

STATE OF MICHIGAN
COURT OF APPEALS

PEN, INC.,

Plaintiff-Appellee/Cross-Appellant,

v

PETER O'DOVERO, d/b/a ASSOCIATED
CONTRACTORS,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED

June 5, 2001

No. 225513

Marquette Circuit Court

LC No. 97-033810-CK

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

This case arises out of a construction contract. Plaintiff filed a claim for breach of contract and slander of title. Defendant filed a counterclaim for enforcement of his construction lien. Following a bench trial, the circuit court issued an opinion on November 22, 1999, and amended the opinion by its final judgment on February 10, 2000. Defendant now appeals as of right from the circuit court judgment awarding him \$138,208.37 less \$15,000 attorney fees and less interest on his \$235,019.47 damage claim. Plaintiff Pen Inc. has filed a cross-appeal on issues involving damages and attorney fees. We affirm in part and reverse and remand in part.

First, defendant argues that the trial court erred in finding slander of title in this case. We agree. The elements of slander of title are falsity of statement and malice. *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990). See also *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 469; 487 NW2d 807 (1992).¹ Malice may not be inferred from the filing of an invalid lien. The plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury. *Stanton, supra*. A lien is not invalid merely because it is filed for an excessive amount; the lien is lost only where bad faith is evident. If the error in the amount was due to a good faith mistake, the appropriate remedy is simply to reduce the amount of the lien. *Tempo, Inc v Rapid Electric*, 132 Mich App 93, 104; 347 NW2d 728 (1984). Bad

¹ It may also be necessary for a plaintiff to show special damages, but that is not an issue in this case. *B & B Investment v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998).

faith is evident where the lien included amounts for labor not actually performed and materials not in fact furnished. *Id.*

In this case, the trial court implicitly found that defendant's lien was valid when it ordered plaintiff to pay part of the lien amount. Although the trial court rejected some of defendant's claimed costs, there is no evidence that defendant charged for work not done or materials not furnished. *Id.* Because the record does not support a finding that defendant filed an invalid lien, the finding of slander of title was not appropriate. *Stanton, supra.*

We also reverse the trial court's award to plaintiff of attorney fees. Absent a statute or court rule authorizing the award of attorney fees, each side is responsible for his own attorney fees. *Radenbaugh v Farm Bureau*, 240 Mich App 134, 152; 610 NW2d 272 (2000). Although attorney fees may be recoverable when there is slander of title, MCL 565.108; MSA 26.1278; *B & B Investment v Gitler*, 229 Mich App 1; 581 NW2d 17 (1998), we have already found that there was no slander of title here. Plaintiff was not a successful lien claimant and there is no basis for finding that defendant's action, which was successful in part, was vexatious. MCL 570.1118(2); MSA 26.316(118)(2); *Vugterveen Systems v Olde Millpond*, 454 Mich 119, 133; 560 NW2d 43 (1997).

Next, defendant argues that the trial court erred in the method it used to calculate damages. The clearly erroneous standard of review applies to a damage award rendered in a bench trial. *Scott v Allen Bradley Co*, 139 Mich App 665, 672; 362 NW2d 734 (1984). The trial court's findings of fact are also reviewed for clear error. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed. *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000). Here, evidence was presented as to a variety of different ways to calculate the amount of dirt moved in the construction project. We find no clear error in the trial court's decision.

Defendant also argues that the trial court erred in not awarding interest to defendant. We agree. The judgment interest statute, MCL 600.6013(1); MSA 27A.6013(1), specifically provides that "interest shall be allowed on a money judgment recovered in a civil action." The purpose of the statute is to compensate the prevailing party for the loss of use of the funds awarded as a money judgment and for the costs of litigation. The provision is remedial in nature and so must be liberally construed. *In re Forfeiture of \$176,598*, 242 Mich App 342, 347; 618 NW2d 922 (2000). The imposition of statutory interest pursuant to MCL 600.6013; MSA 27A.6013 is mandatory and interest must be paid from the date the complaint was filed. *Hadfield v Oakland Co Drain*, 218 Mich App 351, 357; 554 NW2d 43 (1996). Statutory interest accrues until the judgment is satisfied. *Id.* We therefore remand for the limited purpose of correcting the judgment to reflect the addition of statutory interest.

Next, defendant argues that the trial court erred in failing to award him attorney fees. There is no merit to this issue. An award of attorney fees to a lien claimant who is the prevailing party under the Construction Lien Act is discretionary. MCL 570.1118(2); MSA 26.316(118)(2). Here, the trial court made it clear that it did not consider either party to be the prevailing party. Attorney fees are not mandatory under the statute and, on these facts, we find no abuse of discretion. *Vugterveen Systems, supra* at 133.

Plaintiff contends by cross appeal that, if this case is remanded “for a new trial or for factual findings,” the trial court should be ordered to explain why it did not allow plaintiff recovery for “chargebacks.” Plaintiff also argues that the trial court should be instructed to consider the reasonableness of plaintiff’s claimed attorney fees if this matter is remanded for further factual determinations. Plaintiff cites no authority for either argument. A party may not leave it to this Court to search for authority to sustain or reject its position. *Staff v Johnson*, 242 Mich App 521, 529; 619 NW2d 57 (2000).

Finally, plaintiff argues that it is entitled to appellate attorney fees on the basis of the slander of title statute. In light of our decision that the trial court erred in finding slander of title in this case, this issue need not be addressed.

The trial court’s finding of slander of title and the attorney fee award to plaintiff on that basis is reversed. This matter is remanded for the limited purpose of correcting the judgment to reflect defendant’s award of statutory interest. In all other respects, the trial court’s decision is affirmed. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Michael R. Smolenski
/s/ William C. Whitbeck