

STATE OF MICHIGAN
COURT OF APPEALS

NORTHERN CONCRETE PIPE, INC.,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 203322

Oakland Circuit Court

LC No. 95-491366 CK

SINACOLA COMPANIES - MIDWEST, INC.,
THE R.L. CORPORATION, and RAYMOND
LEDUC,

Defendants-Appellees.

Before: Jansen, P.J., and Markey and O'Connell, JJ.

O'CONNELL, J. (dissenting.)

I respectfully dissent. The Construction Lien Act requires that a lien be filed within ninety days after the lien claimant's last furnishing of labor or materials for the construction project. The trial court dismissed the case because the lien was not timely filed. I would affirm the decision of the trial court.

In the present case, all parties agree that the lien was not timely filed. However, plaintiff argues that the trial court erred in granting defendants' motion for summary disposition with regard to his lien action pursuant to MCR 2.116(C)(8) because substantial compliance was provided for under the express language of the Construction Lien Act, and because plaintiff had substantially complied with the requirements for creating a valid lien.

This Court reviews summary disposition decisions de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). This Court reviews a motion for summary disposition pursuant to MCR 2.116(C)(8) by reference to the pleadings alone. See *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). All factual allegations supporting a claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right to recovery. *Id.*

The Construction Lien Act of 1982, MCL 570.1101 *et seq.*; MSA 26.316(101) *et seq.*, which replaced the mechanic's lien act, MCL 570.1 *et seq.*; MSA 26.281 *et seq.*, requires a lien claimant to

record his lien within ninety days after the lien claimant's last furnishing of labor or material for the construction project. MCL 570.1111(1); MSA 36.16(111)(1). In construing a virtually identical provision¹ under the former mechanic's lien act, this Court held that substantial compliance with the ninety-day filing requirement was not sufficient to create a valid lien. *Blackwell v Borstein*, 100 Mich App 550, 554-555; 299 NW2d 397 (1980). It is undisputed that plaintiff was required to file its claim of lien on or before February 10, 1994, but did not file the lien until March 14, 1994, over one month late. Under the plain language of the statute and the holding in *Blackwell*, plaintiff has clearly failed to create a valid construction lien.

Nevertheless, plaintiff argues that *Blackwell* only interpreted the former mechanic's lien act and should not have been relied upon by the trial court in interpreting the current Construction Lien Act. Plaintiff argues that, subsequent to the enactment of the Construction Lien Act, the Michigan Supreme Court, in *Brown Plumbing and Heating, Inc v Homeowner Construction Lien Recovery Fund*, 442 Mich 179; 500 NW2d 733 (1993), interpreted § 302 of the new act as allowing substantial compliance with the ninety-day filing requirement to be sufficient to acquire a valid construction lien. I find that plaintiff has misinterpreted the holding in *Brown*, and that the strict-compliance rule announced in *Blackwell* continues to be the law in Michigan.

Section 302 of the Construction Lien Act provides in pertinent part:

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. [MCL 570.1302(1); MSA 26.316(302)(1).]

This section of the act is virtually identical to the one it replaced under the former mechanic's lien act, which provided:

This act is hereby declared to be a remedial statute and to be construed liberally to secure the beneficial results, intents and purposes thereof; and a substantial compliance with its several provisions shall be sufficient for the validity of the lien or liens hereinbefore provided for, and to give jurisdiction to the courts to enforce the same. . . [MCL 570.27; MSA 26.307.]

In *Brown*, the Michigan Supreme Court considered whether § 302 applied to § 203(3)(h), which required that a person seeking recovery from a fund provided for by the act first establish that the contractor he utilized was licensed. *Id.* at 181. Contrary to plaintiff's argument on appeal, our Supreme Court did not revisit the issue settled in *Blackwell*. The *Brown* Court only considered the narrow issue of whether the substantial compliance standard in § 302 applied to new sections of the Construction Lien Act that were not in place under the former mechanic's lien act. *Id.* at 184-185.

Moreover, the *Brown* Court affirmed the basic holding of *Blackwell* that the substantial compliance provision did not apply to the entire act. *Id.* at 183. The Court noted that the substantial

compliance provision interpreted in *Blackwell* had remained essentially the same under the Construction Lien Act, and that its meaning had not changed. *Id.* at 185. I conclude that the applicability of § 302 to Part 1 of the act was not at issue in *Brown*, and that the Court's statements in that regard were dicta. Accordingly, the strict-compliance rule announced in *Blackwell* continues under the Construction Lien Act.

Because the strict compliance rule announced in *Blackwell* has remained the law in Michigan under the Construction Lien Act, plaintiff's assertion of substantial compliance failed to cure the defect of untimely filing of plaintiff's claim. Therefore, I conclude that the trial court properly granted defendants' motion for summary disposition on the ground that plaintiff failed to state a claim upon which relief could be granted. MCR 2.116(C)(8).

I would affirm the decision of the trial court.

/s/ Peter D. O'Connell

¹ MCL 570.5; MSA 26.285