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 Nos. 336205 & 328292

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

Hon. Kathryn A. Viviano

APPELLANT'S REPLY TO APPELLEE'S ANSWER TO APPLICATION FOR LEAVE TO APPEAL

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INTRODUCTION

This case relates to Appellant's moldbuilder liens on five plastic injection molds. According to the lower courts and Appellee, the liens were extinguished when Appellee sent a verified statement to Appellant's customer ("Takumi") stating that Appellee had paid the liened amount to ***the customer*** (as opposed to Appellant, the lienholding moldbuilder).

There is no dispute whatsoever that ***a*** sworn statement was sent to Takumi by Appellee. Indeed, Appellant stipulated to that fact below. The issue is whether the content of the sworn statement met the statutory requirements for extinguishing a moldbuilder lien under MCL 445.619(5)(b). The answer is no because the statement did not state that the amount of the lien had been paid to the lienholding moldbuilder, as required under MCL 445.619.

Appellee's fixation on the fact that the parties stipulated that Appellee sent a sworn statement to Takumi is either a red herring or the product of incredible lack of understanding of the issue at hand. Appellee cannot seriously contend that just because the parties stipulated that ***a*** sworn statement was sent, that this Court should overlook the fact that the content of that sworn statement was wholly insufficient to invoke MCL 445.619.

RELEVANT PROCEDURAL BACKGROUND

Appellant first asked this Court to review the question presented in interlocutory proceedings. This Court declined to do so, stating that it was "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." (July 1, 2016 Order of the Supreme Court of Michigan) (emphasis added).

The remand proceedings that this Court referred to in its July 1, 2016 Order dealt with the discrete issue of whether or not the sworn statement Appellee relies on, namely its complaint, was

actually sent to Takumi. Now that the remand issue has been resolved (by way of stipulation), Appellant is finally back before this Court asking this Court to address the unresolved issue of whether the content of the sworn statement Appellee relies on satisfies the requirements of MCL 445.619(5)(b).[1]

I. THE INVITED ERROR DOCTRINE HAS NO APPLICATION TO THIS CASE.

Appellee argues that "[b]y stipulating that Sejasmi sent a verified notice, QCI waived its right to appeal the trial court's order granting summary disposition." Apparently, Appellee is taking the position that the parties' stipulation in the trial court on the narrow factual issue of whether a sworn statement was sent by Appellee to Takumi had the effect of rendering every other aspect of the lower courts' rulings unappealable! By this logic, there could never be an appeal in a case where the parties had stipulated to a factual issue in the trial court. This is obviously complete nonsense.

Not surprisingly, the cases Appellee recites in relation to the invited error doctrine support Appellant's position, not Appellee's. Indeed, Appellee cites *Joba Construction Co, Inc v Burns & Roe, Inc*, 121 Mich App 615, 629 (1982) for the proposition that "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." This case supports Appellant because the "certain action" requested in the trial court in this case, namely a factual finding that a sworn statement was sent by Appellee to Takumi, is ***not*** something that Appellant seeks to challenge on appeal. Indeed, there is no suggestion whatsoever

[1] Following the remand proceedings, Appellant had hoped to proceed directly to this Court by way of a by-pass application for leave to appeal because it seemed pointless for the case to meander its way through the court of appeals when the court of appeals had already upheld the lower court on the issue at hand. However, this Court denied the by-pass application "because the Court [was] not persuaded that the questions presented should be reviewed by this Court ***before consideration*** by the Court of Appeals." (2017 Order of the Supreme Court of Michigan). Appellant took this to mean that this Court did not consider the court of appeals' ruling in the interlocutory appeal to be "law of the case", and accordingly made that argument in the court of appeals. The court of appeals disagreed and summarily disposed of the appeal based on the law of the case doctrine.

in Appellant's Application for Leave to Appeal that Appellant believes it was error for the trial court to conclude that a sworn statement was sent by Appellee to Takumi.

To be very clear, Appellant agrees that a sworn statement was sent by Appellee to Takumi. That sworn statement was the complaint that Appellee filed in the trial court. However, the sworn statement does not trigger operation of the provisions of the Moldbuilder Lien Act that deal with extinguishing moldbuilder liens because the statement does not state that Appellee paid the liened amounts to Appellant, the lienholding moldbuilder.[2]

II. THE PLAIN LANGUAGE OF THE MOLD LIEN ACT SUPPORTS APPELLANT'S POSITION, NOT APPELLEE'S.

If the Court considers ***all*** of the relevant plain language of the Mold Lien Act, instead of just the bits that Appellee studiously directs it to consider, there can be no dispute that Appellant's moldbuilder liens were ***not*** extinguished when Appellee sent a verified statement to Takumi stating that Appellee had paid the liened amounts to Takumi (as opposed to Appellant, the lienholding moldbuilder).

Appellee's plain language argument depends upon this Court interpreting the language of Subsection 9(5)(b) of the Act in complete isolation, and in complete disregard of the plain language of Subsection 9(3) of the Mold Lien Act and the general purpose of the statute. MCL 445.619(3) and (5)(b). This is not how statutes are interpreted in Michigan. *Metropolitan Council 23, AFSCME v Oakland County*, 409 Mich 299; 294 NW2d 578 (1980) ("[a] statutory provision that is in dispute must be read in light of the general purpose of the act and in conjunction with the pertinent provisions thereof.").

[2] To the extent Appellant is arguing that the appeal was not properly perfected, that argument is also complete nonsense. *See*, *Tomkiw v Sauceda*, 374 Mich 381, 385; 132 NW2d 125 (1965) (an appeal of a final order permits the appellant to also seek review of interlocutory orders or decrees leading to the final order); *Dean v Tucker*, 182 Mich App 27, 30-31; 451 NW2d 571 (1990) (a party may properly raise any issue on appeal relating to the court's prior orders).

As explained in Appellant's Application for Leave to Appeal, and as Judge Hoekstra correctly stated in his dissenting portion of the court of appeals' April 5, 2016 Opinion and Order, Subsections 9(3) and 9(5)(b) of the Mold Lien Act must be read together, and doing so leads to the inescapable conclusion that Subsection 9(5)(b) only applies to verified statements that state that the liened amount has been paid ***to the lienholding moldbuilder***.

CONCLUSION AND REQUEST FOR RELIEF

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

A. Appellant'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. Appellant has valid and enforceable liens on the Molds at issue under the Mold Lien Act.

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

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

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Dated: October 6, 2017

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