

NEWSLETTERS

Michigan Construction Lien Rights Trump Pay When Paid Clause

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Recently, the Michigan Court of Appeals examined whether a supplier's construction lien rights were limited by a pay-when-paid clause contained in the supplier's contract with the general contractor. In *Dubock v Copeland Paving, Inc.*, 216 Westlaw 1230860 (March 29, 2016), owners of a law firm filed a lawsuit against an asphalt supplier based on the alleged shortfall of asphalt used to repave the law firm's parking lot. The supplier filed a counterclaim to foreclose on its construction lien against the owners as well as a breach of contract claim against the general contractor.

The first issues presented to the court was whether the amount of the supplier's lien claim, which exceeded the contract price between the supplier and the general contractor, rendered the lien invalid. The owner argued that the claim of lien was overstated and vexatious because the overall contract price between the supplier and general contractor was less than the supplier's claim of lien. However, because the owner failed to demand sworn statements and receive valid lien waivers, the court rejected the owner's argument. In reaching its decision, the court held that MCL 570.1107 (7) specifically permits a supplier to include a time price differential in calculating its lien amount so long as that item is part of the supply contract. The time price differential was not considered a late fee and permitted the lien claimant to recover amounts that exceeded their original contract price.

In addition to challenging the lien amount, the owners contended that the supplier had no right or expectation of payment when it filed its because the contract between the supplier and the general contractor indicated that the supplier "would not get paid until Copeland (general contractor) was paid." Commonly referred to as a pay-when-paid clause, such clauses have been uniformly upheld under Michigan law. In rejecting this argument, the court reasoned:

Despite that such contractor's supplier understanding inevitably exists, legislature enacted MCL 570.1107(1), which permits suppliers a lien based on the property owner's possession of the supplier's materials. The statute does not include the limitations urged by the (owners). Rather, the lien may be filed regardless of whether the contractor promised to pay the supplier at the time of delivery, when the owner pays the contractor, or at some other time. Accordingly, the owner's claim is without merit.

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As set forth above, the court held that the particulars of the supplier contract with the general contractor do not dictate the supplier's lien rights against the owner.

Finally, the owner also argued that the supplier improperly pursued its lien claim against the owner when it could have obtained a judgment against the general contractor on its breach of contract claim. The court rejected this argument as well, holding that the supplier could elect which claim to pursue and which claim not to pursue. The court determined that the owner failed to appreciate the purpose and intent of Michigan's Mechanics Lien Act which does not require the court to simultaneously examine and resolve each claim and defense. To hold otherwise, would read words into the statute that do not exist.

To add insult to injury, the owner was also faced with paying attorneys' fees which far exceeded, and nearly doubled, the amount of the claim of lien. The awarded amount, \$63,119.53, was imposed jointly and severally against the owners and their former attorney even though their lien was limited to \$32,574.00. In rejecting the owners' arguments, the court determined that counsel's block billing was not improper such that it would invalidate the supplier's claim of lien. The court determined that the supplier was certainly a prevailing party as contemplated by the Act and rejected the owners' argument that the supplier unnecessarily inflated its attorneys' fees by pursuing its lien claim against the owners instead of quickly securing summary disposition against the general contractor.

As discussed above, the court determined that the supplier was not legally required to pursue its contractual remedy over its lien remedy. The court's decision reaffirms Michigan's strong public policy in favor of enforcing lien rights even when alternative remedies are available.

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