

STATE OF MICHIGAN
COURT OF APPEALS

ASMAR CONSTRUCTION COMPANY, INC. and
RAAD ASMAR,

Plaintiffs-Appellants,

v

AFR ENTERPRISES, INC. and MOSTAFA M.
AFR,

Defendants-Appellees.

UNPUBLISHED
September 15, 2022

No. 357147
St. Clair Circuit Court
LC No. 2001-000631-CH

Before: CAVANAGH, P.J., and GARRETT and YATES, JJ.

PER CURIAM.

This dispute turns upon the distinction between a money judgment and a judgment lien. In 2011, the trial court entered a judgment confirming an arbitration award. The arbitrator’s award, which was incorporated in the judgment, reduced to \$550,000 plaintiffs’ existing construction lien on a parcel of property where construction of an ice arena took place. The arbitrator’s award also authorized plaintiffs to obtain from defendant, Mostafa Afr, “a personal guaranty in the amount of the lien (\$550,000) only as it relates to the sale of the property.” Almost a decade later, the trial court granted plaintiffs’ ex parte motion to renew the judgment. Defendants subsequently objected by moving to “set aside [the] improper judgment lien renewal.” The trial court granted that motion, characterizing its 2011 “judgment” as a lien. Because we conclude that the 2011 “judgment” was much more a lien than a “noncontractual money obligation,” we affirm.

I. FACTUAL BACKGROUND

Much can be said about the strange and convoluted process by which the arbitrator handled the arbitration proceeding and the parties thereafter litigated this case, but the facts germane to the issue presented on appeal are few and uncomplicated. More than two decades ago, plaintiff, Asmar Construction Company, Inc. (Asmar), took part in a construction project at an ice rink on a parcel of land owned by defendant, Afr Enterprises, Inc. (Afr Enterprises). Because Asmar was not paid for its work on the project, Asmar filed a construction lien on the property in an amount exceeding \$9 million. In 2001, Asmar and other construction-lien claimants filed suit attempting to foreclose

on their construction liens. But Afr Enterprises filed for bankruptcy protection, which stayed the state-court litigation. As part of the bankruptcy reorganization, plaintiffs and defendants entered into binding arbitration to resolve their construction-lien dispute.

On July 30, 2010, the parties' chosen arbitrator, John Seman, rendered an award reducing the amount of the construction lien on the property of Afr Enterprises to \$550,000, but permitting Asmar to request from Mostafa Afr "a personal guaranty of the amount of the lien (\$550,000) only as it relates to the sale of the property." Accordingly, the arbitrator conditioned Asmar's recovery on the guaranty to the sale of the property as protection for plaintiffs if the sale of the property did not provide sufficient funds to satisfy the \$550,000 construction lien in full. On February 7, 2011, the trial court entered a "Judgment Confirming Arbitration Award," which stated that "the attached Arbitration Award is confirmed and incorporated herein as the final judgment of this Court[.]" In addition, the trial court's judgment noted that "this Judgment may be recorded with the St. Clair County Register of Deeds." By all accounts, plaintiffs recorded the judgment in that manner soon after the trial court issued the judgment, so recording took place in early 2011.

As far as we can determine, the property was not sold after the judgment was recorded, so plaintiffs have not yet recovered anything from defendants. Accordingly, in early January of 2021, plaintiffs submitted an ex parte motion and order to renew the civil judgment, which the trial court signed and entered on January 5, 2021. Defendants responded with a document styled as a "Motion to Set Aside Improper Judgment Lien Renewal." That submission characterized the judgment of the trial court as a lien, rather than a money judgment, and contended that such a lien could not be extended after the passage of nearly ten years from its entry. The trial court ultimately agreed with that analysis and, on April 12, 2021, entered an "Order Granting Defendants' Motion to Set Aside Improper Judgment Lien Renewal." Plaintiffs thereafter sought relief from this Court. We denied Asmar's application for leave to appeal for lack of merit on the grounds presented. *Asmar Constr Co, Inc v AFR Enterprises, Inc*, unpublished order of the Court of Appeals, entered August 2, 2021 (Docket No. 357147). But on January 4, 2022, our Supreme Court remanded the case to this Court "for consideration as on leave granted." *Asmar Constr Co v Afr Enterprises, Inc*, 508 Mich 1015; 967 NW2d 624 (2022). Accordingly, we must now consider whether the trial court erred when it set aside its order of January 5, 2021, extending the 2011 judgment that confirmed the arbitrator's award.

II. LEGAL ANALYSIS

The simple question that we must answer is whether the trial court's "Judgment Confirming Arbitrator's Award" should be treated as a judgment renewable within ten years pursuant to MCL 600.5809(3) or as a judgment lien that must be renewed within five years under MCL 600.2801 and MCL 600.2809. The question arises in the context of a challenge to the trial court's order setting aside the renewal of the judgment. The trial court based its decision upon its interpretation of the relevant statutes, as opposed to an exercise of discretion often involved in setting aside a judgment, so we shall review the trial court's characterization of the judgment de novo. *Lakeshore Group v Dep't of Environmental Quality*, 507 Mich 52, 61; 968 NW2d 251 (2021). "This Court's role in interpreting statutory language is to 'ascertain the legislative intent that may reasonably be inferred from the words in a statute.'" *2 Crooked Creek v Cass Co Treasurer*, 507 Mich 1, 9; 967 NW2d 577 (2021). " 'In doing so, courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of a statute.' " *Id.*

“ ‘When the statutory language is clear and unambiguous, judicial construction is not permitted and the statute is enforced as written.’ ” *Id.* With these principles in mind, we must turn to the statutes on which the trial court predicated its decision.

Plaintiffs rely upon MCL 600.5809(3) for the proposition that they had ten years to move for renewal of the judgment entered by the trial court in 2011. That statute addresses “[a]ctions to enforce noncontractual money obligations” and prescribes a ten-year “period of limitations . . . for an action founded upon a judgment or decree rendered in a court of record in this state . . . from the time of rendition of the judgment or decree.” See MCL 600.5809(3). Significantly, the statute provides that, “[w]ithin the applicable period of limitations prescribed by this subsection, an action may be brought upon the judgment or decree for a new judgment.” *Id.* Accordingly, if plaintiffs are correct in characterizing the trial court’s judgment entered on February 7, 2011, as a judgment covered by MCL 600.5809(3), then plaintiffs were entitled to the ex parte renewal of the judgment just as the trial court permitted when it signed and entered the order on January 5, 2021.

In contrast, defendants contend that the trial court’s judgment entered on February 7, 2011, and recorded with the St. Clair County Register of Deeds shortly thereafter constitutes a judgment lien under MCL 600.2801(c), so it necessarily expired “5 years after the date it [was] recorded” pursuant to MCL 600.2809(1) and, therefore, it could no longer be renewed or extended in 2021. According to MCL 600.2801(c), the term “judgment lien” refers to “an encumbrance in favor of a judgment creditor against a judgment debtor’s interest in real property, including, but not limited to, after-acquired property.” Defendants insist that the trial court’s 2011 judgment confirming the arbitration award gave plaintiffs nothing more than a construction lien in the amount of \$550,000 and the ability to obtain a personal guaranty for that same amount from Defendant Aft “only as it relates to the sale of the property.” As a result, defendants argue, the trial court’s judgment fits comfortably within the definition of a “judgment lien” under MCL 600.2801(c).

The trial court’s 2011 judgment confirming the arbitration award falls more neatly into the definition of a “judgment lien” under MCL 600.2801(c) than a “noncontractual money obligation” under MCL 600.5809. The principal relief furnished by the trial court’s 2011 judgment takes the form of a \$550,000 construction lien on real property. The Construction Lien Act (CLA), MCL 570.1101 *et seq.*, is designed “to provide a method to secure payment” for the contractors, workers, and suppliers on construction projects. *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 552-553; 861 NW2d 630 (2016). The method of collection available under the CLA is a construction lien, as opposed to a money judgment that can be won through a claim for breach of contract. *Id.* at 552. The trial court’s 2011 judgment awarded a construction lien—not a money judgment—to plaintiffs and paired that relief with a personal guaranty that likewise depended upon “the sale of the property.” That award is much better understood as “an encumbrance in favor of a judgment creditor against a judgment debtor’s interest in real property,” MCL 600.2801(c), than a “noncontractual money obligation” under MCL 600.5809. Accordingly, the trial court correctly ruled that plaintiffs could not avail themselves of the ten-year judgment-renewal process available under MCL 600.5809(3).

Plaintiffs assert that a judgment lien can only arise after the entry of judgment, so the 2011 judgment itself cannot be a judgment lien. As we have explained, the Michigan judgment lien act (MJLA), MCL 600.2801 *et seq.*, defines the terms “judgment” and “judgment lien” in two separate subsections of MCL 600.2801. See *Thomas v Dutkavich*, 290 Mich App 393, 404; 803 NW2d 352

(2010). Here, the entry of the trial court’s “Judgment Confirming Arbitration Award” in February 2011 not only confirmed and incorporated the arbitrator’s award, but also stated clearly that “this Judgment may be recorded with the St. Clair County Register of Deeds.” And, in fact, plaintiffs recorded the judgment in short order as “an encumbrance in favor of a judgment creditor against a judgment debtor’s interest in real property,” just as MCL 600.2801(c) defines a “judgment lien.” See *id.* (“If a judgment creditor records a notice of judgment lien with the register of deeds for the county in which the real property is located, the judgment lien attaches to the judgment debtor’s interest in the real property. MCL 600.2803.”). We reject plaintiffs’ contention that a judgment lien can only arise after the entry of a judgment, especially in circumstances such as this where the judgment itself expressly contemplates the filing of that document as “an encumbrance in favor of a judgment creditor against a judgment debtor’s interest in real property.” See MCL 600.2801(c).

Nor do we accept plaintiffs’ contention that the trial court’s ruling deprives plaintiffs of a remedy to protect their longstanding claim against defendants. The MJLA allows for rerecording of a judgment lien “by recording with the register of deeds, not less than 120 days before the initial expiration date under [MCL 600.2809(1)], a second notice of judgment lien that has been certified by the clerk of the court that entered the judgment.” MCL 600.2809(4). Plaintiffs elected not to avail themselves of that rerecording opportunity, so the five-year expiration date of their judgment lien came and went in 2016. See MCL 600.2809(1). Plaintiffs’ inaction cannot be laid at the feet of any court or opposing party. Simply put, plaintiffs chose to take no action for nearly ten years, and in the meantime they gave up their statutory right to protect their financial interest through the rerecording process set forth in the MJLA, MCL 600.2809(4).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kristina Robinson Garrett
/s/ Christopher P. Yates