

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

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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 SUPPLEMENTAL  
BRIEF AS TO WHETHER THE COURT SHOULD GRANT APPLICATION  
OR TAKE OTHER ACTION PURSUANT TO THE JANUARY 26, 2018 ORDER**

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## I. ARGUMENT

At the heart of this appeal is whether Sejasmi Industries, Inc. (“Sejasmi”) properly terminated Quality Cavity, Inc.’s (“QCI”) lien under the Michigan Mold Lien Act, MCL 445.611 *et seq.* Because the Mold Lien Act is unambiguous and the lower courts properly applied it to the facts of this case, Sejasmi respectfully requests that this Honorable Court deny QCI’s Application for Leave to Appeal.

Under the Mold Lien Act, Sejasmi is a “molder,” which is defined as “a person who uses a die, mold, or form to manufacture, assemble, or fabricate plastic parts.” MCL 445.611(c). QCI, under the Mold Lien Act, is a “moldbuilder” because QCI “fabricates, casts, or otherwise makes, repairs, or modifies a die, mold, or form for use in the manufacture, assembly, or fabrication of plastic parts.” MCL 445.611(b). A+ Mold, Inc. d/b/a Takumi Manufacturing Company (“Takumi”), a non-party to this appeal, is the “customer” under the Mold Lien Act because Takumi was the company “who cause[d] a moldbuilder (i.e. QCI) to fabricate, cast, or otherwise make a die, mold, or form for use in the manufacture, assemble, or fabricate a plastic product.” MCL 445.611(a). QCI does not dispute that it is the moldbuilder, Takumi is the customer, or that Sejasmi is the molder. *See e.g.* QCI’s Answer to Appellee’s Motion to Affirm, filed on July 19, 2017, p. 1.

In fact, QCI admits that it built the molds based on a request from Takumi and further admits that Sejasmi was Takumi’s customer. *See e.g.* QCI Application for Leave to Appeal, p. 3. In other words, QCI acknowledges that it did not have a contractual relationship with Sejasmi. Instead, QCI had a contract with Takumi, and Takumi had a separate and distinct contract with Sejasmi. QCI also acknowledges that Takumi had an obligation to pay QCI for the Molds and that Takumi failed to pay QCI in full. *See e.g.* QCI’s Answer to Appellee’s Motion to Affirm, filed on

July 19, 2017, p. 1. Nevertheless, QCI asserts that Sejasmi is required to pay the outstanding balance for the Molds regardless of the absence of a contractual or statutory obligation to do so.

The provision that is at the heart of the appeal is MCL 445.619, which addresses a moldbuilder's lien. More specifically, this provision addresses when a lien attaches to a die, mold, or form; the amount of the lien; when the lien is extinguished; and priority of the lien. If the parties' names are substituted out based on the definitions set forth in MCL 445.611, the statutory provision at issue in this appeal would read:

(1) [QCI] shall permanently record on every die, mold, or form that [QCI] fabricates, repairs, or modifies [QCI's] name, street address, city, and state.

(2) [QCI] shall file a financing statement in accordance with the requirements of section 9502 of the uniform commercial code, 1962 PA 174, MCL 440.9502.

(3) [QCI] has a lien on any die, mold, or form identified pursuant to subsection (1). The amount of the lien is the amount that [Takumi] or [Sejasmi] owes [QCI] for the fabrication, repair, or modification of the die, mold, or form. The information that [QCI] 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 [QCI's] lien on the die, mold, or form.

(4) [QCI's] lien attaches when actual or constructive notice is received. [QCI] retains the lien that attaches under this section even if [QCI] is not in physical possession of the die, mold, or form for which the lien is claimed.

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

(a) [QCI] is paid the amount owed by [Takumi] or [Sejasmi].

**(b) [Takumi] receives a verified statement from [Sejasmi] that [Sejasmi] has paid the amount for which the lien is claimed.**

(c) The financing statement is terminated.

(6) The priority of a lien created under this act on the same die, mold, or form shall be determined by the time the lien attaches. The first lien to attach shall have priority over liens that attach subsequent to the first lien.

(emphasis added). In this case, QCI admits that MCL 445.619(5)(b) was met, that Sejasmi sent a verified statement to Takumi that it paid the amount for which the lien is claimed.

Despite the fact that QCI's lien was extinguished under the clear and unambiguous terms of the statute, QCI, in this appeal, asserts that the statute should not be applied as written because it would result in "material injustice to QCI." QCI's Application for Leave to Appeal, p. 2. In making this argument, QCI fails to acknowledge that requiring Sejasmi to pay an additional \$187,500 for the Molds which it was never contractually (or statutorily) obligated to do would result in a material injustice to Sejasmi and would require this Court to completely ignore the provisions of a clear and unambiguous statute.

If this Court is concerned about the purported "material injustice to QCI," the Court should also be concerned about the material injustice to Sejasmi, who would be faced with paying twice for the Molds. Sejasmi should not be penalized for Takumi's failure to pay under the terms of a separate contract, especially because QCI failed to take necessary and available steps to protect itself from this situation. QCI knew that Takumi was not the molder. Accordingly, QCI could have added provisions in the contract it entered into with Takumi to protect itself from Takumi keeping the amounts it was obligated to pay QCI. QCI did not. Now, it wants this Court to rewrite a statute and require Sejasmi to pay off a purported lien that was properly extinguished.

## **II. 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.

(signature page follows)

Respectfully Submitted,  
ERSKINE LAW, PC

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Date: March 19, 2018