STATE OF MICHIGAN

COURT OF APPEALS

REPUBLIC WALLS, INC.,

Plaintiff-Appellant,

v

HARVEY A. JOHNSTON and AILEEN C. JOHNSTON,

Defendants-Appellees.

UNPUBLISHED
August 27, 1999

No. 209327
Sanilac Circuit Court
LC No. 96-024501 CH

Before: Zahra, P.J., and Saad and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order striking plaintiff's amended complaint and granting summary disposition in favor of defendants. We reverse in part, affirm in part and remand for further proceedings consistent with this opinion.

We review the trial court's decision to strike an amended complaint for an abuse of discretion. *Taylor v Lenawee Co Bd of Co Rd Comm'rs*, 216 Mich App 435, 443; 549 NW2d 80 (1996). The trial court granted defendants' motion to strike the amended complaint because, although plaintiff had filed a proposed order allowing the complaint to be amended, plaintiff failed to file a notice of presentment of order. Proper entry of an order under the seven-day rule is governed by MCR 2.602(B)(3), which provides:

> (3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, *with a notice to them that it will be submitted to the court for signing if no written objections are filed with the court clerk within 7 days after service of the notice*. The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.
>
> (a) If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall then sign it if, in the court's determination, it comports with the court's decision. [emphasis added.]

Plaintiff argues that the trial court abused its discretion by striking the amended complaint where defendants were not prejudiced by the delay and had actual notice of the contents of both the amended complaint and the proposed order. We agree. MCR 1.105 provides that the court rules "are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties."

This rule has been applied to excuse certain technical violations of other rules of civil procedure. In *Zantop Int'l Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 352; 503 NW2d 915 (1993), this Court held that under MCR 1.105, a party would not be heard to complain that the other party had failed to comply with the notice requirements of MCR 2.112, requiring notice from a party who intends to rely on the law of another jurisdiction in its pleadings, when the purpose behind MCR 2.112 was to give notice and the complaining party had actual notice. This Court stated that "a party that already has notice should not be heard to complain of a technical violation of the rule." *Id*.

The purpose of MCR 2.602 is to provide parties with notice of a proposed order before entry so that a party may file objections to the order. In this case, as in *Zantop, supra*, the purpose of the court rule was served. Defendants had actual notice not only of the contents of the purposed order, but also of the contents of the amended complaint. Striking plaintiff's amended complaint in conjunction with the trial court's dismissal of plaintiff's remaining claim effectively dismissed plaintiff's entire case and left plaintiff without any remedy. We do not question the trial court's authority and discretion to issue some sanction to address plaintiff's violation of the court rules. However, the dismissal of plaintiff's case was too harsh a sanction for a technical violation of the rules, especially when plaintiff's failure to file a notice of presentment did not affect the substantial rights of defendants. On remand, the trial court may consider imposition of a less harsh sanction, like a proportionate monetary sanction, the purpose of which is designed to promote future compliance with the rules.

For these reasons, we find that the trial court's order striking the amended complaint was an abuse of discretion. Upon remand, plaintiff's amended complaint shall be reinstated and the trial court may consider imposition of an alternative proportionate sanction.

Plaintiff next argues that the trial court erred in granting summary disposition to defendants on plaintiff's claim under the Construction Lien Act, MCL 570.1101 *et seq.*; MSA 26.316(101) *et seq*. We disagree. We review the trial court's decision whether to grant summary disposition de novo. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

MCL 570.1107(1); MSA 26.316(107)(1) grants a contractor "a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property . . . ." An action foreclosing on the lien is "directed at the property rather than the person or entity who contracted for the services." *Republic Bank v Modular One*, 232 Mich App 444, 447; 591 NW2d 335 (1998), quoting *Dane Construction, Inc v Royal's Wine & Deli, Inc*, 192 Mich App 287, 292-293; 480 NW2d 343 (1991).

In this case, plaintiff filed the lien on property that was not the property on which the work was performed. Plaintiff argues that the Construction Lien Act should be liberally construed to prevent

defendants from asserting this as a defense because defendants' representations caused plaintiff to file the lien on the wrong property. The Construction Lien Act is a remedial statute that must be liberally construed, MCL 570.1302(1); MSA 26.316(302)(1). Nevertheless, because an action under the Act is directed at the interest in the property on which work was performed and not at the contracting parties, it cannot reasonably be construed to grant a lien against property on which a contractor did not perform any work. Therefore, the trial court correctly concluded that defendants were entitled to judgment as a matter of law on plaintiff's claim under the Construction Lien Act.

Reversed in part, affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Jeffrey G. Collins