subsection (a) and (b) redundant. When construing a statute, a Court must avoid doing so in manner that renders any statutory language nugatory or surplusage. *Robinson v City of Lansing*, 476 Mich 1, 21; 782 NW2d 171 (2010). If a moldbuilder is paid in full, subsection (a) operates to terminate the lien without the need for a "verified statement." Accordingly, in order not to render subsection (b) a nugatory or a surplusage, the Court must interpret (b) as merely requiring a molder to provide a verified statement that it has paid at least

the amount of the lien claimed by the moldbuilder. Consequently, Defendant Quality's position is without merit.

Conclusion

For the reasons set forth above, 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.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: April 1, 2015

JCF/sr

Cc: *via e-mail only*
Melissa Trpcevski, Attorney at Law, mtrpcevski@erskinelawgroup.com
Jason Yert, Attorney at Law, jyert@kerr-russell.com
David Lefere, Attorney at Law, davidl@bolhouselaw.com
Daniel J. Broxup, Attorney at Law, dbroxup@mmbjlaw.com