STATE OF MICHIGAN

IN THE SUPREME COURT

SEJASMI INDUSTRIES, INC., a Michigan corporation,

Appellee-Plaintiff/ Counter-Defendant,

v

QUALITY CAVITY, INC., a Michigan corporation,

Appellant-Defendant/ Counter-Claimant.
_____/

Supreme Court Docket No. _____

Court of Appeals Docket Nos. 336205 & 328292

Macomb County Circuit Court Case No. 2014-004273-CB

Hon. Kathryn A. Viviano

APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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ORDER APPEALED FROM

This Application raises a question of statutory interpretation that is of major jurisprudential significance to Michigan's manufacturing industry.

The question was decided as a matter of first impression in this case by the Macomb County Circuit Court in its July 1, 2015 opinion and order. (**Ex. 1**, July 1, 2015 Opinion and Order of the Macomb County Circuit Court (hereinafter cited as the "7/1/2015 Trial Court Op"). Following an interlocutory appeal of that decision, and *de novo* review, the question was decided by the Court of Appeals in an April 5, 2016 opinion. (**Ex. 2**, April 5, 2016 Opinion of the Court of Appeals in Docket No. 328292 (hereinafter cited as the "4/5/2016 Court of Appeals Op")).

Following the Court of Appeals' April 5, 2016 opinion, Appellant Quality Cavity, Inc. ("QCI") sought leave to appeal to this Court in Michigan Supreme Court Case No. 153625. Leave was denied in order to allow the case to be remanded to the trial court to resolve a preliminary question of fact. (**Ex. 3**, July 1, 2016 Order of the Michigan Supreme Court (hereinafter cited as the 7/1/2016 Supreme Court Op")).

At the conclusion of the remand proceedings, the Macomb County Circuit Court entered a final opinion and order consistent with its July 1, 2015 opinion and order and the April 5, 2016 opinion of the Court of Appeals. (**Ex. 4,** December 12, 2016 Opinion and Order of the Macomb County Circuit Court (hereinafter cited as the "6/12/2016 Trial Court Op")). The Court of Appeals affirmed the trial court's final opinion and order in an order dated July 27, 2017. (**Ex. 5**, July 27, 2017 Order of the Court of Appeals in Docket No. 336205 (hereinafter cited as the "7/27/2017 Court of Appeals Order")).

QCI now seeks leave to appeal from the final opinion and order of Judge Kathryn A. Viviano of the Macomb County Circuit Court in Case No. 14-004273-CB, and the Court of Appeals' order affirming the circuit court's final opinion and order.

BASIS OF JURISDICTION

The Court has jurisdiction to consider an Application for Leave to Appeal from an opinion of the Court of Appeals under Const 1963, art. VI, § 4; MCL 600.215; and MCR 7.303(B)(1). In accordance with MCR 7.305(C)(2)(a), QCI has timely invoked the Court's jurisdiction by filing its Application for Leave to Appeal within 56 days of the date on which the Court of Appeals affirmed the final order of the Macomb County Circuit Court. Therefore, all jurisdictional requirements are satisfied.

STATEMENT OF QUESTIONS PRESENTED

I. WHETHER A STATUTORY MOLDBUILDER LIEN IS TERMINATED UNDER MCL 445.619(5)(b) WHEN A MOLDER IN POSSESSION OF THE LIENED MOLD SENDS A VERIFIED STATEMENT TO THE MOLDBUILDER'S CUSTOMER STATING THAT THE MOLDER HAS PAID THE MOLDBUILDER'S CUSTOMER, EVEN THOUGH IT IS UNDISPUTED THAT NOBODY HAS PAID THE LIENHOLDING MOLDBUILDER?

A. The circuit court originally answered "Yes," then answered "No" on reconsideration, and then answered "Yes" on second reconsideration, as well as in its final order closing the case.

B. A majority of the Court of Appeals answered "Yes," but Judge Hoekstra wrote a part-dissenting, part-concurring opinion, in which he answered "No."

C. QCI answers, "No."

D. Appellee answers, "Yes."

STATEMENT OF FACTS

I. INTRODUCTION

This case involves an issue of first impression relating to the validity of statutory moldbuilder liens under the Michigan Ownership Rights in Dies, Molds and Forms Act, MCL 445.611, *et seq.* (the "Mold Lien Act").

The Mold Lien Act allows "moldbuilders," who make molds, to place a lien on those molds, and "molders," who then use the molds, to take a lien on the plastic parts that they produce using the molds. The Act also addresses the rights of "customers," who are defined as "person[s] who cause[] a moldbuilder to fabricate, cast, or otherwise make a die, mold, or form for use in the manufacture, assembly, or fabrication of plastic parts, or . . . who cause[] a molder to use a die, mold, or form to manufacture, assemble, or fabricate a plastic product." MCL 445.611. In most situations, the moldbuilder's "customer" is the party that takes ownership of the mold and purchases the plastic parts that are created through the molder's use of the mold. In this case, however, the moldbuilder's "customer" (*i.e.* QCI's customer) was simply an intermediary that bought the mold from QCI and sold it to the molder (*i.e.* Appellee Sejasmi Industries, Inc. ("Sejasmi")).

The question presented in this case relates to the circumstances under which a moldbuilder lien is extinguished. The lower courts reached the extraordinary conclusion that a statutory moldbuilder lien is extinguished when a molder in possession of the liened mold sends a verified statement to the moldbuilder's customer stating that the molder has paid for the mold, irrespective of whether anyone has paid the lienholding moldbuilder. This conclusion of law contravenes the most basic and fundamental tenet of lien law: that a lien remains valid and enforceable against anyone who has actual or constructive notice of the lien until such time as payment of the liened amount is made ***to the lienholder***.

Under the lower courts' decisions, as long as a molder pays someone — anyone — for a liened mold, the moldbuilder's statutory lien is extinguished. The obvious error of this counterintuitive result is compounded by the fact that the lower courts failed to apply a "statutory definition" that, when properly applied, compels a conclusion that is directly at odds with the one that the lower courts reached. (**Ex. 2** (Hoekstra, J., dissenting)). For these reasons and for the reasons explained below, the holding of the lower courts is clearly erroneous.

If left to stand, the holding of the lower courts will result in material injustice to QCI, and will have a significant, if not devastating, adverse impact on the moldbuilder industry in Michigan.[1] It will leave moldbuilders "holding the bag" in situations where (1) the moldbuilder does everything by the book in terms of following the requirements of the Mold Lien Act and perfecting its statutory liens, and (2) the molder in possession of the liened molds is on record notice of the liens and has the ability to protect itself, by ensuring that the lienholder gets paid, but fails to take the necessary and normal steps to do so. In this particular case, QCI, a small Wixom-based moldbuilder, will be damaged to the tune of approximately $250,000.

The Court should take this opportunity to address the issue of first impression that is presented because the issue is one of immense importance to the participants in the automobile supply chain, including moldbuilders, and because the lower courts' rulings on the issue could have significant negative ramifications for a large sector of the Michigan economy. Furthermore, the opinion of the Court is desperately needed on this important issue, as demonstrated by the fact that the trial court reversed itself twice on the issue, and the Court of Appeals was split on the issue.

[1] In turn, this will adversely impact the automobile industry in Michigan, which relies heavily on the services and products provided by moldbuilders.

II. OVERVIEW OF THE CASE

The basic facts of this case are straightforward. The procedural events that led to this point are less straightforward.

In 2014, QCI built five plastic-injection molds pursuant to orders it received from its customer, Takumi Manufacturing Company ("Takumi"). At the direction of Takumi, QCI shipped the molds directly to Takumi's customer, Sejasmi. The molds are currently in the possession of Sejasmi and are being used by Sejasmi to manufacture plastic parts for General Motors automobiles. QCI has not been paid in full for four of the five molds at issue: there is an outstanding balance owed to QCI for those molds in the amount of $187,500.

Prior to shipping the molds to Sejasmi, QCI perfected moldbuilder liens on the molds pursuant to the Mold Lien Act. QCI notified Takumi and Sejasmi of its intent to enforce its liens on the molds due to non-payment on or about October 21, 2014. This prompted Sejasmi to initiate an action against QCI and Takumi (n/k/a NKL Manufacturing, Inc.) in the Macomb County Circuit Court. In its Verified Complaint, Sejasmi alleged that it had paid ***Takumi*** for the molds (***not QCI***) and, on that basis, asked the circuit court to declare that QCI's liens were no longer valid. QCI subsequently filed a counterclaim against Sejasmi to enforce its moldbuilder liens.[2]

The issue of the enforceability of QCI's moldbuilder liens was brought before the Macomb County Circuit Court for the first time on QCI's Motion for Enforcement of Lien and for Immediate Possession of Molds. (**Ex. 6**, Motion for Enforcement of Lien and for Immediate Possession of Molds, Brief in Support, and Exhibits (hereinafter referred to as "Motion for

[2] At the time this lawsuit was initiated, QCI was in possession of one of the five molds at issue (to perform modifications) and was withholding the mold from Sejasmi (pursuant to the Mold Lien Act) pending payment of the liened amount for that mold, which was $65,000. Sejasmi eventually agreed to pay the liened amount to QCI in exchange for QCI returning the mold to Sejasmi and releasing its lien on the mold.

Enforcement")). In an Opinion and Order dated April 1, 2015, Judge John C. Foster denied QCI's Motion for Enforcement and ruled that QCI's liens had been extinguished. (**Ex. 7**, April 1, 2015 Opinion and Order of the Macomb County Circuit Court (hereinafter cited as the "4/1/2015 Trial Court Op"), pp. 4-5). In reaching his decision, Judge Foster relied on the following subsection of MCL 445.619:

> (5) The [moldbuilder] lien remains valid until the first of the following events takes place:
>
> . . .
>
> (b) The customer receives a verified statement from the molder that the molder has paid the amount for which the lien is claimed.

MCL 445.619. He opined that QCI's liens were extinguished under MCL 445.619(5)(b) because Sejasmi had served a Verified Complaint on Takumi — the "customer" — which alleged that Sejasmi — the "molder" — had paid ***Takumi*** ***(not QCI)*** for the molds. (**Ex. 7**, 4/1/2015 Trial Court Op, pp. 3-4).

QCI filed a motion for reconsideration of the April 1, 2015 Opinion and Order denying its Motion for Enforcement. (**Ex. 8**, QCI's Motion for Reconsideration, Brief in Support, and Exhibits (hereinafter referred to as "QCI's Motion for Reconsideration")). In support of its motion, QCI argued, *inter alia*, that (1) the Verified Complaint was never served on Takumi, and (2) a moldbuilder lien is not extinguished under MCL 445.619(5)(b) unless a molder sends a verified statement to the moldbuilder's customer stating that the molder has paid the liened amount to ***the moldbuilder*** (*i.e.*, the lienholder). *Id.* In an Opinion and Order dated April 30, 2015, Judge Foster granted QCI's Motion for Reconsideration and ordered Sejasmi to deliver possession of the molds at issue to QCI within 10 days, unless payment of the liened amount was made to QCI within 7 days. (**Ex. 9**, April 30, 2015 Opinion and Order of the Macomb County Circuit Court (subsequently cited as the "4/30/2015 Trial Court Op")). Judge Foster retired shortly after he granted QCI's Motion for Reconsideration.

Sejasmi did not comply with the circuit court's April 30, 2015 Opinion and Order. Specifically, it did not deliver the molds at issue to QCI within 10 days, as ordered, and it did not pay QCI for the molds within 7 days. Instead, on May 21, 2015, Sejasmi filed its own motion for reconsideration. (**Ex. 10**, Sejasmi's Motion for Reconsideration, Brief in Support, and Exhibits (hereinafter referred to as "Sejasmi's Motion for Reconsideration")). In an Opinion and Order dated July 1, 2015, Judge Kathryn A. Viviano (Judge Foster's appointed replacement on the business docket) granted Sejasmi's Motion for Reconsideration and reversed Judge Foster's April 30, 2015 Order. (**Ex. 1**, 7/1/2015 Trial Court Op). Just as Judge Foster did in his first opinion on the issue, Judge Viviano concluded that QCI's liens were extinguished under MCL 445.619(5)(b) because Sejasmi served a verified statement on Takumi stating that it had paid ***Takumi*** (***not QCI***) for the liens. *Id*. at pp. 4-5.

QCI filed an application for leave to appeal the July 1, 2015 Opinion and Order of the Macomb County Circuit Court, which was granted by the Court of Appeals. In a majority unpublished opinion dated April 5, 2016, the Court of Appeals affirmed the July 1, 2015 Opinion and Order insofar as it dealt with the interpretation and application of MCL 445.619(5)(b). However, the majority remanded to the Macomb County Circuit Court for further fact finding on the discrete issue of whether Sejasmi ever served its Verified Complaint on Takumi. Judge Hoekstra wrote a part-dissenting, part-concurring opinion, in which he split with the majority on the interpretation and application of MCL 445.619(5)(b) and concurred with the majority on the decision to remand for further fact finding on the service issue.

On April 28, 2016, QCI filed an Application for Leave to Appeal to this Court, seeking review of the circuit court's July 1, 2015 Opinion and Order and the Court of Appeals' April 5, 2016 Opinion. This Court denied QCI's Application for Leave in an Order that stated in pertinent part as follows:

> [W]e are not persuaded that the questions presented should be reviewed by this Court ***prior to*** the completion of the [remand] proceedings ordered by the Court of Appeals.

(**Ex. 3**, July 1, 2016 Order of the Supreme Court of Michigan)(emphasis added).

On remand, after new evidence was presented on the service issue, QCI stipulated to the fact that Sejasmi had sent its Verified Complaint to Takumi, thus resolving the additional fact finding that was ordered by the Court of Appeals.

Sejasmi subsequently filed a motion for summary disposition on its claim for declaratory relief, seeking a ruling that QCI's moldbuilder liens had been extinguished, as well as a money judgment to recover the $65,000 that it had paid to QCI for possession of one of the five molds at issue. (**Ex. 11**, Sejasmi's Motion for Summary Disposition, Brief in Support, and Exhibits). QCI filed a response and cross motion for summary disposition pursuant to MCR 2.116(I)(2). (**Ex. 12**, QCI's Response to Sejasmi's Motion for Summary Disposition, Cross Motion for Summary Disposition, Supporting Brief, and Exhibits). A hearing was held on the motions for summary disposition on November 14, 2016, and Judge Viviano issued her opinion addressing the motions on December 12, 2016. As expected, Judge Viviano ruled — consistent with her July 1, 2015 Opinion and Order and the law of the case set forth in the Court of Appeals' April 5, 2016 Opinion and Order — that QCI's moldbuilder liens were extinguished when Sejasmi sent its Verified Complaint to Takumi.

On December 19, 2016, QCI filed its Claim of Appeal in the Court of Appeals. After receiving a docket number, QCI filed a "by-pass" Application for Leave to Appeal with this Court pursuant to MCR 7.303(B)(i) and MCR 7.305(C)(1). This Court denied the by-pass application in an order dated April 17, 2017, which states in pertinent part as follows:

> On order of the Court, the application for leave to appeal prior to decision by the Court of Appeals is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court before consideration by the Court of Appeals.

(**Ex. 13**, April 4, 2017 Order of the Michigan Supreme Court). Thereafter, the case was taken up again by the court of appeals, which promptly affirmed the trial court's final order under the law of the case doctrine. (**Ex. 5**, 7/27/2017 Court of Appeals Op).

III. THE PARTIES AND THE MOLDS

QCI is a small tool and die shop located in Wixom, Michigan. Among other things, it designs, fabricates, and manufactures plastic injection molds that are used by suppliers in the automobile supply chain. The customers who purchase molds from QCI are typically suppliers who use the molds to produce plastic parts, *i.e.*, molders. Occasionally, the customer is a supplier who sells the mold to a molder, *i.e.*, a middleman. The instant case involves the latter situation.

In May and June 2013, QCI entered into a series of contracts with Takumi (n/k/a NKL Manufacturing, Inc.), which caused QCI to build the plastic injection molds identified in Exhibits A, B, and D to QCI's Brief in Support of its Motion for Enforcement (the "Molds"). (**Ex. 6**, Motion for Enforcement (Ex. J to Brief; Ex. B to Brief; and Ex. A, B, and D to Brief)). QCI built the Molds pursuant to its contracts with Takumi and (at the direction of Takumi) shipped the Molds directly to Takumi's customer, Sejasmi. (**Ex. 6**, Motion for Enforcement (Ex. C to Brief)). Takumi has failed to pay QCI in full for the Molds. *Id*. There remains an outstanding balance due and owing to QCI for the Molds in the amount of $187,500. *Id*.

As stated above, the Molds are currently in the possession of Sejasmi and are being used by Sejasmi for the production of plastic automobile components. (**Ex. 10**, Sejasmi's Motion for Reconsideration (pp. 1-2 of Brief)).

IV. QCI'S MOLDBUILDER LIENS

Under the Mold Lien Act, if a moldbuilder follows certain statutory requirements, it can obtain a lien on a mold that it has built. The provisions of the Mold Lien Act pertaining to the creation of a moldbuilder lien are set forth in MCL 445.619 as follows:

> (1) A mold builder shall permanently record on every die, mold, or form that the mold builder fabricates, repairs, or modifies the mold builder's name, street address, city, and state.
>
> (2) A mold builder shall file a financing statement in accordance with the requirements of section 9502 of the Uniform and Commercial Code, 1962 PA 174, MCL 440.9502.
>
> ***(3) A mold builder 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 molder owes the mold builder for the fabrication, repair, or modification of the die, mold, or form. The information that the mold builder is required to record on the die, form or mold under subsection (1) and the financing statement required under subsection (2) shall constitute actual and constructive notice of the mold builder's lien on the die, mold, or form.

MCL 445.619 (emphasis added).

Prior to enforcement of a moldbuilder lien, a moldbuilder must send a demand notice to the moldbuilder's "customer" and to the "molder" in possession of the liened mold. MCL 445.620. The moldbuilder cannot take action to enforce its lien against either party until 90 days after the demand notice has been sent. *Id.* To be effective, the 90-day demand notice must state that a moldbuilder lien is being claimed and the amount of the claimed lien. *Id*. In addition, it must contain a specific demand for payment. *Id*.

QCI met all of the requirements under the Mold Lien Act for creation and enforcement of moldbuilder liens on the Molds.[3] Prior to shipping the Molds to Sejasmi, QCI affixed its name, street address, city, state, and zip code on the Molds by placing a QCI identification tag on all of the Molds. (**Ex. 6**, Motion for Enforcement (Ex. C to Brief; Ex. N to Brief)). QCI also filed UCC Financing Statements with respect to the Molds in accordance with the requirements of Section 9502 of the Uniform Commercial Code, MCL 440.9502. (**Ex. 6**, Motion for Enforcement (Ex. C to Brief; Ex. I to Brief)). Finally, QCI sent Takumi and Sejasmi the required 90-day demand notice

[3] The Court of Appeals correctly found that this issue was "undisputed." (**Ex. 2**, Appellate Court Op, p. 3).

under the Mold Lien Act on October 27, 2014, via certified mail, return receipt requested. (**Ex. 6**, Motion for Enforcement (Ex. C to Brief; Ex. J to Brief)).

V. PROCEDURAL HISTORY

Sejasmi initiated the above-captioned case by filing a five-count Verified Complaint, dated November 4, 2014. (**Ex. 6**, Motion for Enforcement (Ex. C to Brief)). In Count IV of its Verified Complaint, Sejasmi requested that the circuit court enter an Order declaring that QCI did not have valid liens on any of the molds in Sejasmi's possession, custody, or control. *Id*. at pp. 9-10. In support of its request for relief, Sejasmi vaguely alleged that QCI failed to follow the statutory requirements for obtaining valid liens under the Mold Lien Act.[4] *Id*.

QCI filed its Answer and Affirmative Defenses to Sejasmi's Verified Complaint on February 10, 2015, along with a Counterclaim against Sejasmi. Count I of QCI's Counterclaim against Sejasmi was a claim under the Mold Lien Act to enforce QCI's valid moldbuilder liens. At the same time QCI filed its Answer and Counterclaim, it also filed its Motion for Enforcement. As stated above, the circuit court initially denied QCI's Motion for Enforcement in an April 1, 2015 Opinion and Order, in which it also ruled that QCI's moldbuilder liens had been extinguished. (**Ex. 7**, 4/1/2015 Trial Court Op).

QCI subsequently filed its Motion for Reconsideration of the April 1, 2015 Opinion and Order, which was granted by Judge Foster in an Opinion and Order dated April 30, 2015. (**Ex. 8**, QCI's Motion for Reconsideration; **Ex. 9**, 4/30/2015 Trial Court Op). In his April 30, 2015 Opinion and Order, Judge Foster reversed his initial decision to deny QCI's motion for immediate possession of the Molds. Sejasmi subsequently filed its own motion for reconsideration, which

[4] Sejasmi has never identified or even attempted to identify a specific basis for its allegation that QCI failed to comply with the requirements under the Mold Lien Act. In any event, the Court of Appeals correctly ruled that the issue of the validity and perfection of QCI's liens is "undisputed." (**Ex. 2**, Appellate Court Op, p. 3).

was granted by Judge Viviano (Judge Foster's replacement) on July 1, 2015. (**Ex. 10**, Sejasmi's Motion for Reconsideration; **Ex. 1**, 7/1/2015 Trial Court Op). In her July 1, 2015 Opinion and Order, Judge Viviano reversed Judge Foster's April 30, 2015 ruling and held that QCI's moldbuilder liens were extinguished under MCL 445.619(5)(b).

QCI sought leave from the Court of Appeals to file an interlocutory appeal of the Macomb County Circuit Court's July 1, 2015 Opinion and Order. QCI also filed various motions with the Court of Appeals, including (1) a motion for expedited appeal and related motion for immediate consideration thereof; (2) a motion for stay of trial court proceedings and a related motion for immediate consideration thereof; and (3) a motion for peremptory reversal of the Macomb County Circuit Court's July 1, 2015 Opinion and Order. The Court of Appeals granted leave to appeal and granted all of the motions identified above, with the exception of the motion for peremptory reversal, which was denied.

QCI subsequently filed its appeal of the Macomb County Circuit Court's July 1, 2015 Opinion and Order with the Court of Appeals. On April 5, 2016, following briefing and oral argument, the Court of Appeals issued a majority unpublished opinion affirming the trial court's conclusion of law that a moldbuilder lien is extinguished if a molder in possession of a liened mold sends a verified statement to the moldbuilder's customer stating that the molder has paid the customer, even when it is undisputed that nobody has paid the lien-holding moldbuilder. (**Ex. 2**, 4/5/16 Appellate Court Op). However, the court remanded for further fact finding on the issue of whether Sejasmi actually served its Verified Complaint on Takumi. *Id.* In a part-dissenting, part-concurring opinion, Judge Hoekstra concluded that reversal was warranted because QCI's moldbuilder liens were not extinguished by Sejasmi's verified statement that it had paid Takumi.

On April 28, 2016, QCI filed an Application for Leave to Appeal to this Court, which was denied in an order which stated in pertinent part as follows:

> [W]e are not persuaded that the questions presented should be reviewed by this Court prior to the completion of the [remand] proceedings ordered by the Court of Appeals.[**Ex. 3**].

On remand, new evidence came to light showing that Sejasmi had in fact sent the Verified Complaint to Takumi. Accordingly, Sejasmi filed a motion for summary disposition on its claim for declaratory relief, which was granted by Judge Viviano, who simultaneously dismissed QCI's claim under the Mold Lien Act. QCI subsequently filed its Claim of Appeal in the Court of Appeals, and a by-pass application for leave with this Court. After the by-pass application was denied, the court of appeals promptly affirmed the trial court's final opinion and order under the law of the case doctrine.

LAW AND ARGUMENT

Standard of Review. This Court has discretion to grant an application for leave to appeal when the decision to be appealed is "clearly erroneous and will cause material injustice" and/or where the decision to be appealed "involves a legal issue of major significance to the state's jurisprudence." MCR 7.305(B)(3) and (5)(a). The issues that QCI seeks leave to appeal involve questions of law and statutory interpretation, both of which are reviewed *de novo*. *Brackett v Focus Hope, Inc*, 482 Mich 269, 275; 753 NW2d 207 (2008); *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998); *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008); *People v Meconi*, 277 Mich App 651, 659; 746 NW2d 881 (2008); *In re Carey*, 241 Mich App 222, 226; 615 NW2d 742 (2000).

I. THE COURT SHOULD GRANT THIS APPLICATION FOR LEAVE TO APPEAL BECAUSE THE APPEAL WOULD INVOLVE PRINCIPLES OF MAJOR SIGNIFICANCE TO THE STATE'S JURISPRUDENCE.

"Tool and die manufacturing has long been considered a key industrial sector."[5] (**Ex. 14**, *The Tool and Die Industry: Contribution to U.S. Manufacturing and Federal Policy Considerations*, The Tool and Die Industry Congressional Research Service (hereinafter the "CRS Report"), p.1). A 1975 analysis captured the nature of the industry:

> While mass production is made possible by tooling, the principal tools themselves cannot be mass produced. Tool making, and especially mold and diemaking, is one of the few activities connected with modern large-scale industry in which there has not been a general substitution of machinery for basic skills. These tools are custom-made, one-at-a-time by skilled artisans who patiently and precisely machine, finish, and construct the complicated devices. Only one die, or set of dies, is needed for the manufacture of many thousands, and sometimes millions, of automobile fenders or hoods of a given design.... The one-of-a-kind characteristic of the tooling industry accounts for enormous differences in management and capitalization strategies, and the skills, machinery, and technology amenable to tooling making and mass production.

Id. at p. 2 (*citing* Harold E. Arnett and Donald N. Smith, The Tool and Die Industry: Problems and Prospects (Ann Arbor, Michigan: Graduate School of Business Administration, the University of Michigan, 1975), p. 6).

Almost half of the work performed by toolmakers is for the motor vehicle industry, so it is no surprise that Michigan is home to more of these manufacturers than any other State. *Id.* at Summary and at p. 4.[6] Most of these manufacturers are small, privately-owned businesses, which are often family operated. *Id.* at Summary. They typically rely on cash flow and credit to fund their operations. (2002 Report of U.S. International Trade Commission, Tools Dies and Industrial

[5] [A]ny durable-goods manufacturer seeking to introduce a new product is likely to require customized tools, dies, and molds to make metal, plastic, and ceramic components."

[6] Customers prefer to use moldbuilders in close proximity in order to facilitate tryout, maintenance, and repair activities. (2002 Report of U.S. International Trade Commission, Tools Dies and Industrial Molds: Competitive Conditions in the Unites States and Selected Foreign Markets, p. 3-18 to 3-20).

Molds: Competitive Conditions in the Unites States and Selected Foreign Markets (hereinafter the USITC Report), pp. 3-18 to 3-20).[7]

Among the challenges that toolmakers face are reduced profit margins, stretched out payments terms from customers,[8] resultant cash flow problems, and difficulty obtaining necessary credit. *Id.*; (**Ex. 14**, CRS Report, p. 14). This has made it difficult for toolmakers to pay for state-of-the-art equipment and training costs, which are necessary to remain relevant in a fiercely competitive global industry.[9] (USITC Report, p. 6-6).

Steps have been taken at the State and Federal level to try to address the issues facing toolmakers. (**Ex. 14**, CRS Report, pp. 13-15; USITC Report at pp. 3-18 to 3:19). Michigan has taken a leading role in that regard, and was one of the first, if not the first, of several States to provide moldbuilders with a statutory nonpossessory lien to "give the toolmaker the legal right to repossess the tooling if payment is overdue." (USITC Report at pp. 3-18 to 3-19).

If the lower court rulings that QCI seeks to appeal are left to stand, they will undo all of the progress that has been made in Michigan with respect to the protection of moldbuilders. The decisions will blunt the one weapon that the moldbuilders have to leverage payment from customers and molders. Furthermore, the ability of these moldbuilders to obtain credit will be jeopardized because lenders will not be able to rely on moldbuilders' accounts receivable as a reliable source of collateral to secure their loans.

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[7] The report can be accessed at the following web address: https://books.google.com/books?id=oPYkj0YhhSYC&lpg=PP1&pg=PP1#v=onepage&q&f=false

[8] "The industry has . . . urged creation of a 'private government guaranteed accounts receivable insurance program' to help tool and die makers, as companies may need to wait many months for payment by OEMs." (**Ex. 14**, CRS Report, p. 14).

[9] Moldbuilding is a capital-intensive business. Tools like molds and dies can cost up to a million dollars each. In addition, manufacturers are often forced to invent new technologies to meet customer demands.

If left to stand, the lower courts' decisions have the potential to drive many Michigan moldbuilders out of business, which would severely disrupt the smooth operation of the automobile supply chain. For all of the reasons explained above, the issue that QCI seeks leave to appeal clearly involves principles of major significance to the state's jurisprudence.

II. THE COURT SHOULD GRANT THIS APPLICATION FOR LEAVE TO APPEAL BECAUSE THE LOWER COURTS' RULINGS ARE CLEARLY ERRONEOUS AND WILL RESULT IN MATERIAL INJUSTICE.

The Mold Lien Act was amended by Act No. 17 of the Public Acts of 2002 in order to add the provisions of the Act that pertain to moldbuilder liens. The House Legislative Analysis Section for House Bill 4812 states that the 2002 amendments to the Mold Lien Act were enacted to "protect [mold builders'] interests in the molds they make when molders or customers don't pay their bills or when they go into bankruptcy or go out of business." (**Ex. 8**, QCI's Motion for Reconsideration (Ex. D to Brief)).

The first step that a moldbuilder must take under the Mold Lien Act to protect its interest in the molds it makes is to properly perfect moldbuilder liens on the molds. As stated, *supra*, it is "undisputed" that QCI properly perfected its moldbuilder liens on the Molds. (**Ex. 2**, 4/5/16 Appellate Court Op, p. 3).

Once a moldbuilder lien has attached to a mold, the Mold Lien Act sets forth three ways in which it can be terminated:

> (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.

MCL 445.619 (emphasis added).

In the instant case, the lower courts relied on subsection 9(5)(b) of the Mold Lien Act (emphasized above) to support their conclusion of law that QCI's moldbuilder liens on the Molds were extinguished when (or in the Court of Appeals case, *if* and when) Sejasmi sent its Verified Complaint to Takumi. For the reasons set forth below, the lower courts' conclusion of law is clearly erroneous. If left to stand, the ruling will result in manifest injustice and will completely eviscerate an act of the Legislature designed to protect moldbuilders. In addition, the ruling is likely to have a substantially damaging effect on the moldbuilding and automobile industries in Michigan.

A. As a General Rule, and Under the Mold Lien Act, a Lien Cannot Be Extinguished by Payment to Someone Other than the Lienholder.

It is beyond peradventure that a lien on property remains valid and enforceable until the amount for which the lien is claimed is paid ***to the lienholder***. For example, in a real estate transaction, when a buyer pays a seller for property encumbered by a mortgage, but fails to pay the mortgagee, the payment to the seller does not extinguish the mortgage. In that situation, if the seller has absconded or is uncollectible, the buyer may have to make a second payment to the mortgagee in order to obtain title to the property free and clear of the mortgage.

The general rule may be modified by statute, as it has been with respect to construction liens under Section 118a of the Construction Lien Act ("CLA") . Section 118a of the CLA sets forth requirements that must be met in order for a homeowner to avoid paying a lien-holding subcontractor for amounts that the homeowner has already paid to the general contractor. MCL

570.1118a.[10] In other words, the CLA protects homeowners against having to make "double payments" — to a general contractor ***and*** a subcontractor. The legislature was explicit in its intent in this regard, stating:

> (1) A claim of construction lien does not attach to a residential structure, to the extent payments have been made, if the owner or lessee files an affidavit with the court stating that the owner or lessee has paid ***the contractor*** for the improvement to the residential structure ***according to the contract***, indicating in the affidavit the amount of the payment.

Id. (emphasis added).

The Mold Lien Act does ***not*** contain a statutory provision akin to Section 118a of the CLA, *i.e.*, a provision expressly stating that a molder can pay someone other than the lien-holding moldbuilder and thereby extinguish the lien. To the contrary, the Mold Lien Act specifically states that a moldbuilder lien is only extinguished if payment is actually made ***to the lienholding moldbuilder*** or if the molder sends a verified statement to the customer stating that ***the amount owed to the lienholding moldbuilder has been paid***.

As evidenced by CLA Section118a, the Legislature clearly knows what words to use to create a defense against "double payment" in situations in which it wants to provide such a defense. It chose not to do so in the case of the Mold Lien Act. MCL 570.1118a*; see also*, (**Ex. 15**, Legislative Analysis of House Bills 4356-4359 as Reported 2-17-2010 (recognizing that, under the Mold Lien Act, a customer "may end up paying twice for [a liened] mold" when the customer "pays its supplier, but the supplier does not pay the moldbuilder . . . ."). The lower courts disregarded the Legislature's intent when they created their own judicial protection against "double payment" under the Mold Lien Act.

[10] In the absence of Section 118a of the CLA, homeowners in Michigan would face the prospect of having to pay twice in situations where payments were made to contractors who failed to pay their subcontractors.

B. Subsection 9(5)(b) of the Mold Lien Act is Only Implicated When a Molder Sends a Verified Statement that Payment Has Been Made to the *Lienholding Moldbuilder*.

As discussed *supra*, the Mold Lien Act sets forth three ways in which a lien can be terminated: (1) payment *to the lien-holding moldbuilder*, MCL 445.619(5)(a); (2) stating that payment of the liened amount has been made, MCL 445.619(5)(b); and (3) termination of a UCC filing statement, MCL 445.619(5)(c). In the instant case, MCL 445.619(5)(a) does not apply because it is undisputed that QCI has not been paid in full for the Molds. MCL 445.619(5)(c) does not apply because QCI did not terminate its UCC financing statements. Thus, the only way QCI's liens could be extinguished is if MCL 445.619(5)(b) applies to the facts of this case. For the reasons set forth below, it does not.

Subsection 9(5)(b) states that a lien is extinguished if "the customer receives a verified statement from the molder that the molder has paid ***the amount for which the lien is claimed***." MCL 445.619(5)(b) (emphasis added). Section 9(3) of the Mold Lien Act defines the "***amount of the lien***" as "the amount that a customer or molder ***owes the moldbuilder*** for the fabrication, repair, or modification of the die, mold, or form." MCL 445.619 (emphasis added).

As Judge Hoekstra correctly stated in his dissenting opinion, subsections 9(3) and 9(5)(b) must be read together, and doing so leads to the inescapable conclusion that "the amount for which the lien is claimed" is the amount "owe[d] the moldbuilder." Judge Hoekstra reasoned as follows:

> [T]o ascertain what is meant by "the amount for which the lien is claimed," it is appropriate to turn to MCL 445.619(3), which states, in relevant part, that ""[t]he 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." In other words, "the amount" is ***statutorily defined*** as the amount owed to the moldbuilder. Thus reading MCL 445.619(5) together with MCL 619(3), it is plain that to have "paid the amount" in question, payment must have been made to the moldbuilder, i.e., the party to whom the debt is owed. Conversely, a verified statement that the molder gave money to the customer is not a statement that "the amount" owed to the moldbuilder under MCL 445.619(3) has been "paid."

> In this case, the molder's statement reported nothing more than payment to the customer. Because payment to a customer is not payment of the amount owed to the moldbuilder, in my judgment, this verified statement was deficient and did not extinguish the moldbuilder's liens under MCL 445.619(5)(b). Consequently, I would reverse the trial court.

(**Ex. 2**, 4/5/16 Appellate Court Op) (Hoekstra, J., dissenting, p. 2) (emphasis added).

Under Judge Hoekstra's analysis, Sejasmi would face the prospect of double payment, (which is what the Legislature intended). However, Sejasmi had the means to protect itself against that possibility. Indeed, QCI's liens were perfected by the filing of UCC financing statements which served as notice to the world of its interests in the Molds. *See*, MCL 445.619 (stating that "[t]he 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."). Accordingly, Sejasmi had the ability to make arrangements with Takumi to ensure that QCI's liens were satisfied. *See Titanus Cement Wall Co Inc v Watson*, 158 Mich App 210, 219-20; 405 NW2d 132 (1987) ("Having notice, it would appear that the prospective purchaser has the opportunity to identify possible lien claimants and the amount of such claims and also has the ability to arrange payments to the builder/developer in such a manner as to insure that such claims are paid."). Sejasmi failed to take these basic and normal actions, but the lower courts rewarded Sejasmi's negligent behavior to the detriment of QCI — the moldbuilder who did everything "by the book" and who is supposed to be protected under the Mold Lien Act.

The lower courts completely failed to grasp the statutory interpretation issue in this case. They made no effort to read MCL 445.619(5) together with MCL 445.619(3) or in view of MCL 455.619(3).[11] Because they ignored MCL 455.619(3), the lower courts erroneously concluded that

[11] Michigan law requires exactly the opposite approach: this Court has held that "[a] statutory provision that is in dispute must be read in light of the general purpose of the act and in

QCI was asking them to "read into the statutory provision language that is absent." (**Ex. 2**, 4/5/16 Appellate Court Op, p. 5). The language is not absent at all: its set forth, plain as day, in MCL 455.619(3), which the lower courts overlooked or ignored. Only Judge Hoekstra, in his dissenting opinion, properly applied MCL 455.619(3). Judge Hoekstra recognized that MCL 455.619(3) contains a "***statutory definition***" that is controlling in this case. (**Ex. 2**, Appellate Court Op, (Hoekstra, J., dissenting, p. 2)) (emphasis added).

The lower courts also failed to address the absurd results of their ruling:[12] that payment to someone other than the moldbuilder is ***not*** sufficient to extinguish a moldbuilder lien, ***but*** merely stating that payment has been made to someone other than the moldbuilder ***is*** sufficient to extinguish the lien. In order to avoid such an absurd result, this Court should rule that Subsection 9(5)(b) requires the molder (in this case Sejasmi) ***to state that it has paid the moldbuilder***. This is the only interpretation that gives effect to the express purpose of the Mold Lien Act, which is to protect moldbuilders.

Contrary to the Court of Appeals majority's reasoning, Judge Hoekstra's interpretation does not render Subsection 9(5)(b) "duplicative" of Subsection 9(5)(a). Indeed, the readily apparent purpose of Subsections 9(5)(b) is to protect upstream customers by giving them an ***alternative*** way to ensure that moldbuilder liens on their tools have been extinguished when the customer cannot locate the moldbuilder to obtain direct verification of payment. In that situation,

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conjunction with the pertinent provisions thereof." *Metropolitan Council 23, AFSCME v Oakland County*, 409 Mich 299; 294 NW2d 578 (1980).

[12] *See, Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 664, 674; 760 NW2d 565 (2008) (holding that "absurd-results rule" applies in Michigan and that "a statute should be construed to avoid absurd results that are manifestly inconsistent with the legislative intent . . . .").

the customer can simply ask the molder for a verified statement of payment and proceed safe in the knowledge that the moldbuilder lien has been extinguished.

This Court should adopt the reasonable interpretation of the Mold Lien Act that actually benefits moldbuilders — the class that the Legislature sought to protect under the statute — rather than the illogical interpretation of the Act that leaves moldbuilders holding the bag. *See, e.g., P. H. I. Const. Co v Riverview Commons Associates*, 80 Mich App 518; 264 NW2d 50 (1978) (holding that statute creating lien *"**should be interpreted in such a way as to protect liens, not require that they be extinguished***.")(emphasis added).[13] Otherwise, moldbuilders might justifiably conclude that there is no point in even filing a UCC financing statement, or bothering to seek protection under the Mold Lien Act at all.[14]

CONCLUSION AND REQUEST FOR RELIEF

Based on the foregoing, QCI respectfully requests that this Honorable Court enter an opinion and order that states the following:

A. QCI's Application for Leave to Appeal is granted.

B. The July 1, 2015 and December 12, 2016 Opinions and Orders of the Macomb County Circuit Court, as well as the April 5, 2016 and July 17, 2017 Opinions and Orders of the Court of Appeals are reversed.

C. QCI has valid and enforceable liens on the Molds at issue under the Mold Lien Act.

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[13] Furthermore, there is no logical reason why a molder would send a notice to a downstream "customer" telling the downstream customer something that the customer is already aware of — namely that the "molder" has paid the downstream customer. In this case, no purpose was served by Sejasmi sending a verified statement to Takumi telling Takumi that Sejasmi has paid Takumi. Furthermore, the Court should consider the fact that the "customer" and the "molder" are frequently the same party. Indeed, molders frequently place orders with moldbuilders to build molds (making them "customers" too). Accordingly, the lower courts' ruling opens the door to the absurd situation where a "molder" who is also a "customer" could send itself a verified statement stating that it had paid itself for a liened mold.

[14] The lower courts' decisions render the whole concept of "record notice" nugatory.

D. Sejasmi must either deliver immediate possession of the Molds to QCI, or immediately deliver payment of the liened amount of $187,500 to QCI.

E. That QCI is entitled to other relief that is just and equitable.

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Dated: August 22, 2017

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