

**STATE OF MICHIGAN
IN THE SUPREME COURT**

Appeal from the Michigan Court of Appeals
Hon. Pat M. Donofrio, P.J., Hon. Henry William Saad, Hon. Kathleen Jansen

RONNISCH CONSTRUCTION GROUP, INC.,
a Michigan corporation,

Supreme Court No. 150029

Appellee,

v.

LOFTS ON THE NINE, LLC, a Michigan limited
liability company, et al.,

Appellant.

BRIEF ON APPEAL—APPELLANT LOFTS ON THE NINE

*****ORAL ARGUMENT REQUESTED*****

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STATEMENT OF THE BASIS OF JURISDICTION

This Court has jurisdiction to consider this matter pursuant to MCR 7.301(A)(2). On July 24, 2014, the Court of Appeals issued its Opinion. (**App. 131a**). Appellant Lofts on the Nine, LLC timely filed its Application within forty two days of the date of the Opinion. *See* MCR 7.302(C)(2). On April 23, 2015, this Court granted the Application. (**App. 138a**).

STATEMENT OF QUESTION INVOLVED

- I. Whether the Court of Appeals erred in holding that the plaintiff contractor, who filed a claim of lien under the Construction Lien Act, MCL 570.1101 *et seq.*, and then filed a circuit court action against the defendant property owner, alleging breach of contract, foreclosure of lien, and unjust enrichment claims, was entitled to an award of attorneys' fees as a "prevailing party" under MCL 570.1118(2), when the plaintiff prevailed in binding arbitration on its contract claim, but neither the arbitrator nor the circuit court resolved the plaintiff's foreclosure of lien claim?

The trial court would answer "YES"

Defendant-Appellant Lofts on the Nine answers "YES"

Plaintiff-Appellee Ronnisch Construction Group, Inc, answers "NO"

STATEMENT OF STANDARD OF REVIEW

This Court reviews a trial court's decision whether to award attorneys' fees for an abuse of discretion. *Moore v Secura, Inc*, 482 Mich 507, 516; 759 NW2d 833 (2008). It is well-settled that "[a]n abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes". *Id.*

Statutory interpretation is a question of law that is reviewed *de novo*. See *GC Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 419, 662 NW2d 710 (2003).

INTRODUCTION

This case concerns a straightforward breach of contract action in which Plaintiff-Appellee Ronnisch Construction Group, Inc. (“RCG”) seeks attorney fees under the Construction Lien Act (the “Act”), despite the fact that neither the Arbitrator nor the trial court adjudicated its construction lien claim.

Defendant-Appellant Lofts on the Nine, LLC (“LON”) reasonably disputed paying the outstanding **10% balance** of a \$6 million construction contract because of RCG’s defective and tardy construction of the building and attempt to overcharge LON for certain General Conditions. After RCG filed suit, the parties arbitrated their dispute as mandated by the parties’ AIA contract.¹ There, the Arbitrator awarded RCG a “net” of \$450,820.36, on its approximately \$800,000 claim. (**App. 93a**).² The Arbitrator denied RCG’s claim for approximately \$173,000 in contract interest and did not adjudicate RCG’s lien foreclosure claim.

LON promptly paid the amount of the Award in full (including all applicable statutory interest) before RCG filed its motion with the trial court to confirm the Award and to request attorneys’ fees as a prevailing lien claimant under MCL 570.1118(2) (“RCG’s Motion”). Neither the Arbitrator nor the trial court adjudicated the lien foreclosure claim.

In its April 24, 2012 Opinion and Order denying RCG’s Motion, the trial court found that: (1) neither it nor the Arbitrator adjudicated RCG’s lien foreclosure claim and (2) LON

¹ RCG first breached the AIA contract by filing a lawsuit in the Oakland County Circuit Court purporting to state claims for Breach of Contract, Foreclosure of Construction Lien and Unjust Enrichment. In response to LON’s motion to compel arbitration, RCG ultimately stipulated to stay the litigation and proceeded with AAA arbitration. It is this improperly filed lawsuit (in particular, the un-adjudicated claim for lien foreclosure) upon which the Court of Appeals erroneously predicates its Opinion.

² The Award is approximately **56% of RCG’s total Claim of Lien** because the amount of RCG’s Claim of Lien included **not only** the \$626,163.73 specifically identified on its face, but also “interest on late payments pursuant to the contract.” (**App. 73a**).

satisfied the Award. (**App. 125a, 127a**). Consequently, the trial court correctly applied the unambiguous language of MCL 570.1118(2), that only allows a court to consider awarding attorneys' fees to a "prevailing party" lien claimant in a lien foreclosure action, when it ruled that it lacked discretion to award RCG any attorneys' fees under the Act. Said another way, because RCG did not "prevail" on its lien foreclosure claim, the trial court had no discretion to award RCG attorneys' fees.

The trial court also properly determined that, under this Court's decision in *HA Smith Lumber & Hardware Co v Decina*, 480 Mich 987, 742 NW2d 120 (2007), the fact that RCG merely filed a lien foreclosure claim in tandem with its breach of contract claim is not sufficient to declare RCG a "prevailing party" lien claimant (*i.e.* a party is not entitled to an award of attorneys' fees simply because it filed both a breach of contract and lien foreclosure suit). RCG subsequently appealed the trial court's Opinion and Order.

In an Opinion dated July 24, 2014, the Court of Appeals vacated that portion of the trial court's Opinion and Order denying RCG's request for attorneys' fees and remanded the case for further proceedings consistent with the Opinion. To arrive at its decision, the Court of Appeals: (1) failed to adhere to the clear and unambiguous language of MCL 570.1118(2); (2) refused to follow the binding precedent of this Court as articulated in *Decina, supra*; (3) improperly engaged in fact finding; and (4) disregarded the parties' agreement to arbitrate all disputes.

STATEMENT OF FACTS

A. RCG's Construction of the Building.

In 2007, LON contracted RCG to competently and timely construct a high-end condominium building. (**App 4a-72a**). RCG's total price to construct the building came to

\$6,071,645.20. During the course of construction, LON paid RCG \$5,445,481.47, representing 90% of the contract price. A dispute over the construction ensued.

LON withheld the final 10% and maintained that RCG breached the contract by, among other things: (1) defectively constructing the building (*e.g.* shoddy masonry work); (2) dishonestly charging LON for certain General Conditions; and (3) failing to complete the Project on-time (resulting in LON incurring unnecessary financing charges). LON also asserted that it incurred other damages as a result of RCG's breaches.

B. The 2009 Lawsuit.

On June 2, 2009, RCG recorded its Claim of Lien for the balance of the contract amount, including extras and interest under the parties' AIA contract. The Claim of Lien states the following with respect to the debt alleged by RCG:

[RCG's] contract amount, including extras, is \$6,071,645.20. [RCG] has received payment thereon in the total amount of \$5,445,481.73, and therefore claims a construction lien upon the above described real property **in the amount of \$626,163.73. This amount is also subject to interest on late payments pursuant to the contract.**

(**App 73a**, emphasis added).

On November 25, 2009, rather than filing the AAA arbitration demand required by the AIA Contract, RCG instead filed a Complaint in the Oakland County Circuit Court (the "2009 Case"). (**App. 74a-88a**). RCG's Complaint in the 2009 Case alleges three counts: Count I (Breach of Contract); Count II (Foreclosure of Lien); and Count III (Unjust Enrichment/Quantum Meruit). (**App. 77a-88a**).³

³ RCG not only seeks to recover its attorneys' fees for the claims in the 2009 Case that the parties arbitrated, but also its attorneys' fees in another case involving the architect and engineer for the Project (the "2010 Case"), that did not directly concern the claims arbitrated between LON and RCG.

In its Complaint, RCG conceded that the trial court (not the Arbitrator) would only adjudicate Count II (Foreclosure of Lien), following arbitration **and** only if LON failed to pay the amount of a net arbitration award in RCG's favor. (**App. 80a**). Specifically, the "Wherefore" clause of Count II (Foreclosure of Lien) states:

WHEREFORE, [RCG] prays that this Honorable Court:

A. Enter a judgment in favor of RCG and against [LON] in at least the amount of \$626,163.73, together with interest, costs and attorney fees and any other relief that the Court deems appropriate; or

B. In the alternative, after Defendants file their respective answers, enter an Order staying this matter so that claims may be heard in American Arbitration Association after which the award of the arbitrator(s) may be Confirmed by the Court in accordance with MCR 3.602(I); and

C. **After either of the foregoing**, [RCG] requests that:

1) This Court determine the rights and respective priorities of each lien claimant . . .

2) RCG be adjudged to have a valid lien upon the Property . . . for \$626,163.73 . . .

3) **Upon default of the payment of said amount**, this Honorable Court order the Property . . . sold in accordance with the statute . . .

(**App. 79a-80a**, emphasis added). Despite its current position, RCG recognized when it filed its Complaint that its lien foreclosure claim could only be adjudicated by the trial court following arbitration and only in the event LON failed to satisfy a net arbitration award entered against it.

LON filed a motion with the trial court to stay the litigation and to compel arbitration. Subsequently, RCG entered into a stipulated order staying the circuit court litigation pending the outcome of arbitration between RCG and LON.⁴ (**App. 89a-91a**).

C. The Arbitration and the Award.

Following a multi-day arbitration in which both sides were provided ample leeway to introduce evidence and testimony, the parties submitted their final claim summaries to the Arbitrator for consideration. RCG asked the Arbitrator to award it approximately \$800,000 in contract damages (including more than \$173,000 in contract interest), plus attorneys' fees, expert fees and AAA expenses. (**App. 92a**).

On January 26, 2012, the Arbitrator issued a net Award to RCG for \$450,820.36, plus statutory and post-award interest. (**App. 95a**). The Arbitrator deducted amounts from RCG's claim for its faulty construction and overbilling. (**App. 94a-95a**). The Arbitrator characterized the overwhelming majority of the net amount of the Award as "[d]irect damages for work performed under the Construction Contract". (**App. 94a**). Specifically, the Arbitrator denied RCG's claim for more than \$173,000.00 in contract interest in its entirety. (**App. 94a**). The Arbitrator did not make any findings with respect to the validity or priority of RCG's purported lien.

To calculate the net amount of the Award, the Arbitrator first awarded RCG \$636,058.72, primarily on its breach of contract claim, and then deducted from that amount an award in LON's favor of \$185,238.36, for, among other things: (1) RCG's defective construction of the building (*e.g.* an award for Masonry Repair); (2) failure to complete the building on-time

⁴ Because the contract contains a valid and enforceable arbitration clause, LON and RCG agreed to arbitrate their dispute before a single private arbitrator pursuant to the applicable rules of the American Arbitration Association.

(awards for Delay Interest and Punchlist [I]tems [R]emaining [I]ncomplete); and (3) RCG's questionable billing practices (an award for Adjustments to General Conditions). (**App. 94a-95a**).

Importantly, the Award states the following concerning the sharing of arbitration fees and the finality of the Award:

The administrative fees of the American Arbitration Association totaling \$16,000.00 and the compensation of the arbitrator totaling \$34,350.00 shall be borne equally

Other than as stated above, this Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

(**App. 95a**). The Award also states that it does not address attorneys' fees under the Act:

This Award expressly does not address the issue of RCG's claim for attorney fees and costs under MCL § 570.1118(2) which is not being addressed by the Arbitrator, and no ruling is made in that regard. The issue of such attorney fees and costs per MCL § 570.1118(2) is hereby reserved for the Court in the underlying lawsuit of Ronnisch Construction Group, Inc v Lofts on the Nine, LLC et al., Oakland County Circuit Court Case No. 09-105768-CH.

(**App. 95a**).

D. LON'S Payment of the Award In Full.

On February 17, 2012, LON paid the Award in full (including pre and post-judgment interest) by wiring \$485,319.76 to the client trust account of RCG's counsel. (**App. 96a**). LON paid the Award in full to satisfy the Award, preclude entry of a judgment against LON, and to discharge RCG's Claim of Lien and *Lis Pendens*. Consistent with the language of the Award, LON paid the Award "in full settlement of all claims and counterclaims submitted to this Arbitration". (**App. 95a**).

Realizing that payment of the Award would render its lien foreclosure claim moot and invalidate its Claim of Lien, RCG's counsel asked LON to enter into a stipulated order agreeing that payment of the Award would not terminate RCG's Claim of Lien or result in the dismissal of its lien foreclosure claim. (**App. 97a-100a**). LON's counsel refused to sign the proposed stipulated order. RCG never returned or attempted to return LON's payment.

E. The Trial Court Denies RCG's Motion for Attorneys' Fees.

On February 21, 2012, RCG filed its motion to confirm the award and for attorneys' fees. (**App 101a-118a**). Despite its misleading title, RCG's Motion was, in reality, a poorly camouflaged motion for partial summary disposition on Count II (Foreclosure of Lien) of RCG's Complaint. LON responded and argued that RCG did not have a construction lien to foreclose because LON had already satisfied the Award. Consequently, no outstanding amount existed for a construction lien to secure.

On February 29, 2012, the trial court heard oral argument and subsequently denied RCG's Motion, in its entirety, in a written Opinion and Order. (**App. 119a-129a**). Significantly, the trial court made the following findings and determinations in its Opinion and Order:

RCG's lien foreclosure claim was not adjudicated by this Court or the Arbitrator in the AAA Case. Instead, the Arbitrator ruled solely upon RCG's contract claim. In addition, [LON] paid the monies it owed to RCG under the [Award] within weeks of the Award being issued.

In the instant case RCG's lien was satisfied (without being adjudicated by the AAA or this Court) when RCG accepted [LON's] payment of the monies due under the [Award].

As [LON] paid RCG the amount [LON] owed pursuant to the Arbitration Award on February 16, 2012 and RCG's lien foreclosure claim was not adjudicated by this Court or the Arbitrator in the AAA case, RCG cannot be deemed to be a

prevailing lien claimant in this matter. Therefore, the Court does not have the discretion to award RCG its attorney fees and costs under the Michigan Construction Lien Act.

(App. 125a, 127a, 129a). The trial court also found that the Award “was approximately **56%** of RCG’s original contract claim” and that:

[t]he Arbitrator characterized the Award as “[d]irect damages for work performed under the Construction Contract”. In addition, the Arbitrator denied RCG’s claim for contract interest.

(App. 122a).

On April 15, 2012, RCG timely appealed.

F. The Court of Appeals’ Opinion.

On July 24, 2014, the Court of Appeals issued its Opinion vacating the portion of the trial court’s Opinion and Order dealing with attorneys’ fees and remanding for further proceedings.

(App. 131a-137a). In short, the Court of Appeals held that a party substantially prevailing **solely on its breach of contract claim** may automatically seek attorneys’ fees under MCL 570.1118(2), so long as it filed a simultaneous lien foreclosure claim, even if: (1) the parties agreed to arbitrate all disputes such that the filing of the circuit court contract action breached the parties’ arbitration agreement; (2) the Award secured by the lien was promptly paid in full without the need for enforcement; and (3) neither the Arbitrator nor circuit court adjudicated the lien foreclosure claim. **(App 131a-137a).** The Court of Appeals published its Opinion.

G. This Court Grants Leave to Appeal.

On September 4, 2014, LON filed its Application for Leave to Appeal to this Court. On April 23, 2015, this Court entered an order granting leave and directed the parties to address the following issue:

[W]hether the Court of Appeals erred in holding that the plaintiff contractor, who filed a claim of lien under the Construction Lien

Act (CLA), MCL 570.1101 *et seq.*, and then filed a circuit court action against the defendant property owner, alleging breach of contract, foreclosure of lien, and unjust enrichment claims, was entitled to an award of attorney fees as a “prevailing party” under MCL 570.1118(2), when the plaintiff prevailed in binding arbitration on its contract claim, but neither the arbitrator nor the circuit court resolve the plaintiff’s foreclosure of lien claim.

(App. 138a).

SUMMARY OF THE ARGUMENTS

The Court of Appeals’ decision should be reversed and the trial court’s decision denying RCG’s request for attorney fees reinstated because RCG is not a “prevailing party” on its construction lien foreclosure claim.

The Act states:

[i]n an action to **enforce a construction lien through foreclosure**, the court shall examine each claim and defense that is presented and determine the amount, if any, due to each lien claimant . . . The court may allow reasonable attorneys’ fees to a lien claimant who is the **prevailing party**.

MCL 570.1118(2). (App. 139a, emphasis added). This unambiguous language requires the trial court to adjudicate RCG’s lien claim before deciding “who is the prevailing party”. Specifically, the trial court must: (1) find that there is an action to enforce a construction lien through foreclosure; (2) examine claims, defenses and amounts due; **and** then (3) determine whether a lien claimant is the “prevailing party”. MCL 570.1118(2). None of these events happened in this case because neither the Arbitrator nor the trial court adjudicated RCG’s lien foreclosure claim.

If allowed to stand, the Court of Appeals’ published decision allows any plaintiff who receives a net recovery in any action or proceeding to petition for an award of attorneys’ fees, so long as that plaintiff *asserted* a lien foreclosure claim, and regardless of whether that lien claim

was ever adjudicated. This radically new principle of law conflicts with the requirements of the Act and this Court's Opinion in *HA Smith Lumber & Hardware Co v Decina*, 480 Mich 987 (2007).

In *Decina*, this Court held, "To be awarded attorney fees as a 'prevailing party' under MCL 570.1118(2), the party must prevail on the lien foreclosure action". *Id.* at 988. This Court also held, "The language of MCL 570.1118(2) does not permit recovery of attorney fees on the contract action merely because it was brought together with the lien foreclosure action". *Id.* Consistent with the statutory language, this Court confirmed that a party seeking attorneys' fees must actually prevail on its lien claim. That did not occur here.

The decisions relied upon by RCG and the Court of Appeals below—*Bosch v Altman Constr Corp*, 100 Mich App 289; 398 NW2d 725 (1980), and *Solution Source, Inc v LPR Assoc Ltd Partnership*, 252 Mich App 368; 652 NW2d 474 (2002)—do not allow recovery of attorneys' fees for a lien claim where a plaintiff prevails on any of its causes of action even when the lien claim is not adjudicated. In both of those cases, the lien foreclosure claims were fully adjudicated with judgment granted to the lien claimant. Plaintiffs in those cases were prevailing parties under the Act. Consequently, those cases are materially distinguishable and the Court of Appeals erred by relying upon them, instead of *Decina*.

The Court of Appeals also erred by engaging in improper fact finding and declaring RCG a "prevailing" lien claimant. RCG only recovered 56% of the amount it claimed under its lien. Section 570.1118(2) of the Act does not provide that a lien claimant achieves "prevailing party" status by obtaining a net award in its favor equal to a given percentage of its lien claim. The factual question of whether RCG meets the "prevailing party" requirement was the province of the trial court.

Finally, the Court of Appeals' Opinion conflicts with Michigan's public policy favoring arbitration. Here, the parties' arbitration agreement provided for prompt adjudication of contractual disputes. RCG should have filed an arbitration demand before filing a complaint in circuit court, and adjudicated the contract claim before taking lien enforcement action. The Court of Appeals' Opinion discourages prompt arbitration and encourages the filing of lien foreclosure actions with the circuit court because lien claimants will know that, even if the lien claim is never adjudicated, they can still petition the court for an award of attorneys' fees, regardless of what the arbitration agreement requires. This result violates Michigan's public policy of following statutes and encouraging arbitration agreements.

ARGUMENTS

- I. **The Court of Appeals Erred in Holding that RCG, Who Filed a Claim of Lien Under the Construction Lien Act, MCL 570.1101 *et seq.*, and then filed a Circuit Court Action Against LON, Alleging Breach of Contract, Foreclosure of Lien, and Unjust Enrichment Claims, was Entitled to an Award of Attorneys' Fees as a "Prevailing Party" under MCL 570.1118(2), when RCG Prevailed in Binding Arbitration on its Contract Claim, but Neither the Arbitrator nor the Circuit Court Resolved RCG's Foreclosure of Lien Claim.**
 - A. **The Court of Appeals Disregarded the Unambiguous Language of MCL 570.1118(2) That Requires the Circuit Court to Examine Claims and Defenses in an Action to "Enforce a Construction Lien Through Foreclosure" as a Condition Precedent to Allowing a Lien Claimant to Seek Recovery of Attorneys' Fees.**

The Court of Appeals committed reversible error when it disregarded the unambiguous language of MCL 570.1118(2) and declared RCG a "prevailing party" lien claimant when neither the Arbitrator nor trial court adjudicated RCG's lien claim.

In Michigan, parties are generally not entitled to an award of attorneys' fees absent an express legal exception. *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274

Mich App 584, 589; 735 NW2d 644 (2007). Exceptions to this general rule are narrowly construed. *Id.* Once such narrow exception is provided in the Act, that states:

[i]n an action to enforce a construction lien through foreclosure, the court shall examine each claim and defense that is presented and determine the amount, if any, due to each lien claimant . . . The court may allow reasonable attorneys' fees to a lien claimant who is the prevailing party.

MCL 570.1118(2).

Under the plain language of the statute, before a trial court may even exercise its discretion on whether to award reasonable attorneys' fees, it must first: (1) find that there is an action to enforce a construction lien through foreclosure; (2) examine claims, defenses and amounts due; **and** (3) determine whether a lien claimant is the "prevailing party".⁵ See *GC Timmis & Co*, 468 Mich at 420. Absent these threshold findings, there is no basis for the trial court to exercise any discretion whatsoever with respect to a request for an award of attorneys' fees under the Act.

The Court of Appeals ignored these requirements and interpreted MCL 570.1118(2) as though it reads: "in any case in which a claim for foreclosure of a construction lien is asserted, whether or not litigated . . . the court may allow reasonable attorneys' fees". Instead, of narrowly construing the provision allowing attorneys' fees,⁶ the Court of Appeals' decision allows attorneys' fees for **any** lien foreclosure plaintiff who recovers anything in a proceeding, regardless of whether the foreclosure claim is actually adjudicated, and regardless of the parties' agreement.

⁵ The Court of Appeals relied on a "liberal" construction of the Construction Lien Act. But, this Court has explained that "liberality cannot and should not nullify a clear and unambiguous requirement." *Brown Plumbing & Heating, Inc v Homeowner Construction Lien Recovery Fund*, 442 Mich 179, 183; 500 NW2d 733 (1993).

⁶ See *Fleet Business Credit, LLC, supra* at 589.

Here, because LON promptly paid the Award (including all applicable interest), the trial court never engaged in the analysis required by the Act. The court did not examine each claim or defense or determine an amount due RCG or the priority or validity of the other nine lien claimants/mortgage holders.⁷ LON's prompt payment precluded an analysis of the competing lien claims or amount due RCG by the trial court, so there is no longer an action for the enforcement of RCG's lien "through foreclosure".

The trial court correctly reached this conclusion:

RCG's lien foreclosure claim was not adjudicated by this Court or the Arbitrator in the AAA Case . . . In addition, [LON] paid the monies it owed to RCG under the [Award] within weeks of the Award being issued

In the instant case **RCG's lien was satisfied (without being adjudicated by the AAA or this Court)** when RCG accepted [LON's] payment of the monies due under the [Award]

As [LON] paid RCG the amount [LON] owed pursuant to the Arbitration Award on February 16, 2012 and **RCG's lien foreclosure claim was not adjudicated by this Court or the Arbitrator in the AAA case, RCG cannot be deemed to be a prevailing lien claimant in this matter.**

(**App. 125a, 127a, 129a**, emphasis added). Importantly, the Arbitrator issued the Award "in full settlement of all claims and counterclaims submitted to this Arbitration". (**App. 95a**).

Indeed, RCG received full payment on the Award without having to take any lien enforcement action. After full payment, RCG's Lien no longer secured payment of a debt and should have been discharged. *See* MCL 570.1118(2).⁸ In Michigan, "[a] construction lien . . . is

⁷ The Arbitrator also did not engage in this analysis.

⁸ Pursuant to MCR 3.602(I) and (J), a party may seek confirmation of an arbitration award and entry of a judgment by the trial court based upon the confirmed award. *See* MCR 3.602(I) and (J). However, a party, such as RCG, should not be allowed to move a circuit court for confirmation of an arbitration award and entry of a judgment on the award if the arbitration

not a substitute for a debt but is only a security interest given to facilitate satisfaction of the debt”. *Old Kent Bank of Kalamazoo v Whitaker Constr Co*, 222 Mich App 436, 439 (1997). Once the underlying debt is extinguished, so too is the security interest. *See Fox v Mitchell*, 302 Mich 201, 212; 4 NW2d 518 (1942). *See also Fifth Third Bank v Danou Tech Park*, unpublished opinion per curium of the Court of Appeals, issued March 20, 2012 (Docket No. 302884) (holding that a security interest has no validity in the absence of an underlying debt). (**App. 140a**). After prompt payment of the Award, RCG found itself in the exact position as it should have been; full payment of its debt without a contractual right or expectation to recover attorneys’ fees.

Once the trial court correctly concluded that neither it nor the Arbitrator adjudicated RCG’s lien foreclosure claim and that the Award had been fully paid without the need for enforcement of the lien, RCG could not be declared a “prevailing party” lien claimant under the Act. The trial court correctly concluded, “The Court does not have the discretion to award RCG its attorney fees and costs under the Michigan Construction Lien Act”. (**App. 129a**). Any other decision violates the explicit language of MCL 570.1118(2) that requires a party that recovers attorneys’ fees to be the “prevailing party” lien claimant in an adjudicated lien foreclosure action. *See* MCL 570.1118(2).⁹

award is paid prior to the request for confirmation. *See Martin v Auto Club Ins Ass’n*, 204 Mich App 138, 139; 514 NW2d 197 (1994).

⁹ “When construing a statute, the Court’s primary obligation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute. If the language of the statute is unambiguous, the Legislature is presumed to have intended the meaning expressed.” *GC Timmis & Co, supra*, at 420. The first sentence of MCL 570.1118(2) unambiguously states “[i]n an action to enforce a construction lien through foreclosure . . .”

Unlike the trial court, the Court of Appeals failed to adhere to the express language of MCL 570.1118(2); conflated RCG's breach of contract and lien foreclosure claims; and re-wrote the statute to arrive at the erroneous conclusion that substantially prevailing on the breach of contract claim **by itself** is sufficient to trigger potential attorneys' fee liability under MCL 570.1118(2).

The effect of the Court of Appeals' error is readily apparent if this Court imagines a scenario in which RCG asserted only a breach of contract claim in arbitration (as contemplated by the parties' contract) and did not simultaneously file a complaint to foreclose its lien. It is absurd to think that under that scenario RCG would be a "prevailing party" in "an action to enforce a construction lien through foreclosure". Yet, the Court of Appeals considered RCG a "prevailing party" simply because it *asserted* a lien claim, and nothing more happened.

B. The Court of Appeals Failed to Follow *HA Smith Lumber & Hardware Co v Decina*, 480 Mich 987 (2007) and finding RCG a "Prevailing Party" under the Act Merely Because it Obtained a Net Award in its Favor on its Breach of Contract Claim in Arbitration and Filed a Lien Foreclosure Count with its Breach of Contract Complaint.

1. This Court's Decision in *Decina* Requires a Party Seeking Attorneys' Fees to Actually Prevail on the Lien Foreclosure Action.

The trial court's conclusion that RCG is not entitled to seek recovery of its attorneys' fees under MCL 570.1118(2) as a "prevailing party" lien claimant is a faithful application of this Court's decision in *HA Smith Lumber & Hardware Co v Decina*, *supra*. Under *Decina*, the mere filing of a lien foreclosure claim with a breach of contract action does not vest a trial court with discretion to award attorneys' fees if the plaintiff does not actually "prevail on the lien foreclosure action". *Decina*, *supra* at 988.

As cogently articulated by this Court:

[t]o be awarded attorney fees as a ‘prevailing party’ under MCL 570.1118(2), the party must prevail on the lien foreclosure action . . . The language of MCL 570.1118(2) does not permit recovery of attorney fees on the contract action merely because it was brought together with the lien foreclosure action.

Decina, *supra*, at 988 (reversing lower court orders awarding attorneys’ fees, emphasis added).¹⁰

Said another way, breach of contract and lien foreclosure actions are separate and distinct. MCL 570.1117(5). Even RCG’s Complaint recognized this precept by seeking foreclosure of its construction lien only in the event LON failed to satisfy the Award. (**App. 80a, ¶(C)(3)**). This Court’s holding in *Decina* expressly requires RCG to actually “prevail on the lien foreclosure action” before attorneys’ fees can be awarded.

Both *Decina* and the trial court’s decision are consistent with the Act and prior Court of Appeals decisions allowing attorneys’ fees only for plaintiffs who receive a judgment on their lien foreclosure claims. (See *infra*). The Court of Appeals’ Opinion disregards these precedents and disrupts prior case law.

2. The Court of Appeals’ Attempt to Distinguish *Decina* is Unpersuasive.

The Court of Appeals attempted to distinguish *Decina* by emphasizing a fact—not addressed by this Court in its Opinion—that the liens in that case had not “attached”. The Court of Appeals reasoned, “[T]he Supreme Court aptly concluded that in light of no lien legally being able to attach to the property, it was impossible for the subcontractors to have prevailed on their lien claim, which is a prerequisite for being able to collect attorney fees under MCL 570.1118(2)”. (**App. 136a**).

¹⁰ In *H.A. Smith Lumber & Hardware Co v Decina*, 265 Mich App 380, 384; 695 NW2d 347 (2005), the Court of Appeals held “that, in assessing attorney fees under the CLA, ‘prevailing party’ means one who prevails in a CLA claim or a claim brought in the alternative for the same injury or loss raised in the CLA Claim.” This Court expressly overturned that holding.

However, whether the liens “attached” in *Decina* is not material to its holding. This Court unequivocally held, “To be awarded attorney fees as a ‘prevailing party’ under MCL 570.1118(2), the party must prevail on the lien foreclosure action”. *Decina, supra* at 988. The Court also held, “The language of MCL 570.1118(2) does not permit recovery of attorney fees on the contract action merely because it was brought together with the lien foreclosure action”. *Id.* These are general principles of law following the statutory language and are not dependent on the specific reason why the lien does not “attach” or whether the foreclosure claim is adjudicated or successful. This Court expressly rejected the Court of Appeals’ conclusion that a prevailing party is “one who prevails in a CLA claim or a claim brought in the alternative for the same injury or loss raised in the CLA claim”. *HA Smith Lumber & Hardware Co v Decina*, 265 Mich App 380, 384; 695 NW2d 347 (2005) (emphasis added).

At its core, the present case is a breach of contract dispute between two sophisticated businesses entities over the final 10% of the contract price to construct a building. The Award is based almost entirely upon an adjudication of RCG’s breach of contract claim and LON’s counterclaims for breach of the same contract. The contract does not provide for an award of attorneys’ fees. Under *Decina*, RCG cannot change that fact simply by including a companion lien foreclosure count in its Complaint, which it never should have filed first as a result of the agreement to arbitrate in the AIA contract.

Yet, the Court of Appeals’ Opinion disregards *Decina* and wrongly decides that the Act automatically entitles RCG to seek attorneys’ fees simply because it obtained a net award on its breach of contract claim and included a lien foreclosure count in the Complaint improperly filed with the circuit court (in breach of the AIA contract). According to the Court of Appeals, it does not matter whether LON promptly paid the Award (with interest) satisfying the debt and purpose

of the lien, or that the parties agreed to arbitration and RCG ignored the agreement by filing its lawsuit. All that matters is that RCG obtained some “net” monetary award and RCG’s premature Complaint includes a count entitled “Foreclosure of Lien”. The Court of Appeals’ Opinion runs counter to this Court’s binding precedent and creates an untenable situation for property owners that contest paying for work not completed or adequately performed.

If the Court of Appeals’ Opinion is allowed to stand, the only way for a property owner to avoid potential liability for attorneys’ fees under the Act’s “prevailing party” provision is for the owner to pay the **full amount** demanded by a lien claimant, no matter how unwarranted, **prior** to adjudicating the propriety of the amount owed under the contract and the validity and priority of the alleged lien. A property owner is then forced to pursue the lien claimant, in a separate lawsuit, for any amounts deemed overpaid. Otherwise, if the property owner does not make immediate payment, and the lien claimant is granted any net relief, then the lien claimant will be a “prevailing party” who can then seek attorneys’ fees, regardless of whether the lien claim is actually adjudicated. A property owner will not be able to rely on an arbitration agreement in expectation of avoiding lien litigation. Such an outcome conflicts with the language of the Act and this State’s policy favoring resolution of disputes through contractually agreed arbitration.

3. The Other Cases Relied on by the Court of Appeals are Inapposite and do not Provide a Basis to Disregard *Decina*.

Instead of applying this Court’s decision in *Decina*, the Court of Appeals concluded that this case is similar to, and governed by, *Bosch v Altman Constr Corp*, 100 Mich App 289; 398 NW2d 725 (1980), and *Solution Source, Inc v LPR Assoc Ltd Partnership*, 252 Mich App 368; 652 NW2d 474 (2002). The Court of Appeals erred.

First, this case is not factually analogous to *Bosch*. In its recitation of the facts of *Bosch*, the Court of Appeals failed to recognize that the circuit court “granted formal judgment” for Bosch on its lien foreclosure claim (*i.e.* the circuit court adjudicated Bosch’s lien foreclosure claim). *See Bosch, supra*, at 294. Thus, the plaintiff in *Bosch* **prevailed** on its lien foreclosure claim. Here, RCG did not prevail because no adjudication of the lien foreclosure claim occurred.

Contrary to the Court of Appeals’ reasoning below, *Bosch* does not hold that a plaintiff who “substantially prevail[s] on the amount it sought under the claim of lien” is a prevailing party under Section 1118(2), even when the lien claim is not adjudicated. A closer reading of *Bosch* shows that it stands for the proposition that a plaintiff cannot be *forced* to accept payment on the day of trial, thereby preventing the plaintiff from seeking attorneys’ fees. *Id.* at 297-98. In other words, a lien claimant has the option to refuse to accept payment on the eve of trial and proceed to judgment if it hopes to get an award of attorneys’ fees. However, *Bosch* does not allow a lien claimant to *voluntarily* accept full payment before any action on the lien foreclosure claim occurs, and then still demand an award of attorneys’ fees and costs.

This rule is shown by the facts and holdings of *Bosch*. There, the plaintiff brought an action in circuit court to foreclose its lien and a separate action in district court for breach of contract. *Id.* at 292-93. The plaintiffs obtained a judgment in the contract action first. *Id.* at 293. The defendant then “tendered payment of the district court judgment and demanded that the mechanics’ lien be discharged. The plaintiff refused this tender, claiming he was entitled to attorney fees”. *Id.* The defendant then moved for an order requiring the plaintiff to discharge the lien upon payment of the district court judgment. The plaintiff opposed the motion, arguing that the discharge should only be required upon payment of his costs and attorneys’ fees. *Id.*

The circuit court ordered the plaintiff to execute a discharge of the lien upon payment of the district court judgment. *Id.*

The defendant did not tender payment again until the day of trial on the foreclosure claim. *Id.* at 293. As required by the court's earlier order, the plaintiff accepted payment and signed a satisfaction of judgment and a discharge of the lien. *Id.* However, the plaintiff continued to assert a claim for attorneys' fees and costs. *Id.* Despite the discharge of lien, the trial court held that it still had jurisdiction to hear the matter because there was no evidence that the defendant's payment check had cleared and, therefore, the court could not find the lien discharged. *Id.* at 294. The trial court went on to find the lien valid, *entered judgment for the plaintiff*, and awarded the plaintiff attorneys' fees. *Id.*

On appeal, the defendant argued that the payment discharged the lien and the trial court lacked jurisdiction to hear the lien claim. The Court of Appeals held that the trial court reached the right result, but for the wrong reason. *Id.* at 297. The court held that the plaintiff could not be required to accept the payment and discharge the lien in the first place. *Id.* at 296. The Court of Appeals explained:

We believe it would clearly violate the spirit of the mechanics' lien statute to permit a lienee **to force a lienor to accept payment of a lien claim** just before the commencement of a lien foreclosure trial and thereby avoid a possible assessment for attorney fees.

We conclude that a lienor **is not required to accept tender of payment** after a complaint has been filed if he wishes to pursue his statutory right to attorney fees.

Once the lien foreclosure complaint has been filed, **plaintiff should have been permitted to refuse payment** and proceed to judgment and a determination of whether attorney fees should be awarded.

Id. at 296-97 (emphasis added). The court therefore concluded that the discharge of lien signed by the plaintiff did not “justify reversal of the trial court’s decision”. *Id.* at 298.

Unlike here, the parties in *Bosch* did not have an agreement requiring binding arbitration with no provision for fee shifting. Further, in this case, the trial court did not force RCG to accept payment in satisfaction of the lien claim; RCG voluntarily accepted payment without any compulsion. Arguably, RCG could have “refuse[d] payment and proceed[ed] to a judgment and a determination of whether attorney fees should [have been] awarded”. *Id.* at 297. Even if RCG did, there is no evidence that any subsequent adjudication of the lien would have led to an award of attorneys’ fees.

Solution Source is also distinguishable. There, the plaintiff obtained a default judgment on its lien claim. *Id.* at 370. A month later, the trial court awarded plaintiff attorneys’ fees and costs. *Id.* at 371. After four years of appeals, which ultimately affirmed the default judgment, plaintiff sought to collect the judgment through garnishments. *Id.* After objecting to the garnishments, the defendants produced a cashier’s check for \$18,000 to settle the outstanding judgment. Plaintiff then filed a motion to settle the outstanding amount due, which plaintiff claimed should include attorneys’ fees incurred in connection with the appellate and postjudgment proceedings. *Id.* The trial court held that the plaintiff was entitled to postjudgment attorneys’ fees. *Id.* at 372.

The Court of Appeals affirmed, holding that “satisfaction of a lien does not bar a lien claimant who is a *prevailing party* from recovering its appellate and postjudgment attorney fees incurred in connection with enforcement of its lien”. *Id.* at 381 (emphasis added).

Unlike RCG, plaintiff in *Solution Source* “prevailed” on its lien claim because the trial court “granted [the] plaintiff’s request for foreclosure on its construction lien and determined the

value of the lien[.]” *Id.* at 377. While the plaintiff in *Solution Source* chose to satisfy the judgment through garnishments rather than foreclosure, this did not change the fact the plaintiff prevailed on the lien claim. The Court of Appeals explained, “We hold that plaintiff’s action did not lose its characterization as an action to enforce ‘a construction lien through foreclosure’ simply because plaintiff sought avenues other than foreclosure to satisfy the judgment on its valid construction lien”. *Id.* at 379. Thus, the “defendants’ satisfaction of the judgment four years after the judgment was entered did not bar plaintiff from recovering appellate and postjudgment attorney fees”. *Id.* at 381.

Here, RCG did not “prevail” on its lien claim. It was never adjudicated. While there may be no requirement that the prevailing party actually complete the foreclosure process, *Solution Source* does not stand for the proposition that a party can be declared a “prevailing party” under the Act when the party does not even prevail on the lien claim.

C. The Court of Appeals Improperly Engaged in Fact Finding and Deemed RCG the “Prevailing Party” When the Amount Due Stated in its Lien is Overstated by More Than \$345,000.00.

The Court of Appeals also erred when it engaged in impermissible fact finding to deem RCG the “prevailing party” by concluding that:

contrary to the circuit court’s view, [RCG] substantially prevailing on the **amounts** it sought under the claim of lien made it a prevailing party under the Construction Lien Act, and the circuit court had the discretion under MCL 570.1118(2) to award attorney fees.

(**App. 135a**, emphasis added).

Specifically, the Court of Appeals improperly compared only the dollar amount stated on the face of RCG’s claim of lien (\$626,163.73) to the amount of the net Award (\$450,820.36) to find RCG substantially prevailed on its lien foreclosure claim because the “net” Award

constituted 72% of its claim of lien. (**App. 133a**). However, RCG actually sought a contract balance/lien amount of nearly \$800,000 (\$626,163.73, plus more than \$173,000 in contract interest). Consequently, the amount of the net Award is only **56%**, not 72% of the total amount RCG claimed due in its claim of lien.¹¹

The Court of Appeals not only erred in this factual comparison, but also by engaging in this factual finding in the first place. Factual findings are the exclusive province of the trial court. At a minimum, the Court of Appeals should have remanded the case to the trial court to determine whether a net award in favor of RCG of **56%** of its claim of lien entitles RCG to the designation of a “prevailing party” lien claimant. *See Vugterveen Sys, Inc v Olde Millpond Corp*, 454 Mich 119, 133-34; 560 NW2d 43 (1997). Moreover, nothing in the express language of MCL 570.1118(2) provides that a lien claimant achieves “prevailing party” status by obtaining a net award in its favor equal to a given percentage (72% or 56%) of its lien claim.

RCG’s reliance on *Schuster Const Servs v Painia Dev Corp*, 251 Mich App 227, 238; 651 NW2d 749 (2002), for the proposition that any party entitled to a lien is a “prevailing party” is misplaced and misleading. In *Schuster Const Servs*, the trial court granted summary disposition to the plaintiff and entered judgment on the plaintiff’s lien claim. *Id.* at 229-30. The Court of Appeals affirmed summary judgment, and with respect to attorneys’ fees held, “Given our determination that plaintiff is entitled to a lien, plaintiff is the prevailing party under subsection 118(2) and defendant has provided no basis for vacating the trial court’s award of fees to plaintiff”. *Id.* at 238.

The trial already entered judgment in favor of the plaintiff on the lien claim, so the Court of Appeals accurately called the plaintiff “the prevailing party”. However, nothing in *Schuster*

¹¹ RCG’s lien is overstated. In Michigan, a court may deem an overstated lien void and unenforceable. *See Sacchetti v Recreation Co*, 304 Mich 185; 7 NW2d 275 (1943).

suggests that the Court of Appeals is free to make findings of fact regarding a lien claim not adjudicated in the trial court. Here, neither the Arbitrator nor the trial court made any findings of fact regarding the validity or enforceability of RCG's lien. RCG properly discharged the lien and there was no need for any lien enforcement. (**App. 130a**). The Court of Appeals should not have labeled RCG a "prevailing party" in these circumstances.

D. The Court of Appeals' Opinion Disregards the Arbitration Provisions of the Parties' AIA Contract and Undermines Michigan's Policy Favoring the Arbitration of Disputes and Swift Payment of Awards.

It is well-settled that Michigan public policy favors arbitrations. *See Jozwiak v Northern Michigan Hospitals, Inc*, 207 Mich App 161, 165; 524 NW2d 250 (1994). The arbitration process delineated in the AIA contract worked as the parties in this case intended. Two parties with a well-founded and genuine contractual dispute adjudicated their issues before a private Arbitrator with minimal use of the State's judicial resources. After the Arbitrator determined that RCG's claims were substantially overstated (awarding RCG 56% of its contract claim and lien amount), LON promptly paid the Award in-full and without any need for RCG to petition the trial court to confirm or enforce the Award. Had LON not paid the Award, the Act would have protected RCG by allowing it to recover its attorneys' fees in connection with an action in the circuit court to foreclose its lien. This is the procedure negotiated between LON and RCG for the resolution of disputes. Michigan Courts enforce express contracts between sophisticated business entities, such as LON and RCG, as written. *See Quality Products and Concepts v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003).

Moreover, pursuant to the express language of the parties' AIA contract, RCG never should have initiated its action by first filing a Complaint in the circuit court. Rather, RCG should have followed the terms of the AIA contract and first filed its demand for arbitration with

the AAA. By agreeing to enter into a stipulated order to arbitrate its claims when faced with a motion to enforce the parties' agreement to arbitrate, RCG' affirmed the appropriateness of arbitration as the only proper forum in which to resolve its dispute with LON. RCG could have then expeditiously arbitrate its dispute and obtained prompt payment of any net award in its favor without ever appearing before the circuit court.¹² By improperly filing in the circuit court first, RCG caused numerous parties to spend money needlessly to appear in an unnecessary a circuit court action.

The Court of Appeals' Opinion, however, discourages arbitration and encourages the filing of lien foreclosure actions with the circuit court, even when the parties agree to arbitrate all claims. This departure from Michigan's policy favoring arbitration will encourage lien claimants to ignore agreements to arbitrate and file first in circuit court to assert a claim for foreclosure of their liens, so they can later demand attorneys fees, no matter whether the lien claim is ever adjudicated.

Moreover, the Court of Appeals' Opinion conflicts with the terms of the AIA contract, which did not include any type of fee shifting provision. The parties bargained for each to bear their own attorneys' fees in the event of a dispute. The Court of Appeals' Opinion abrogates the parties' bargain and inserts a fee shifting provision where none exists. Under Michigan law, sophisticated commercial parties are free to enter into contracts of their choosing with the knowledge that courts will subsequently enforce the contract's clear and unambiguous terms.

¹² RCG waited almost six (6) months between the recording of its Claim of Lien and the filing of the 2009 Case. (**App 73a-74a**). RCG's lien foreclosure action only needs to be filed within one (1) year of the recording of the claim of lien. Arguably, RCG could have timely filed its arbitration demand, arbitrated the amount due, and received payment, all before the filing of a lien foreclosure action became necessary.

Quality Products, 469 Mich at 370-75. The Court of Appeals' decision below undermines this well-established policy and should be reversed.

E. At Most, RCG Would Only be Entitled to Seek its Nominal Fees Arising from the Circuit Court Litigation and Cannot Recover Its Expert or AAA Fees Under the Act.

Even if RCG is a “prevailing party” under the Act, a lien claimant is only entitled to the fees incurred in actually enforcing the construction lien. An instructive case is *JL Construction Co v Fairview Construction, Inc*, unpublished opinion per curium of the Court of Appeals, issued January 28, 1997 (Docket No. 182744). (**App. 149a**). The plaintiff in *JL Construction* brought a breach of contract claim, subsequently arbitrated in favor of the plaintiff. To collect its judgment, the plaintiff sought to foreclose on its construction lien. *Id.* at 1. The trial court granted a judgment of foreclosure. In addressing attorneys’ fees, the trial court held that the Act allowed an award of attorneys’ fees incurred in pursuing foreclosure of the lien, but not those fees incurred in proving the underlying breach of contract claim. *Id.* at 1.

The Court of Appeals affirmed the trial court’s decision, holding that a breach of contract claim is a distinct action from a foreclosure proceeding. *Id.* at 2. *See also Cook v Delta*, unpublished opinion per curium of the Court of Appeals, issued October 15, 2013 (Docket No. 306421) (holding plaintiffs were entitled only to attorneys’ fees incurred for the foreclosure of their construction lien and not for pursuing their other claims). (**App 152a**).

The same reasoning applies here. The Arbitrator did not adjudicate RCG’s construction lien. Instead, the Arbitrator only addressed the contract claims, which “sought recovery under the parties’ agreement and was not related to the construction lien”. *JL Construction, supra* at 2. The trial court also did not adjudicate the construction lien claim. Thus, even if RCG were a “prevailing party”, it would only be entitled to seek minimal attorneys’ fees specifically in

connection with the enforcement and foreclosure of the lien, which did not occur because LON promptly and fully paid the arbitration award.

Likewise, the trial court correctly denied RCG's request for expert and AAA fees. (**App. 119a-129a**). The Court of Appeals did not address these issues. This Court should affirm the trial court's denial. Besides not being a "prevailing party", there is no authority to recover these fees under the Act. RCG argued below that the use of the phrase "payment for expenses" in *Stock Bldg Supply v Parsley Homes of Mazuchet Harbor, LLC*, 291 Mich App 403, 406-07; 804 NW2d 898 (2011), means that RCG may recover its expert fees and AAA fees as "expenses". RCG's reliance on these terms is misplaced. RCG takes these terms out of context.

In *Stock Bldg Supply*, the court states that "[t]he Construction Lien Act is . . . aimed at protecting the rights of lien claimants to payment for expenses and . . . the rights of property owners from paying twice for these expenses". *Id.* at 406-07. Adopting RCG's interpretation of the phrase "payment of expenses," would require reading the Act as protecting lien claimants from paying expert fees and AAA expenses and also protecting property owners from paying those same expenses twice. Nothing in the Act calls for this conclusion. The phrase "payment of expenses" actually refers to the payment by a contractor for wages and materials. *See Old Kent Bank of Kalamazoo, supra*, at 428-29 (stating that "[t]he Construction Lien Act has been held to have two purposes: (1) protecting the rights of lien claimants to payment for wages and materials and (2) protecting owners from paying twice for such services"). Accordingly, this Court should affirm the trial court's decision to deny RCG's request for expert and AAA fees.

Moreover, RCG's request for its AAA fees directly conflicts with the unambiguous language of the Award, that expressly states:

[t]he administrative fees of the American Arbitration Association totaling \$16,000.00 and the compensation of the arbitrator totaling \$34,350.00 **shall be borne equally**

(App. 95a).¹³ There is no legal authority permitting RCG or a court to alter the clear language of the Award. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497 (1991) (“[C]ourts may not substitute their judgment for that of the arbitrators and hence are reluctant to vacate or modify an award when the arbitration agreement does not expressly limit the arbitrators’ power in some way”). The trial court rightly denied RCG’s request for these fees.

CONCLUSION

The Court of Appeals’ published Opinion should be reversed. The Court of Appeals: (1) failed to adhere to the unambiguous language of MCL 570.1118(2); (2) refused to follow the binding precedent established by this Court in *Decina, supra*; (3) improperly engaged in fact finding; and (4) disregarded the parties’ agreement to arbitrate all disputes. The trial court’s Opinion and Order should be reinstated and affirmed.

Respectfully submitted,

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¹³ The trial court specifically refers to this language in its summary of the Award. (App. 122a).