

CLIENT ALERTS

A Recent Court Decision Provides Subtle, Yet Valuable, Reminders to Contractors and Suppliers Concerning the Michigan Construction Lien Act

Client Alert

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On January 11, 2024, the Michigan Court of Appeals issued an opinion in the case of *Morland Property Services LLC v. J.J. Development Inc., et al.*, No. 363581, 2024 WL 133321 (Mich. App. Jan. 11, 2024), which provides subtle, yet valuable, reminders to both residential and non-residential contractors and suppliers concerning the Michigan Construction Lien Act (CLA) (MCL 570.1101 *et seq.*). In *Morland*, plaintiff filed suit against defendants to foreclose on its construction lien. Eventually, defendants moved for summary disposition on plaintiff's lien foreclosure claim. After the trial court granted defendants' motion, plaintiff appealed, arguing that the trial court improperly granted defendants' motion because there was a genuine issue of material fact about when plaintiff last performed work on the property. The appellate court agreed, holding that "[i]f the trial court had construed the evidence in a light most favorable to plaintiff, it would have recognized the two construction liens and...meeting notes indicated plaintiff continued to furnish services and materials to the" subject property after November 15, 2019. The appellate court also held that it was unclear why the trial court believed the testimony from plaintiff's sole member, *Morland*, was conclusive of the issue in the case, noting that, if plaintiff stopped working in 2019, but it did on November 15, 2019 while performing the subject services on the subject property, its construction lien was still timely. The appellate court noted that "[t]he trial court failed to recognize the record lacked any indication of when, precisely, during 2019, *Morland* stopped working." The appellate court also held that, under MCL 570.1106, the subject structure was not a residential structure, and therefore, the contract for the work, which formed the basis of the lien did not need to be in writing as required under MCL 570.1114.

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Morland serves as a reminder of two extremely important construction-related items.

First, the importance of keeping sufficient written records of the work and/or for the project. Whether those records be daily reports or daily logs (or the like), they could be vital to prosecuting and defending claims, in particular, CLA-related claims, as they were for plaintiff in *Morland*. The same holds true for meeting notes or meeting minutes (e.g., progress meeting notes or progress meeting minutes). Once they are issued, they should be reviewed and, if necessary, corrected. It is also imperative that relevant verbal communications be memorialized in writing; something as simple as an email or text may suffice depending on the subject or the nature of the communication.

Second, that contracts for residential-related work need to be in writing under the CLA. If not, contractors and suppliers run the risk of forfeiting their lien rights for such work. While only contracts for residential-related work need to be in writing under the CLA, it is recommended that contracts for both residential-related work and non-residential-related work be in writing, in particular, a comprehensive contract with specific construction-related terms, conditions, and provisions, since such contracts will expressly offer rights and remedies (or the like) that a “handshake” will not.

The author of this alert or any other attorney in Butzel Construction Law Practice Group are willing and able to help you with any construction-related matters that contractors or supplier may have, in particular, preparing forms for keeping sufficient written records of work that they perform, which will provide simplicity and uniformity to the such record keeping; advising on correcting meeting notes or minutes; and drafting or revising (or the like) contracts for both residential-related work and non-residential-related work.

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