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Case Law Update: Construction Lien Rights of Architects, Engineers, Surveyors, and Consultants

Client Alert

4.11.2023

Recently, the Court of Appeals issued a decision in the case of *ECI Environmental Consultants & Engineers LLC v House of Providence*, 2023 WL 2721399 (Mich App March 30, 2023), which provides clarity on the Construction Lien Act and the rights of construction lien claimants, in particular, with respect to those who provide architectural, engineering, or environmental services such as planning, programming, and surveying.

In *ECI*, the Court of Appeals held that the trial court erred when it relied on MCL 570.1114 in granting summary disposition to defendant, House of Providence, under MCR 2.116(C)(8). As to the dismissal of its request to foreclose on the construction lien, plaintiff, ECI Environmental Consultants & Engineers LLC, argued that “the trial court improperly relied on MCL 570.1114” when it should have instead relied on MCL 570.1118. The appellate court noted that plaintiff “did not undertake work for defendant related to the existing residential structure(s) on the property. Rather, the work was to prepare the physical site or land, through remediation of hazardous substances, to achieve suitability for future construction...” Thus, the appellate court concluded that “the trial court’s reliance of MCL 570.1114 was improper. Rather, the definitions of MCL 570.1107(1), regarding the rights of a contractor ‘who provides an improvement to real property’ to a construction lien, in conjunction with MCL 570.1104 (6) defining the types of labor that provide an ‘improvement’ to property, are more appropriate to apply to the work performed by plaintiff.” The appellate court held that when “viewed with the statutory definition of a ‘contract,’ which indicates a ‘contract’ can be ‘of whatever nature,’ as long as it ‘provides an improvement to real property,’ MCL 570.1103(4), there is, at a minimum, a question of fact as to whether plaintiff’s alleged work would be sufficient to qualify for a construction lien.” The appellate court noted that “while MCL 570.1114 requires a written

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contract, MCL 570.1104(6) does not include a written requirement in its definition of a contract.” Thus, the appellate court held that the trial court erred in granting summary disposition based on its misapprehension as to “the applicability and requirements of MCL 570.1114, to the exclusion of other provisions.”

In *ECI*, defendant also claimed that “plaintiff did not provide an ‘improvement’ on the subject property as contemplated by the statute, precluding foreclosure of the construction lien.” The appellate court held that given “the specific terms, ‘surveying’ and ‘engineering and architectural planning’ contained within MCL 570.1104(6) allude to similar forms of labor engaged in by plaintiff, allowing an inference,” and thus, a question of fact about whether its labor was contemplated by the statute. The appellate court concluded that “plaintiff’s work can best be described as an essential step in preparing defendant’s land and structures for its stated purpose of housing children. Therefore, plaintiff’s environmental consulting services could be construed as an ‘improvement,’ as contemplated by MCL 570.1104(6).” The Court of Appeals, therefore, reversed and remanded the decision to the trial court.

As mentioned above, *ECI* provides clarity on the Construction Lien Act and the rights of construction lien claimants, in particular, with respect to those who provide architectural, engineering, or environmental services such as planning, programming, and surveying. If you provide any services involving a project or improvement, it is prudent that you take the necessary steps to perfect a construction lien under the Act, even if you question whether those services are lienable under the Act, since those services could eventually be determined lienable and that lien could eventually secure payment for those services.

If you have any questions or concerns or need any assistance in handling any construction related matters, in particular, construction lien related matters, please contact the author of this alert or any of the attorneys in Butzel Long’s Construction Law Practice Group.

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