

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

CHRISTOPHER THOMAS
CONSTRUCTION, LLC,

Plaintiff,

vs.

Case No. 2015-2588-CB

JSR FUNDING, LLC, CHRISTIE
EAGLE, CHAD ANDERSON, and
MICHIGAN SCHOOLS AND
GOVERNMENT CREDIT UNION,

Defendants.

OPINION AND ORDER

Defendant JSR Funding, LLC ("JSR") has filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

In February 2014 JSR was the owner of a residential home located at 1633 Haverhill, Macomb, MI ("Subject Property"). In March 2014, JSR contracted Plaintiff to complete various construction work on the Subject Property. At that time Plaintiff possessed a valid residential builder license ("RBL") from the Michigan Department of Licensing and Regulatory Affairs ("LARA"). Subsequently, disagreements arose between Plaintiff and JSR, with JSR ultimately refusing to pay the amounts requested by Plaintiff for the work performed.

On July 25, 2014, Plaintiff filed a claim of lien in the amount of \$55,575.00 with

the Macomb County Register of Deeds ("First Lien"). On August 4, 2014, Plaintiff ceased working at the Subject Property. On September 29, 2014, Plaintiff filed a second claim of lien, in the amount of \$64,531.44 ("Second Lien")(First and Second Liens collectively as, "Liens").

On July 24, 2015, Plaintiff filed its complaint in this matter asserting claims for foreclosure of the Liens (Count I) and breach of contract (Count II). On October 19, 2015, JSR filed its instant motion for summary disposition. On November 10, 2015, Plaintiff filed its response in which it requests that the motion be denied. Plaintiff and JRR have also subsequently each filed reply briefs in support of their positions. On November 16, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might

be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

In its motion, JSR contends that Plaintiff claims must be dismissed as it was not licensed at all times it was performing work at the Subject Property.

The Michigan Occupational Code, MCL 339.101 *et seq*, prohibits a person from engaging in certain occupations unless "the person possesses a license or registration issued by the department for the occupation." MCL 339.601(1). Included within the listed occupations is a "Residential Builder." A residential builder is a person engaged in the construction of a residential structure who, for compensation, undertakes with another for "the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement, wrecking of, or demolition of..." the structure. MCL 339.2401(a).

In this case, it is undisputed that Plaintiff is a residential builder within the meaning of the statute. Accordingly, MCL 339.2412 restricts a residential builder in certain situations. Specifically, MCL 339.2412 provides, in part:

(1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

(3) A person or qualifying officer for a corporation or a member of a residential builder or residential maintenance and alteration contractor shall not impose or take any legal action to impose a lien on real property unless that person was licensed under this article during the performance of the act or contract.

Plaintiff's qualifying officer during all periods of time relevant to this case was Matthew Stroud. It is undisputed that Mr. Stroud possessed an RBL from July 27, 2007 to May 31, 2014. (See JSR's Exhibit A.) It is also undisputed that Mr. Stroud's RBL expired on May 31, 2014. (Id.) However, the parties dispute the effect of Mr. Stroud's expired license on Plaintiff's residential builder company license ("RBCL"). Both sides rely on MCL 339.2405, which provides:

Sec. 2405. (1) Subject to section 2404c1 if a corporation, partnership, association, limited liability company, or other entity applies for a license, the applicant shall designate 1 of its officers, partners, or members or its managing agent as a qualifying officer. A qualifying officer who takes and passes the examination and meets all other requirements of this article is entitled to a license to act for the corporation, partnership, association, limited liability company, or other entity. A qualifying officer shall also obtain and maintain a license under this article as an individual. A qualifying officer is responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with this article and the rules promulgated under this article. The department shall not issue a license to a corporation, partnership, association, limited liability company, or other entity unless each partner, trustee, director, officer, or member, and each person that exercises control over the entity, is at least 18 years of age and meets the requirements for a license under this article other than those relating to knowledge and experience. If an individual licensee is also a qualifying officer, the department shall include the individual's name and license number on any license issued to the individual as a qualifying officer. If the department issues a license under this subsection to an officer, partner, member, or managing agent, whether or not he or she is the qualifying officer, that individual shall provide a copy of his or her operator's license or state personal identification card to the department. The department shall use the license or card only for identification purposes. A licensee granted inactive status under section 2404b2 is not eligible to serve as a qualifying officer.

(2) The license of a corporation, partnership, association, limited liability company, or other entity is suspended when a license or license application of a qualifying officer, partner, trustee, director, officer, or member, or a person that exercises control of the corporation, partnership, association, limited liability company, or other entity, is suspended, revoked, or denied. The suspension shall remain in force until the board

determines that the disability created by the suspension, revocation, or denial is removed.

(3) If an individual's license under this article is suspended, revoked, or denied by the board, any other license issued or applied for under this article is suspended, revoked, or denied. If the license of a corporation, partnership, association, limited liability company, or other entity is suspended, revoked, or denied, any other license issued to or applied for by the qualifying officer of that entity is suspended, revoked, or denied.

(4) If the qualifying officer of a licensee ceases to be its qualifying officer, the license is suspended. However, on request, the department may permit the license to remain in force for a reasonable time to permit the qualification of a new qualifying officer.

In support of its motion, JSR contends that MCL 339.2405(2) operated to suspend Plaintiff's RBCL on the date that Mr. Stoud's RBL expired. In response, Plaintiff asserts that MCL 339.2405(4) permits LARA to allow an RBCL to remain in full force for a reasonable time in its discretion.

When the interpretation of a statute is raised, the objective of the judiciary is to discern and give effect to the legislative intent. *Wurtz v. Beecher Metro Dist.*, 495 Mich 242, 250; 848 NW2d 121 (2014). First, the plain language is examined because it provides the most reliable evidence of legislative intent. *Ter Beek v. City of Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014). Judicial construction is not permitted or required if the statutory language is unambiguous. *Id.* "When construing statutory language, [the court] must read the statute as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined." *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW2d 503 (2012). A dictionary may be consulted when a statutory term is not defined. *Klooster v. City of Charlevoix*, 488 Mich 289, 304; 795 NW2d 578 (2011). When a word may be defined in various ways, the given meaning is determined by its context or setting. *Liberty Hill Housing*

Corp. v. City of Livonia, 480 Mich 44, 58 n14; 746 NW2d 282 (2008). Effect must be given to every word, phrase, and clause in a statute, and the court must render a construction that would not render part of the statute surplusage or nugatory. *Johnson v. Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012).

On October 27, 2014, LARA sent a correspondence to Plaintiff in which interpreted subsection (4) as follows:

MCL 339, 2405(4) states that: "If a qualifying officer of a licensee ceases to be its qualifying officer, the license is suspended." MCL 339.2405(4) and 2006 AACRS R 338.1526(5) permit the license to remain in force for a reasonable time, at [LARA's] discretion, to allow for the qualification of a new qualifying officer.

(See Plaintiff's Exhibit H.)

Further, LARA went on to state that a response to its notice of non-compliance must be filed within 60 days or Plaintiff's RBCL may be subjected to disciplinary action, including suspension. (*Id.*)

Our Supreme Court has explained that "an agency's interpretation of a statute is entitled to 'respectful consideration,' but courts may not abdicate their judicial responsibility to interpret statutes by giving unfettered deference to an agency's interpretation. Courts must respect legislative decisions and interpret statutes according to their plain language." *In re Complaint of Rovas Against SBC Mich*, 482 Mich. 90, 93; 754 NW2d 259 (2008). This standard requires "cogent reasons" for overruling an agency's interpretation." *Id.* at 103. "However, the agency's interpretation is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue." *Id.*

In this case, Mr. Stoud's RBL expired on May 31, 2014. While the Court recognizes that LARA did not formally suspend Plaintiff's RBCL until January 9, 2015 based on their interpretation of subsection (4), the Court is convinced that the plain and unambiguous language of subsections (2) and (4) provides that Plaintiff's RBCL was suspended as a matter of law on the date Mr. Stroud's RBL expired. Subsection (2) provides that a LLC's RBCL "is suspended when a license of a qualify officer...is suspended, revoked or denied." MCL 339.2405(2). Accordingly, contrary to LARA's position, the statute clearly provides that an RBCL is suspended, not that it may or could be suspended. Moreover, subsection (4) clearly and unambiguously applies to situations in which an LLC's qualifying officer leaves or is replaced, not situations in which a qualifying officer fails to maintain their RBL for a period of time. Accordingly, the Court is convinced that Plaintiff's RBCL was suspended as of May 31, 2014 under subsection (2).

In its response, Plaintiff also contends that even if its RBCL was suspended on May 31, 2014, JSR's motion should be denied because it substantially complied with the licensing requirements. In support of its position, Plaintiff relies on *Mich Roofing & Sheet Metal v Duffy Rd Props*, 90 Mich App 732; 282 NW2d 809 (1979).¹ In *Mich Roofing*, the Michigan Court of Appeals held that strict compliance with the Residential Building Act is not necessary for a plaintiff to maintain an action to recover the funds owed to the builder if: (1) The plaintiff held a valid license at the time of contracting; (2) Plaintiff readily secured a renewal of that license, and (3) The responsibility and competence of the plaintiff's managing officer were officially confirmed throughout the

¹ Vacated and remanded by 409 Mich 887, 295 NW2d 230 (1980); however, the substantial compliance doctrine was reaffirmed on remand 100 Mich App 577, 581; 298 NW2d 923 (1980).

period of performance of the contract. The Court in *Mich Roofing* adopted the California standard set forth in *Latipac, Inc. v The Superior Court of Marin County*, 64 Cal Rptr 676, 679; 411 P2d 564, 567 (1966). In doing so, the Michigan Court of Appeals reasoned that doing so was appropriate because failure to do so would transform the statute into an ‘unwarranted shield for the avoidance of a just obligation.’” *Mich Roof*, 90 Mich App at 735-736.

As a preliminary matter, it is undisputed that Plaintiff and Mr. Stroud both held their respective license at the time Plaintiff and JSR entered into the contract at issue and Plaintiff began providing services. Consequently, the first element is satisfied. While it does not appear that the Michigan Court of Appeals or Michigan Supreme Court has specifically addressed the remaining elements of the substantial compliance doctrine, the California Supreme Court has in *Latipac*.

In *Latipac*, the Court held that the time of contracting is the determinative time because “it is the time that the other party to the agreement must decide whether the contractor possesses the requisite responsibility and competence and whether he should in the first instance, enter into the relationship. The license, as an official confirmation of the contractor’s responsibility and experience, plays an important role.” *Latipac*, 64 Cal2d at 282. Consequently, the Court held that courts have given great accord to whether the contractor had a license at the time of contracting. *Id.*

With respect to the second element, the Court looks to whether the contractor renewed its license after completion of performance. *Id.* at 283. The Court noted that a subsequent renewal “lends confirmation to plaintiff’s continuing competence and responsibility during the period of performance.” In this case, it is undisputed that

Plaintiff and Mr. Stroud subsequently had their licenses reinstated. Moreover, JSR has not presented any evidence that Plaintiff or Mr. Stroud's fitness fluctuated between the date the licenses expired and the date that they were reinstated. Accordingly, the Court is convinced that this element also weighs in favor of a finding of substantial compliance. See *Latipac*, 64 Cal2d at 284.

The third element directs the Court to look at the company at issue's managing officer or person otherwise responsible for possessing the requisite knowledge and experience. Specifically, the third element allows a court to take into consideration whether that person, or other entities that person controlled, held the requisite licensure at the time at issue. In this case, it was the expiration of Mr. Stroud's license that caused Plaintiff not to have a valid license from May 31, 2014 through the end of the project. Consequently, Mr. Stroud's licensure status does not lend support to a finding of substantial compliance.

Whether a person's actions substantially complied with a statute is an issue of fact. *Dellar v Frankenmuth Mut Ins Co*, 173 Mich App 138; 433 NW2d 380 (1988). In this case, while the first element unquestionable supports a finding of substantial compliance, the third element does not support such a finding. With respect to the second element, although Plaintiff and Mr. Stroud subsequently had their licenses reinstated, the Court is convinced that JSR and the other Defendants should be given an opportunity to conduct discovery on the issue of whether Plaintiff and Mr. Stroud maintained the requisite competency and responsibility necessary to hold the required licenses and complete the work they contracted to perform. Accordingly, the Court is convinced that summary disposition on the issue of substantial compliance is

inappropriate at this time. As a result, JSR's motion for summary disposition must be denied without prejudice.

IV. Conclusion

For the reasons discussed above, Defendant JSR Funding, LLC's motion for summary disposition is DENIED, WITHOUT PREJUDICE. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: JAN 15 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge