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. 156341

Court of Appeals Docket No. 336205
(formerly Docket No. 328292)

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

Hon. Kathryn A. Viviano

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APPELLEE, SEJASMI INDUSTRIES, INC.'S ANSWER
TO QUALITY CAVITY'S APPLICATION FOR LEAVE TO APPEAL

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Was summary disposition properly granted on Count IV of the Complaint (Declaratory Relief) and Count I of the Counter-Complaint (Enforcement of the Michigan Mold Lien Act) pursuant to MCR 2.116(C)(10) when the Trial Court found that the Appellee provided proper notice under MCL 445.619(5)(a), pursuant to the Appellant and Appellee's stipulation, and held the Appellant's liens were extinguished?

Appellant's Answer: No

Appellee's Answer: Yes

COUNTER STATEMENT OF FACTS

I. STATEMENT OF FACTS AND PROCEEDINGS

Sejasmi is the exclusive supplier of certain plastic components to Magna Modular Systems, Inc. and Mahle Behr. Beginning in February of 2013, Sejasmi issued purchase orders to Takumi Manufacturing Company ("Takumi") to build five (5) custom production molds.[1] Unbeknownst to Sejasmi, Takumi sub-contracted a portion of this work to QCI. From February 12, 2013 through February 19, 2014, Sejasmi paid Takumi a total sum of $387,970.00 – the total amount due to Takumi for the tooling based on the invoices issued by Takumi.

QCI never issued an invoice to Sejasmi, nor did it seek payment from Sejasmi in any way for its involvement in the production of this tooling. In October of 2014, Sejasmi was made aware that QCI alleged that Takumi had failed to pay QCI for its portion of the work on the tooling. At that time, QCI was in possession of the final tool that Sejasmi had contracted Takumi to produce. Sejasmi, desperate to begin production for its customer, filed an action in Macomb County Circuit Court (Case No. 2014-004273-CB) seeking, among other things, a Court Order to release one of the frame tools from QCI's possession. It is from this case that the current appeal (and a prior appeal filed by QCI, Docket No. 328292) stems.

a. Overview Of Trial Court Case

On February 10, 2015, QCI filed its Motion for Enforcement of Liens ("Motion to Enforce"), seeking to gain possession of four of the five molds. QCI's Motion to Enforce sought "immediate payment in full for any molds with respect to which Sejasmi has an interest[,]" and/or an Order requiring that "Sejasmi immediately deliver possession of the Molds to QCI."

[1] QCI's Appeal Brief included as exhibits nearly a foot of paper. In light of the fact that most of the documents Sejasmi cites in its Brief are already part of this Court's record, Sejasmi will refrain from doing the same.

Oral argument was heard on QCI's Motion to Enforce on March 9, 2015. In the Motion to Enforce and during oral argument, QCI argued that the Mold Lien Act is unambiguous and ought to be enforced as written. In fact, QCI made the following statement before the trial court:

> The Act says we're entitled to immediate possession. There is really no precedent for equity coming into supersede the clear, unambiguous provision of the statute that says Quality Cavity is entitled to immediate possession of the tooling.

(March 9, 2015 Hearing Transcript, p. 7-13). QCI admitted that the Mold Lien Act is clear.

Ultimately, the trial court agreed with QCI that the Mold Lien Act was clear and on April 1, 2015 issued an order denying QCI's Motion to Enforce. The trial court found that Sejasmi properly extinguished any claimed liens on the Molds pursuant to the plain language of MCL 445.619(5)(b). Judge Foster reasoned as follows:

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

(April 1, 2015 Opinion and Order, p. 4).

On April 20, 2015, QCI filed a Motion for Reconsideration of the trial court's April 1, 2015 Order. On April 30, 2015, the trial court issued its Opinion and Order granting QCI's Motion for Reconsideration, holding that QCI has enforceable liens on four of the Molds. In negating its prior finding, the trial court interpreted MCL 445.619(5)(a) and (5)(b) to apply in distinct situations, reasoning as follows:

> While this Court was initially concerned that such an interpretation would render MCL 445.619(5)(a) nugatory, upon additional review the Court is satisfied that each subsection applies to a distinct situation. Subsection (a) operates to extinguish a lien when a moldbuilder is actually paid the amount of the lien. Subsection (b)

> operates to extinguish a lien in order to protect a customer in the event that it receives a verified statement that the lien has been satisfied, but where the moldbuilder has not been in fact paid. Although the Court recognizes that this interpretation operates in this case to likely require [Sejasmi] to pay for at least some of the Molds twice if it wishes to keep them, the Court is satisfied that this interpretation is the only one which is consistent with the spirit and purpose of the Act. Consequently, the Court is convinced that Defendant Quality's motion for reconsideration must be granted.

(April 30, 2015 Opinion and Order, p. 4).

Sejasmi filed its own Motion for Reconsideration, which was ultimately granted by Judge Viviano (Judge Foster's replacement) on July 1, 2015. In the July 1, 2015 Opinion, Judge Viviano reversed Judge Foster's April 30, 2015 Opinion and held that QCI's moldbuilder liens were extinguished under MCL 445.619(5)(b).

b. QCI's First Appeal

On July 13, 2015, QCI sought leave from this Court to file an interlocutory appeal of the July 1, 2015 Opinion and Order in Court of Appeals Case No. 328292 ("First Appeal"). In conjunction with its Application for Leave to Appeal, QCI also filed a Motion for Immediate Consideration. That same day, QCI also filed a Motion to Stay and a Motion for Immediate Consideration of its Motion to Stay.

On August 27, 2017, after QCI's Application for Leave to Appeal was granted, QCI filed a Motion to Expedite Appeal and a Motion for Immediate Consideration of its Motion to Expedite Appeal. Also on August 27, 2017, QCI filed a Motion for Preemptory Reversal of the Trial Court's July 1, 2015 Opinion and a Motion for Immediate Consideration of its Motion for Preemptory Reversal.

On September 11, 2015, the Court of Appeals denied QCI's Motion for Preemptory Reversal, but granted QCI's Motion to Expedite Appeal and issued a briefing schedule. The parties

timely submitted their briefs according to the briefing schedule. In its Appeal Brief, QCI asked the Court of Appeals to determine the following question in the First Appeal:

> Whether a moldbuilder's lien is terminated under MCL 445.619(5)(b) when a molder sends a verified statement of payment to the moldbuilder's customer stating that the molder has paid the moldbuilder's customer, rather than the moldbuilder (i.e., the lienholder)?

On April 5, 2016, the Court of Appeals issued its Opinion. In the Opinion, the Court "remand[ed] the matter to the trial court for further fact finding on the issue of whether the customer received a verified statement from the molder, but affirm[ed] the trial court's reading ***and*** application of MCL 445.619(5)(b)." (emphasis added).

Unsatisfied with the results at the Court of Appeals, on April 28, 2016, QCI filed an Application for Leave to the Supreme Court and a Motion for Immediate Consideration of its Application for Leave to Supreme Court. QCI, on that same day, also filed a Motion for Stay and a Motion for Immediate Consideration of its Motion for Stay.

On July 1, 2016, the Supreme Court granted QCI's Motion for Immediate Consideration and denied its Motion for Leave. In denying the Motion for Leave, the Supreme Court noted: ". . . we are not persuaded that the questions presented should be reviewed by this Court prior to the completion of the proceedings ordered by the Court of Appeals."

c. Trial Court Remand

After running out of courts to which QCI could appeal, the case was finally remanded back to the Macomb County Circuit Court pursuant to the Court of Appeals April 5, 2016 Opinion. On October 24, 2016, on remand, Sejasmi filed a Motion for Summary Disposition, arguing that summary disposition was appropriate on the remaining claims in the case (i.e. Count I of the Counter-Complaint, Enforcement of the Michigan Mold Lien Act against Sejasmi and Count IV of the Complaint Declaratory Relief). QCI opposed Sejasmi's Motion for Summary Disposition.

On November 28, 2016, the Macomb County Circuit Court held a hearing on the Motion for Summary Disposition and took the matter under advisement.

On December 12, 2016, in response to Sejasmi's Motion for Summary Disposition and consistent with the April 5, 2016 Decision of the Court of Appeals, the Macomb County Circuit Court issued an Opinion and Order in which the Court addressed the issue of whether Sejasmi sent a verified statement in compliance with MCL 445.916(5)(b). Noting that the parties stipulated that the statement was sent, the Circuit Court granted summary disposition on the remaining claims and held that there was no genuine issue of material fact that Sejasmi extinguished the liens pursuant to MCL 445.916(5)(b). Specifically, in the December 12, 2016 Opinion and Order the Circuit Court noted:

> . . . the Court of Appeals remanded the matter on the issue of whether [Sejasmi] made a verified statement in compliance with MCL 445.916(5)(b). However, the parties have now stipulated that such as statement was sent. Accordingly, Count I of the Counter-Complaint is properly dismissed as [Sejasmi] has extinguished the liens pursuant to MCL 445.916(5)(b).

(December 12, 2016 Opinion and Order, p. 3-4) (emphasis added).

Additionally, in analyzing Sejasmi's request for summary disposition as to its Declaratory Relief count, the Circuit Court further examined the extinguishment of QCI's liens under MCL 445.916(5)(b):

> Count IV is a claim for declaratory relief. In its prayer for relief in connection with Count IV, [Sejasmi] requests an order declaring that Defendant Quality does not have a valid lien on the Molds. (*See* Complaint, at p. 10) As discussed above, the parties have stipulated that [Sejasmi] has served a verified statement on Defendant Takumi that it has paid the amount for which the liens are claims [sic]. Based on this Court's previous holding that a lien is extinguished under MCL 445.916(5)(b) upon the molder, i.e. [Sejasmi], serving he customer, i.e. Takumi, with a verified statement that it has paid the amount for which the lien is claimed, and the parties' stipulation that such a statement was served on Defendant Takumi, the Court is convinced that [Sejasmi] is entitled to an order declaring Defendant Quality's liens are extinguished.

(December 12, 2016 Opinion and Order, p. 4) (emphasis added).

d. QCI's Second Appeal

In this most recent appeal, ("Second Appeal"), QCI asked the Court of Appeals to determine the following question:

> 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?

Notably, this was the same question that QCI asked the Court of Appeals to determine in its First Appeal.

Even more remarkable is that the *only* action taken by the trial court on remand was to grant Sejasmi's Motion for Summary Disposition. Accordingly, the only issue that would be properly addressed in this Second Appeal is whether the trial court erred when it granted summary disposition in favor of Sejasmi under MCR 2.116(C)(10), because QCI already appealed the July 1, 2015 Opinion and Order during an interlocutory appeal to this Court. Instead, QCI filed this Second Appeal, asking this Court to revisit the same issue which was *previously decided* by this Court on April 5, 2016.

Below is a summary of the procedural posture that is relevant to QCI's Second Appeal:

Date	Description
December 19, 2016	QCI files claim of appeal, Court of Appeals Case No. 336205
January 6, 2017	QCI files Bypass Application to the Supreme Court
February 3, 2017	QCI files Motion to hold Court of Appeals case in Abeyance
February 23, 2017	Court of Appeals grants Appellant's Motion to hold case in abeyance pending decision in Supreme Court case
April 4, 2017	Supreme Court denies Appellant's request to bypass

April 28, 2017	QCI files Appeal Brief
April 28, 2017	QCI files **Motion to Expedite Appeal** and **Motion for Immediate Consideration of Motion** to Expedite Appeal
April 28, 2017	QCI files Motion for Preemptory Reversal and **Motion for Immediate Consideration** of Preemptory Reversal
May 10, 2017	Court of Appeals Grants QCI's Motions for Immediate Consideration; Denies QCI's Motion to Expedite Appeal; and Denies the Motion for Preemptory Reversal for failure to persuade the Court of the existence of a manifest error requiring reversal and warranting preemptory relief without argument or formal submission.

This Second Appeal was QCI's fifth bite (at least) at the same apple. The Court of Appeals aptly recognized that QCI's Second Appeal was just another attempt at the same argument and granted Sejasmi's Motion to Affirm on July 27, 2017, holding that the issues sought to be reviewed were so unsubstantial as to need no argument or formal submission.

ARGUMENT

I. QCI WAIVED ITS RIGHT TO APPEAL UNDER THE INVITED ERROR DOCTRINE

QCI conveniently fails to disclose to this Court that on remand QCI **stipulated** that Sejasmi sent a verified statement to QCI's customer. Instead, QCI alludes to "undisputed evidence" regarding a verified statement sent by Sejasmi, but purposely ignored that QCI *agreed* that Sejasmi sent a verified statement under MCL 445.619(5)(a). In other words, the only issue that was to be addressed by the trial court on remand pursuant to the Court of Appeal's April 5, 2016 Order (i.e. whether Sejasmi sent a verified statement to QCI's customer) was the subject of a stipulation between the parties. Further, the lynchpin of the trial court's opinion granting summary disposition was that **QCI stipulated that verified notice was sent**, and therefore, no genuine issues of material fact existed. Now, QCI appeals to this Court (again). However, the exact order which QCI

is appealing in this Second Appeal is confusing, and likely purposefully so. While QCI certainly references the trial court's December 12, 2016 Opinion and Order, QCI focuses on the trial court's July 1, 2015 Opinion and Order, which was the subject of QCI's First Appeal. QCI also, in its Conclusion and Request for Relief, seeks to have the July 1, 2015 Opinion and Order vacated. Because the trial court's July 1, 2015 Opinion and Order was already appealed *and affirmed*, Sejasmi takes the position that the Second Appeal can only involve questions pertaining to the December 12, 2016 Opinion and Order.

By stipulating that Sejasmi sent a verified notice, QCI waived its right to appeal the trial court's order granting summary disposition. Specifically, under the invited error doctrine, a party may not request a certain action in the trial court and then argue on appeal that it was error for the trial court to grant that request. *Joba Construction Co, Inc v Burns & Roe, Inc* 121 Mich App 615, 629 (1982). Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence. *Phinney v Perlmutter*, 222 Mich App 513, 537 (1997). Because QCI stipulated to the fact that Sejasmi sent a verified notice, QCI waived its right to now argue before this Court that the trial court erred by granting summary disposition.

II. THE TRIAL COURT AND THE COURT OF APPEALS PROPERLY HELD THAT THE MICHIGAN MOLD LIEN ACT IS UNAMBIGUOUS AND SHOULD NOT BE SUBJECT TO JUDICIAL INTERPRETATION

Even if this Court is not persuaded that QCI's appeal is barred by the Invited Error Doctrine, QCI's appeal must nonetheless be denied. At the heart of QCI's Application for Leave to Appeal is the issue of whether statutory interpretation is proper with respect to the Michigan Mold Lien Act. Unambiguous statutes are to be interpreted as written. The Supreme Court of Michigan wrote in *Roberts v Mecosta Co Gen Hosp*, 446 Mich 57, 63 (2002) as follows:

> An anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that courts are to effect the intent of the Legislature. To do so, we begin with an

> examination of the language of the statute. If the statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the words of the statute itself.

(internal citations omitted).

QCI appeals to this Court to hold that MCL 445.519(5)(b) "requires the molder (in this case Sejasmi) ***to state that it has paid the moldbuilder***. (QCI's brief, p. 19 (emphasis in original)).[2] Doing so would require this Court to look beyond the plain language of the statute and add a term that is explicitly absent. Where the language of the statute is clear, the courts should neither add nor detract from its provisions. *Paschke v Retool Indus*, 445 Mich 502, 511 (1994), citing *Bower v Whitehall Leather Co*, 412 Mich 172, 191 (1981). The Court of Appeals has repeatedly held that "[n]othing will be read into a clear and unambiguous statute that is not within the manifest intent of the Legislature ***as derived from the language of the statute itself***." *People v Miller*, 288 Mich App 207, 210 (2010) (emphasis added). Had the legislature wanted to include a requirement that a molder serve a verified statement that it has paid the *moldbuilder*, it would have done so. See *Hamilton v Fawcett*, 259 Mich App 699, 703-704 (2003); *People v Levinge*, 297 Mich App 278, 283-284 (2012).

The Michigan Mold Lien Act is clear and unambiguous as written. The provisions governing a moldbuilder's lien contain no ambiguities:

> Sec. 9
>
> (3) A moldbuilder has a lien on any die, mold, or form identified pursuant to 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.

[2] QCI made this **exact same argument** in its First Appeal (see QCI's First Appeal Brief, p. 11).

* * *

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

* * *

Sec. 10

To enforce a lien that attaches under section 9, the moldbuilder shall give notice in writing to the customer and the molder. The notice shall be given by hand delivery or certified mail, return receipt requested, to the last known address of the molder. The notice shall state that a lien is claimed, the amount that the moldbuilder claims it is still owed for fabrication, repair, or modification of the die, mold, or form, and a demand for payment.

MCL 445.519; MCL 445.620.

A cursory review of the statute as a whole reveals that there is no ambiguity in the language of the statute. That is, MCL 445.519(3) explicitly states the amount of a moldbuilder's lien is the amount that a customer or molder owes the moldbuilder; MCL 445.519(5)(a) explicitly states that a lien is extinguished when the moldbuilder is paid the amount *owed by the customer or molder*; MCL 4445.620 explictly states that to enforce a lien, the moldbuilder shall give notice in writing to *the customer and the molder*. That is, the Legislature intended to exclude an explicit reference to the amount owed "to the moldbuilder" in MCL 445.519(5)(b). **The statutory language itself is the best indicator of the statute's scope**. *People v Acosta-Baustista,* 296 Mich App 404, 408 (2012), citing *People v Miller, supra,* at 210.

The trial court recognized the unambiguous language of the statute, and in its July 1, 2015 Order relied upon *McCormick v Carrier*, 487 Mich 180 (2010) in holding that "[a] court should not read anything into an unambiguous statute that is not within the manifest intent of the

Legislature as derived from the words of the statute." Judge Viviano's holding is supported by voluminous legal precedent regarding statutory interpretation in Michigan.

The Court of Appeals examined the provisions of MCL 445.611 *et seq* in *CG Automation & Fixture, Inc v Autoform, Inc*, 291 Mich App 333 (2011)[3] At issue in *CG Automation* was whether the moldbuilder had perfected its lien on tooling. This Court was asked "to construe several sections of the molder's lien act and determine whether, when harmonized, the act supports the imposition of a molder's lien." In making that determination, the Hon. Gleicher wrote as follows:

> In undertaking this task, we must avoid construing the statute in a manner that renders any statutory language nugatory or surplusage. When discerning legislative intent, we read the entire act and interpret a particular word in one statutory section only 'after due consideration of every other section so as to produce, if possible, a harmonious and consistent enactment as a whole.' This Court considers both the plain meaning of critical words or phrases comprising the statute and their placement and purpose in the statutory scheme. In summary, '[w]e construe an act as a whole to harmonize its provision and carry out the purpose of the Legislature.'

Id. at 338-339 (internal citations omitted).

The Court considered the clear and unambiguous language of MCL 445.619(1) and (2) and ultimately found that there was not a valid lien on the tooling in question, ending its discussion of the statute. However, in holding that the preceding sections of the Mold Lien Act are clear and unambiguous, Judge Viviano's reading of the statute in this case has produced a harmonious and consisted enactment as a whole.

Judge Viviano's July 1, 2015 was already affirmed by the Court of Appeals in its unpublished opinion issued on April 5, 2016. That Court refused to accept QCI's invitation to read requirements into the Mold Lien Act that simply are not there. Specifically, the Court of Appeals opined:

> Quality seeks to have this Court read into the statutory provision language that is absent. To comply with this request would be contrary to the rules of statutory

[3] Leave to appeal denied by the Supreme Court, 490 Mich 858 (2011).

> interpretation. 'Nothing will be read into a statute that is not within the manifest intention of the Legislature as gathered from the act itself.' *In re Schnell*, 214 Mich App 304, 309; 543 NW2d 11 (1995). Only 'literal constructions that produce unreasonable and unjust results that are inconsistent with the purpose of the act [are to] be avoided.' *Rowell v Security Steel Processing Co*, 445 Mich 347, 354; 518 NW2d 409 (1994). Contrary to Quality's position, enforcement of MCL 445.619(5)(b), as written, and without the additional language proposed by Quality, does not render other provisions within the subsection nugatory, specifically subsection (5)(a). Clearly, in accordance with subsection (5)(a), a lien is extinguished if either the customer or molder pays the moldbuilder. To require, as suggested by Quality, that the verified statement in subsection (5)(b) submitted by the molder to the customer must indicate that the molder paid the moldbuilder would be merely a duplication of and an additional step effectuating subsection (5)(a) rather than a separate and distinct mechanism to invalidate the lien (i.e. both 5(a) and 5(b) would simply indicate payment by the molder).

Sejasmi Industries Inc v A+ Mold Inc, et al, Unpublished per curium opinion, Case No. 328292.

Considering the foregoing, Sejasmi respectfully requests that this Court deny QCI's Application for Leave to Appeal.

RELIEF REQUESTED

WHEREFORE, Plaintiff/Appellee Sejasmi Industries, Inc. respectfully requests that this Honorable Court DENY Defendant/Appellant Quality Cavity, Inc.'s Application for Leave to Appeal.

Respectfully Submitted,
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Date: September 19, 2017