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Environmental Consultant/Services: Michigan Appellate Court Addresses Potential Applicability of Construction Lien Act

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The Court of Appeals of Michigan ("Court") addresses in a March 30th Opinion whether services provided by an environmental consultant were encompassed by the Michigan Construction Lien Act ("Act"). *See ECI Environmental Consultants and Engineers, LLC v. House of Providence*, 2023 WL 2721399.

The Court considers whether the services provided by the environmental consultant constitute an "improvement" as required by the Michigan lien statute.

The Construction Lien Act is a Michigan law that has been construed to accomplish two goals:

1. protect the rights of lien claimants to payment of wages and materials; and
2. protect owners from paying twice for such services.

The Act states that a contractor "who provides an improvement to real property has a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property." The two questions arising from this language are how the terms "Contract" and "Improvement" are defined.

The Act defines a contract as "a contract, of whatever nature, for the providing of improvements to real property." "Improvement" is defined as "including but not limited to surveying, engineering and architectural planning, construction management, clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, and installing or affixing a fixture.

House of Providence contracted with ECL in 2017 to prepare a plan acceptable to the Michigan Department of Environmental Quality. It wanted to develop the property to remove toxins from the land to build a foster home for at-risk youth. ECL contended that they had not been compensated for their work on the property from June 2019-August 2020.

House of Providence subsequently utilized a different environmental services firm. ECL placed a construction lien on the property. Further, it filed a complaint to foreclose on the construction lien and a claim for breach of contract. House of Providence moved for the case to be dismissed for failure to state a claim.

House of Providence stated that the property was a residential structure. As a result, it argued a construction lien on a residential structure could only be obtained with a written contract. ECL did not have a written contract. Therefore, the House of Providence argued that the construction lien was improper.

The House of Providence also argued that ECL's environmental consulting services did not constitute an "improvement" within the meaning of the Construction Lien Act. ECL responded that the statute does not require a written contract for a construction lien. An oral contract was argued to suffice. In addition, it contended the services constituted an improvement within the meaning of the statute. Nevertheless, the trial court granted the motion for summary disposition, and ECL filed a timely appeal.

ECL argued on appeal that the trial court relied on the wrong statutory provisions of the Construction Lien Act. It also argued that the trial court erred in granting summary disposition because it did not recognize the plaintiff's implicit breach of contract claim.

ECL first argued that the trial court improperly relied on MCL 570.1114. This provision provides that a contractor has no right to place a construction lien on a residential structure unless it has provided an improvement under a written contract.

ECL contended that it did not undertake improvements of any residential structures on the property. Instead, it prepared reports about the physical site for suitable future construction and the use of the property to house children. Therefore, ECL would not be subject to the written contract requirement of this provision. ECL would simply have to show that it had a contract of "whatever nature" to improve real property.

House of Providence responded that ECL still should not be able to obtain a construction lien because it did not improve the property. The Court responded to this argument by noting that the definition of "improvement" includes the broad language of "including but not limited to." Further, the definition includes surveying, engineering and architectural planning. Both involve expert services on developing property. Consequently, whether ECL's work could be included in this definition was deemed a question of fact.

Although ECL did not expressly state a breach of contract action in its pleadings, ECL argued that the trial court erred by ignoring the claim. To establish an oral contract, ECL relied on a 2017 letter of engagement and an ongoing relationship for work to be done between the parties. The Court acknowledged that the 2017 letter of engagement was a description of the scope of the work and its potential price as opposed to a written contract.

Several facts were identified as possible evidence of an oral contract. In particular, the House of Providence attempted to terminate the relationship without signing a written contract. This implied the existence of a working relationship. Also, ECL was instructed to continue its work by House of Providence. These facts considered together imply the possible existence of an oral contract. Therefore, the court found sufficient notice in the pleading of a breach of contract claim. This should not have been left unaddressed by the trial court.

The case was remanded to the trial court to apply the proper statutory provisions and allow the ECL to attempt to prove the breach of contract claim.

A copy of the Opinion can be downloaded [here](#).