

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CENTRAL CEILING & PARTITION, INC.,

Plaintiff-Appellee,

v

DEPARTMENT OF COMMERCE,

Defendant-Appellant,

and

KITCHEN SUPPLIERS, INC.,

Defendant-Appellee,

and

CAPPY HEATING AND AIR CONDITIONING,  
INC.

Intervening-Plaintiff-Appellee,

and

PRIMEAU HOMES, INC.,

Defendant.

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FOR PUBLICATION

January 29, 2002

9:15 a.m.

No. 225378

Wayne Circuit Court

LC No. 98-810597-CH

Updated Copy

April 12, 2002

Before: Neff, P.J., and Wilder and Cooper, JJ.

NEFF, P.J.

Defendant Michigan Department of Commerce appeals as of right the trial court's denial of defendant's motion for summary disposition and entry of judgment of \$21,280 in favor of plaintiff Central Ceiling & Partition, Inc. (Central), \$4,054 in favor of defendant Kitchen Suppliers, Inc. (KSI), and \$6,915 in favor of intervening plaintiff Cappy Heating and Air Conditioning, Inc. (Cappy) with respect to their claims against the Homeowner Construction Lien Recovery Fund. We affirm.

## I

The facts in this case were stipulated before the trial court. Defendant general contractor Primeau Homes, Inc., failed to pay its subcontractors,<sup>1</sup> Central, KSI, and Cappy, for materials and work performed on several homes under Primeau's contracts with the owners for home improvements. The subcontractors sought recovery from the Homeowner Construction Lien Recovery Fund under the Construction Lien Act, MCL 570.1101 *et seq.* Pursuant to MCL 570.1111(1), Central, KSI, and Cappy each presented liens to the Wayne County Register of Deeds for recording within ninety days of the last furnishing of labor or materials for the improvements. However, Wayne County failed to formally "record" the liens by assigning them a liber and page number until sometime later, after the ninety-day period had passed.

Defendant sought summary disposition of the subcontractors' lien fund claims under MCR 2.116(C)(10) on the ground that the liens were not recorded within the ninety-day period as required by the Construction Lien Act, MCL 570.1111(1). The trial court denied defendant's motion and instead granted judgment in favor of the subcontractors, concluding that there was substantial compliance with the act's requirements and the subcontractors were entitled to recovery from the lien fund. The court reasoned that the subcontractors presented their liens for recording within the required ninety-day period and obtained date stamps on the filings, and any delay by Wayne County staff in entering the filings in the record books was beyond the subcontractors' control; thus, there was compliance with the ninety-day requirement.

## II

This Court reviews *de novo* as a question of law a trial court's grant of a motion for summary disposition. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests the factual basis underlying a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). We consider all relevant documentary evidence in a light most favorable to the nonmoving party. *Id.*; *Ardt, supra*. Summary disposition under MCR 2.116(C)(10) is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

## III

To recover under the Construction Lien Act, a claimant must record the lien within ninety days of the last date of furnishing material or labor:

Notwithstanding section 109 [MCL 570.1109], the right of a contractor, subcontractor, laborer, or supplier to a construction lien created by this act shall cease to exist unless, within 90 days after the lien claimant's last furnishing of labor or material for the improvement, pursuant to the lien claimant's contract, a claim of lien is recorded in the office of the register of deeds for each county

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<sup>1</sup> For ease of reference, we refer to Central, KSI, and Cappy as "subcontractors," disregarding any technical distinction between material suppliers and service contractors.

where the real property to which the improvement was made is located. A claim of lien shall be valid only as to the real property described in the claim of lien and located within the county where the claim of lien has been recorded. [MCL 570.1111(1).]

Defendant contends that the lien claims filed by Central, KSI, and Cappy were not timely because even though they were filed by the subcontractors and accepted by the Wayne County Register of Deeds office within the ninety-day period, the register of deeds office did not formally record the liens until after the ninety-day period had passed. We disagree.

The Construction Lien Act contains a substantial compliance provision, MCL 570.1302(1):

This act is declared to be a remedial statute, and shall be liberally construed to secure the beneficial results, intents, and purposes of this act. Substantial compliance with the provisions of this act shall be sufficient for the validity of the construction liens provided for in this act, and to give jurisdiction to the court to enforce them.

The substantial compliance provision does not necessarily apply to all requirements of the act. *Northern Concrete Pipe, Inc v Sinacola Cos—Midwest Inc*, 461 Mich 316, 321; 603 NW2d 257 (1999). The scope of the provision must be determined case by case by analysis of logically relevant factors, such as

the overall purpose of the statute; potential for prejudice or unfairness when the apparent clarity of a statutory provision is replaced by the uncertainty of a "substantial compliance" clause; the interests of future litigants and the public; the extent to which a court can reasonably determine what constitutes "substantial compliance" within a particular context; and, of course, the specific language of the "substantial compliance" and other provisions of the statute. [*Id.* at 321-322.]

In applying these factors, the Court in *Northern Concrete Pipe* observed that provisions outlining the requirements for filing certain information with public officials or those providing for notice are the types of provisions to which a substantial compliance provision may suitably be applied. *Id.* at 323. We agree, and so conclude, on the facts before us.

Pursuant to the Construction Lien Act's substantial compliance provision, MCL 570.1302(1), the subcontractors' actions of properly filing the lien claims with the register of deeds, and acceptance by the register of deeds office, constitutes substantial compliance with the act's requirement that a claim of lien be recorded within ninety days. Accordingly, the subcontractors' rights were not subject to the automatic extinguishment provision of § 111 and did not cease to exist.

Of the six liens at issue, all were timely filed and accepted. Central's liens were subject to a last date of furnishing of October 3, 1997, and were filed with the register of deeds on December 17, 1997. KSI's lien was subject to a last date of furnishing of June 11, 1997, and was

filed with the register of deeds on August 27, 1997. Cappy's liens were subject to a last date of furnishing of September 18, 1997, and were filed with the register of deeds on December 5, 1997.

Unfortunately, the claims of lien were not formally recorded within the register of deeds office for more than thirty days after they were filed and accepted. Central's claims of lien were filed and accepted on December 17, 1997, but not formally recorded until February 2, 1998. KSI's claim of lien was filed and accepted on August 27, 1997, but not formally recorded until September 30, 1997. Cappy's claims of lien were filed and accepted on December 5, 1997, but not formally recorded until January 23, 1998. Attributing the delays within the register of deeds office to the subcontractors, as suggested by defendant, would lead to absurd and unfair results. No lien claimant would ever know the number of days that would be "deducted" from the statutorily prescribed ninety-day period because the lag time between the filing and acceptance, and formal recording, would vary case by case. One lien claimant might be subject to a thirty-day period while another might be subject to a sixty-day period, and yet another to an eighty-ninety-day period, merely because of variances in formal recording times within the registers of deeds offices. We cannot sanction this result, which wholly negates the Legislature's concept of a ninety-day period expressed in the statute and has great potential for prejudice or unfairness. *Northern Concrete Pipe, supra* at 321-322.

We recognize that the Construction Lien Act's specified ninety-day period in § 111 is not subject to a substantial compliance interpretation. *Id.* at 323. The ninety-day deadline means precisely ninety days. *Id.* However, just as the Legislature could not have intended that ninety days be stretched to ninety-one or one hundred days or more, *id.*, neither could the Legislature have intended an arbitrary reduction of the ninety-day deadline to fifty-six or forty-three days or less, to allow for the internal office time involved in recording each particular claim of lien. Such idiosyncratic calculations would wreak chaos on the construction lien system.

We hold that filing within the ninety-day statutory period, and acceptance of a lien claim by the register of deeds, substantially complies with the act's requirement of recording the lien claim. Our holding leaves no uncertainty that the filing and acceptance must occur within the ninety-day period; it can reasonably be determined whether the requirement has been met in a particular context. *Id.* at 322, see also *id.* at 318 (a lien may be improperly filed and thus not accepted, in which case the requirement may not be met).

The dissent's analysis would be well taken if the standard under the Construction Lien Act was one of *strict compliance*, but it is not. The Legislature expressly adopted a standard of substantial compliance to secure the beneficial results of the act: "[s]ubstantial compliance . . . shall be sufficient for the validity of the construction liens . . . ." MCL 570.1302(1).

The strict compliance premise of the dissent reads the holding of *Northern Concrete Pipe, supra*, too broadly. The question in that case was limited to the ninety-day deadline and whether a lien that *was not properly filed* by the contractor within the ninety-day period could nevertheless be timely. *Id.* at 318, 321. As framed by the Court, the question was "whether the 'substantial compliance' provision here is applicable to the ninety-day filing requirement." *Id.* at 321. Observing that "[a] precise deadline is not well suited to an analysis of what constitutes

'substantial compliance,'" the Court declined to expand the deadline to accommodate the contractor's failure to supply a complete legal description for the lien filing until some 120 days after the last date of furnishing. *Id.* at 318, 323. We cannot view the circumstances in the present case as within the holding of *Northern Concrete Pipe*. The Construction Lien Act's substantial compliance standard and the Legislature's express directive that the act "shall be liberally construed to secure the beneficial results, intents, and purposes of this act" distinguishes it from other statutes and subsequent interpretations by the courts relied on by the dissent. MCL 570.1302(1).

Application of the substantial compliance provision in this circumstance comports with the Construction Lien Act's purpose of "protecting the rights of lien claimants to payment for wages and materials."<sup>2</sup> *Old Kent Bank of Kalamazoo v Whitaker Constr Co*, 222 Mich App 436, 438-439; 566 NW2d 1 (1997). It also coincides with previous court decisions that have examined the recording requirement, in which the recording requirement was tacitly understood to require that the claimant *file* the lien with the register of deeds. See *Northern Concrete Pipe*, *supra* at 318, 322 ("a lien must be filed within ninety days after the last date when materials or services are supplied," and "[a]bsent strict compliance with the ninety-day *filing* requirement of MCL 570.1111(1) . . ."); see also *Superior Steel Systems, Inc v Nature's Nuggets, Inc*, 174 Mich App 368, 370; 435 NW2d 492 (1989) ("Delene *filed* its construction lien on October 7, 1986." Further, the *Northern Concrete Pipe* Court referred to a "ninety-day deadline for *filing* a construction lien," *id.* at 320, stating that the "lien was eventually *accepted for filing*," *id.* at 318. In this case, the liens were filed and accepted within the ninety-day period and were therefore timely.

Affirmed.

Cooper, J., concurred.

/s/ Janet T. Neff

/s/ Jessica R. Cooper

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<sup>2</sup> Further, application of the substantial compliance provision does not work against the purpose of protecting homeowners from paying twice for services, *Old Kent Bank of Kalamazoo v Whitaker Constr Co*, 222 Mich App 436, 439; 566 NW2d 1 (1997), because the claims asserted are against the recovery fund.