

# MICHIGAN REAL PROPERTY REVIEW

## REAL PROPERTY LAW SECTION

### STATE BAR OF MICHIGAN

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"In my youth, " said his father, "I took to the law,  
And argued each case with my wife;  
And the muscular strength which it gave to my jaw  
Has lasted the rest of my life."

Lewis Carroll, Alice's Adventures in Wonderland

VENDOR'S LIABILITY FOR PHYSICAL DEFECTS  
ON SALE OF REAL ESTATE

by

William F. Nern, Nern & Alfs

Often after closing of the sale of real estate, the buyer will discover or claim some defect for which he holds the seller responsible. Does the rule of "caveat emptor" apply? An examination of the law discloses some interesting applications.

MCLA 565.5 (M.S.A. 26.524) provides that no covenant is implied in any conveyance of real estate, but in Weeks v. Slavik Builders, Inc. 24 Mich App 621 (1970) the court held that an executory sales agreement was not a conveyance.

In Mulheron v. Koppin, 221 Mich 187 (1922), Plaintiff purchased a new cottage, constructed by Defendant, whose agent represented it would be of good quality and workmanship. The land had been filled and after plaintiff took possession the house settled and cracks appeared. The court held that "caveat emptor" did not apply, even though plaintiff had inspected the premises at various stages, as the defect was a latent one and Plaintiff was entitled to rescind. Concealment of material facts that one, under the circumstances, is bound to disclose may constitute actionable fraud. Busch v. Wilcox, 82 Mich 315; Prudential Insurance Co. v. Ashe, 266 Mich 667; Wolfe v. Kusterer, 269 Mich 424.

The facts of Groening v. Opsata, 323 Mich 73 (1948) were that plaintiffs purchased a residence situated on a bluff on the shore of Lake Michigan and had asked the defendant's real estate agent if the property was safe and secure, and Plaintiffs were assured there was no problem, while in fact defendant's agent knew otherwise. After closing, the elements and waves completely eroded away the property. The court held that the facts were sufficient to support a jury verdict for Plaintiffs.

In Ball v. Sweeney, 354 Mich 616 (1958) the defendants who were the sellers of a resort had experienced sewage problems which were discovered by plaintiff some time after closing. The court held defendants had fraudulently concealed a material fact and plaintiff was entitled to rescission. There was no discussion as to whether plaintiff might not easily (reasonably) have discovered the problem by inspection, as the sewage flowed onto the open land.

The case of Weeks v. Slavik Builders, Inc. supra, involved an express written warranty for the roof of a newly constructed residence, but also the question of implied warranty was raised, and a defense of the statute of limitations was raised as the action was commenced more than six years after the first roof leak appeared and when repairs were attempted without success. The court held that the doctrine of "caveat emptor" does not apply to the purchase of new construction, and the court went on to say that the issue of implied warranty is limited to new houses, "whether they are purchased prior to construction, during construction, or are purchased after the dwelling has been constructed but is yet unoccupied." The court further held that the plaintiffs had commenced this action within a reasonable time after it was determined that repairs would not correct the leaking roof and that the action was commenced within the statutory period.

While the case of Williams v. Benson, 3 Mich App 9 (1966) was overruled by the Supreme Court on its own motion without any opinion, 378 Mich 721, the Court in People v. Atkins, 397 Mich 163 (1976) at page 181 cites Williams v. Benson as authority for the proposition that Michigan civil jurisprudence fully supports the "silent fraud rule." Therefore, the Williams case should be read as to the application of the "silent fraud rule." Williams, the plaintiffs, sold a motel to defendants. Plaintiffs had informed defendants that the motel had been infested by termites, but plaintiffs had the area chemically treated and believed the problem had been arrested. Defendants sold the motel to Muller without informing the new buyer of the prior termite problem and the steps which had been taken to correct it, and some time later Muller discovered the motel was seriously infested with termites. The Williams opinion cites the rule that "a fraud arising from the suppression of the truth is as prejudicial as the assertion of a falsehood," Tompkins v. Hallister, 60 Mich 470; Fred Macey Co. v. Macey, 143 Mich 138; Nowicki v. Podgorski, 359 Mich 18.

Representations falsely made by the defendant that land was high and dry and good agricultural land, without mire, swamp or boggy portions were material facts and not mere seller's talk, which, relied upon by plaintiff, became the inducing case of the sale, rendering defendant liable. Hainer v. McKenzie, 188 Mich 27.

Many printed purchase agreement forms contain language such as: "Buyer represents that he has inspected or has had the opportunity to inspect and make inquiry concerning the premises, knows the conditions thereof and is purchasing the same 'as is.'" See 97 ALR 2d 849. In Fignar v. Schreiber, 255 Mich 661, the court held that a contract provision which stated that purchaser relied upon his own observations is ineffective against claim of fraud. The general rule is that a purchase agreement containing a clause that the purchaser is buying in an "as is" condition does not preclude the purchaser from bringing an action based upon fraudulent representations of the physical conditions of the premises, 97 ALR 2d 849. The New York Court in Taylor v. Heisinger, 242 NYS 2d 281 held that a clause that the premises were being sold in "their present condition and state of repair and without representations with respect to condition" protected seller from purchaser's claim of termites. But see Smith v. Rickards, 308 P2d 758, where the purchase agreement stated that "buyer has personally examined said property and is familiar with its location and condition and is not relying upon any representations relating thereto," and the court held such provision insufficient to protect a fraudulent vendor.

In the early case of Whiting v. Hill, 23 Mich 399, it was held that if a purchaser makes an actual inspection of the property the rule of caveat emptor applies notwithstanding false representation made by the vendor. It has been held in Florida that a purchaser, having ample opportunity to inspect premises and electing not to do so and to accept representations of seller, is not entitled to claim having been misled by representations. Davis v. Dunn, 58 So 2d 539 (Fla.).

It was held in Smith v. Werkheiser, 152 Mich 177, that where seller made fraudulent misrepresentations, the fact that the buyer undertook to verify the statements did not deprive buyer of his remedy, since a defrauded party does not owe to the party who defrauds him an obligation to use diligence to discover the fraud. Also see Papin v. Demski, 17 Mich App 151, holding that plaintiff is not required to use diligence to discover fraud. Both the Smith and Papin cases run contrary to Whiting v. Hill, supra.

Mere expressions of opinions, however strongly or positively made, though false, are not fraud. See Windham v. Morris, 370 Mich 188; Mieske v. Harmony Electric Co., 278 Mich 61; Kulesza v. Wyhowski, 213 Mich 189; Leshner v. Bonner, 269 Mich 124. See Linn v. Gunn, 56 Mich 447; Haener v. McKenzie, 188 Mich 27; Kalamazoo v. Shiek, 248 Mich 118, for cases on "Puffing."

Again the termites appear in Sullivan v. Ulrich, 326 Mich 218, and in Urban v. Doolan, 282 Mich 271. In the Urban case, plaintiff purchased a 57 year old farm house after viewing the property three times, having been informed by the seller that it was a good house. After plaintiff took possession the house was found to be infested with termites. There was no evidence to show that the defendant-seller had knowledge of the termites, nor was there any discussion or evidence that plaintiff could have discovered the problem by proper inspection and examination. The court held that there was no fraud and that the statements made by the seller were mere expressions of opinion and the bill to rescind was dismissed. The court also refused plaintiff permission to amend on the grounds of mutual mistake. In Sullivan, supra, where there was evidence that the seller-defendant had knowledge of the termites prior to the sale to plaintiff and by partial statements had deceived the plaintiff and concealed the facts, the misrepresentations were inferred rather than pure positive expressions. The court held for the plaintiff.

While not totally within the scope of this article, it is noteworthy to call attention to the Uniform Vendor and Purchaser Act, compiled Laws of 1948 #565.701, MSA 26.676 (1), which provides if neither title nor possession has been transferred and the property is destroyed without fault of the purchaser (or is taken by condemnation) the vendor cannot enforce the contract and purchaser is entitled to a refund of his money, but if either title or possession has been transferred, and all or any part of property is destroyed without fault of vendor (or is taken by condemnation) the seller can enforce the contract of sale.

In conclusion, it generally can be said that there is no implied warranty on the sale of an existing house; but concealment of a material fact will afford relief to purchaser. The builder of a new house is not protected by the caveat emptor rule.

## MORE ON MECHANIC'S LIENS

by

G. Norman Gilmore, Reid, Gilmore &amp; Reid

In the June, 1977, issue of the Real Property Review, Bob Bolton, the able and erudite chairman of our Mechanic's Lien Committee, undertook to bring up to date lower court decisions which this writer had cited in an earlier article to illustrate the conflicting and contradictory judicial opinions which make the Mechanic's Lien Law as presently constituted a "shambles." It is the purpose of this dissertation to provide a further update on these decisions.

First, after the Court of Appeals had dutifully followed stare decisis in stating, in William Moors, Inc. v. Pine Lake Shopping Center, Inc. #2, 74 Mich. App. 78, that the mechanic's lien statute should be strictly construed up to the time the lien attaches, but liberally construed after that point (Headnote 1), and in affirming the decisions of Spartan and Hodgkiss, the Michigan Supreme Court, on June 2, 1977, reversed Spartan and Hodgkiss, by holding specifically that the Act should be construed "liberally" from the beginning, thus ignoring all previous holdings. A copy of that opinion follows this article.

The crowning touch in incongruity, however, seems to be on its way to probable appellate review. The able Hon. Robert B. Webster, of the Oakland County Circuit Court, in what can only be described as a supreme effort to give a strict construction to the Act, and without the benefit of notice of the Supreme Court's reversal of Spartan and Hodgkiss, dictated an opinion in Pisarra v. Simpson Lake Development in which the Court declares that - since engineering drawings are a lienable item (M.C.L.A. 570.1) and since, under M.C.L.A. 570.9, all liens attaching by reason of "work, labor or materials furnished in carrying forward or completing the same building or buildings..." are prior to "all other titles, liens or encumbrances" given or recorded subsequently - any mortgage, even if recorded prior to commencement of actual construction, is subject and inferior to all liens against the land properly filed at any time afterward. A copy of this Opinion also follows this article. Our only comment on this concept is that since engineering drawings and surveys (both lienable) are necessary prerequisites to the granting of any construction loan, and must take place before the mortgage can be consummated (or even committed), lenders are being placed in a highly untenable position, and mortgages of that type may be hard to obtain, to say the least.

We can only hope for legislative relief. As Mr. Bolton has noted, Senate Bill 174, sponsored by subcontractors wishing for simplified and more effective lien procedures, and Senate Bill 630, introduced following a report of the Michigan Law Revision Commission, attack the problem from two irreconcilable perspectives. Both by their language do repeal the present Mechanic's Lien Act and start over to find a real solution. We do not believe either bill, without considerable revision, would stand the tests of constitutionality and practicality. There is some expectation that the legislative committee, working with representatives of sponsoring organizations and with our Mechanic's Lien Committee, may reach a worthwhile goal.

If they do, it will be a great day for the State of Michigan!

NOTE: Where possible, a syllabus (headnote), such as this, will be released at the time the opinion is released. This syllabus is not a part of the opinion of the Court but has been written by the Supreme Court Reporter as a summary of the case for the convenience of readers. See United States v. Detroit Lumber Company, 200 US 321, 337; 26 S Ct 282; 50 L Ed 499 (1906).

SPARTAN ASPHALT PAVING COMPANY v. GRAND LEDGE MOBILE HOME PARK

HODGKISS & DOUMA, INC. v. WOODWARD DEVELOPMENT COMPANY

Docket Nos. 58978, 59067. Decided June 2, 1977. On applications by plaintiffs for leave to appeal the Supreme Court, in lieu of granting leave to appeal, reversed the decisions of the Court of Appeals.

The issue in these cases is whether paving improvements are subject to the mechanic's lien statute.

Spartan Asphalt Paving Company did paving work for the general contractor of a mobile home park and brought a complaint for foreclosure of a mechanic's lien, recovery quantum meruit, or creation and foreclosure of an equitable lien against the owner of the mobile home park, Grand Ledge Mobile Home Park, and the contractor and mortgagees. The Eaton Circuit Court, Richard Robinson, J., granted summary judgment for the defendants on all counts. The Court of Appeals, Allen, P.J., and E. H. Papp, J. (D. E. Holbrook, Jr., J., concurring), affirmed and held that the paving work performed is not covered by the mechanic's lien statute but remanded for further proceedings on the plaintiff's motion to amend the complaint (Docket No. 25510). Plaintiff applies for leave to appeal.

Hodgkiss & Douma, Inc., constructed a paved parking area for a shopping center and brought a complaint for foreclosure of a mechanic's lien against Woodward Development Company, Union Lake Associates and others. The Emmet Circuit Court, Martin B. Breighner, J., granted summary judgment for defendants on the ground that the mechanic's lien statute did not apply to parking lots and related areas. The Court of Appeals, Danhof, P.J., and D. E. Holbrook and D. L. Monro, JJ., affirmed (Docket No. 25895). Plaintiff applies for leave to appeal.  
Held:

1. The Legislature directed that the mechanic's lien statute, because of its remedial nature, must be construed liberally to carry out its intended purpose of benefiting and protecting subcontractors, materialmen and laborers. This legislative mandate must prevail over previous judicial pronouncements to the contrary.

2. The mechanic's lien statute gives a lien on a house or building to subcontractors who may perform any labor or furnish materials in carrying forward or completing any contract whose object is to improve any lot or parcel of land. The statute, liberally construed, requires treating the paving improvements for the mobile home park and the shopping center as the performance of labor and the furnishing of materials in connection with the improvement of land and therefore subject to the mechanic's lien statute. To the extent that previous case law may be read as holding otherwise, it is overruled.

Reversed.

71 Mich App 177; 247 NW2d 589 (1976) reversed.

70 Mich App 298; 245 NW2d 725 (1976) reversed.

Bezold v. Beach Development Co., 259 Mich 693; 244 NW 204 (1932), over-ruled in part.

CR 18-371 & a  
CR 18-453

FILED JUNE 2, 1977

S T A T E   O F   M I C H I G A N  
S U P R E M E   C O U R T

SPARTAN ASPHALT PAVING COMPANY,  
a Michigan corporation,

Plaintiff-Appellant,

v

58978

GRAND LEDGE MOBILE HOME PARK,  
a Michigan Limited Partnership,  
and JACK R. COURSHAN, Nominee of  
First Mortgage Investors, a  
Massachusetts Business Trust,

Defendants-Appellees and  
Cross-Appellants,

and

MICHIGAN NATIONAL BANK - Oakland,  
a National Banking Association,

Defendant-Appellee.

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HODGKISS & DOUMA, INC., a  
Michigan Corporation,

Plaintiff-Appellant,

v

59067

WOODWARD DEVELOPMENT COMPANY,  
a Michigan Corporation; UNION  
LAKE ASSOCIATES, A partnership  
consisting of E. David Auer,

Jack J. Surnow and Roy J. McGlothlin;  
and Trustees of CITIZENS MORTGAGE  
INVESTMENT TRUST, a Massachusetts  
Business Trust,

Defendants-Appellees.

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Per Curiam. The issue common to these cases is whether paving improvements are subject to the mechanic's lien statute. MCLA 570.1; MSA 26.281. We hold that they are.

Plaintiff Spartan Asphalt Paving Company did paving work for the general contractor of a mobile home park. When the general contractor failed to pay, plaintiff filed a several-count complaint against defendant Grand Ledge Mobile Home Park, a limited partnership that owns property on which the mobile home park has been constructed. The first count of the complaint was based on the mechanic's lien statute, the second on quantum meruit, and the third on equitable lien. Plaintiff appealed following the trial judge's grant of the defendant's motion for summary judgment on all three counts. The Court of Appeals "reluctantly" concluded that the paving work plaintiff had performed is not covered by the mechanic's lien statute. 71 Mich App 177, 186; 247 NW2d 589 (1976).

Plaintiff Hodgkiss & Douma is an asphalt paving company that constructed a parking area for the general contractor of a shopping center owned by the defendants. When the general contractor failed to pay, plaintiff sought to foreclose a mechanic's lien on the premises for the work done. The trial judge ruled that the mechanic's lien statute did not apply to parking lots and related areas. The Court of Appeals affirmed. 70 Mich App 298; 245 NW2d 725 (1976).

Plaintiffs lost in the courts below largely because of (1) our decision in Bezold v. Beach Development Co., 259 Mich 693, 695; 244 NW 204 (1932); and (2) the line of cases holding that the mechanic's lien statute must be strictly interpreted "until the lien attaches," only thereafter to be liberally interpreted. See, e.g., Smalley v. Northwestern Terra-Cotta Co., 113 Mich 141, 148; 71 NW 466 (1897).

The premier rule of statutory construction is to discover and give effect to the intent of the Legislature. Moore v. Department of Military Affairs, 398 Mich 324, 327; 247 NW2d 801 (1976). Extracting the Legislature's intent from the tangle of words and clauses that comprises the mechanic's lien statute is difficult and tedious. The following quotation represents only about one-third of the statute's first sentence:

"Every person who shall, in pursuance of any contract, express or implied, written or unwritten, existing between himself as contractor, and the owner, part owner or lessee of any interest in real estate, build, alter, improve, repair, erect, ornament or put in, survey or plat any lot or parcel of land, or portion thereof, or engineer or design any sewers, water lines, roads, streets, highways, sidewalks, or prepare and furnish pursuant to such contract to such owner, part owner or lessee of any interest in real estate any survey, plat, plat of survey or design or engineering plan, or plans, for the improvement of any lot or parcel of land not exceeding one-quarter section of land, or who shall furnish any labor or materials in or for building, altering, improving, repairing, erecting, ornamenting or putting in any house, swimming pool, building, machinery, wharf or structure, or who shall excavate, or build in whole, or in part, any foundation, cellar or basement for any such house, swimming pool, building, structure or wharf, or shall build or repair any sidewalks,

sewers, sewage disposal equipment, water lines and pumping equipment or wells or shall furnish any materials therefor, or shall furnish any nursery stock, or labor in connection therewith for any property, or shall rent or lease equipment in connection therewith for any property, and every person who shall be subcontractor, laborer, or materialman, perform any labor or furnish materials or shall rent or lease equipment to such original or principal contractor, or any subcontractor, in carrying forward or completing any such contract, shall have a lien therefor upon such house, swimming pool, building, machinery, wharf, walk or walks, wells, sewers, sewage disposal equipment, water lines and pumping equipment, foundation, cellar or basement, and other structures, and its appurtenances, . . ." MCLA 570.1; MSA 26.281 (emphasis supplied)

For our purposes here, the statute appears to give a "lien" on a "house [or] building" to subcontractors who may "perform any labor or furnish materials . . . in carrying forward or completing any . . . contract" whose object is to "improve . . . any lot or parcel of land, . . ."

In determining whether plaintiff's paving work is encompassed by the foregoing statutory language, we are mindful of the Legislature's directive that the mechanic's lien statute, because of its remedial nature, must be construed liberally to carry out its intended purpose of benefiting and protecting subcontractors, materialmen and laborers:

"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, . . ." MCLA 570.27; MSA 26.307

This legislative mandate must prevail over previous judicial pronouncements to the contrary. See, e.g., Smalley, supra.

The statute, liberally construed, requires us to treat plaintiffs' paving improvements in connection with the construction of the mobile home park (Spartan Asphalt Paving Company) and the shopping center (Hodgkiss & Douma) as the performance of labor and the furnishing of materials in connection with the improvement of land. Thus, we hold that plaintiffs' paving improvements are subject to the mechanic's lien statute. Bezold, we feel, does not compel a contrary conclusion.

The terse opinion in Bezold did not expand upon the reasons for the conclusion there reached, nor did it indicate an awareness of the legislative directive that the mechanic's lien statute be liberally construed. Moreover, the present statute is more expansive than the one in effect at the time of Bezold:

"Every person who shall, in pursuance of any contract, express or implied, written or unwritten, existing between himself as contractor, and the owner, part owner or lessee of any interest in real estate, build, alter, improve, repair, erect, ornament or put in, or who shall furnish any labor or materials in or for building, altering, improving, repairing, erecting, ornamenting or putting in any house, building, machinery, wharf or structure, or who shall excavate, or build in whole, or in part, any foundation, cellar or basement for any such house, building, structure or wharf, or shall build or repair any sidewalks or wells or shall furnish any materials therefor, and every person who shall be subcontractor, laborer, or materialman, perform any labor or furnish materials to such original or principal contractor, or any subcontractor, in carrying forward or completing any such

contract, shall have a lien therefor upon such house, building, machinery, wharf, walk or walks, wells, foundation, cellar or basement, and other structures, and its appurtenances, . . ." 1929 PA 264, 3 CL 1929, §13101 (emphasis supplied)

The 1929 version limited the lien to improvements "in any house, building, machinery, wharf or structure." The present version covers improvements for "any lot or parcel of land." The language of the present statute, in conjunction with the legislative directive to construe liberally, covers asphalt paving which improves a parcel of land. To the extent Bezold may be read as holding otherwise, it is overruled.

Our conclusion finds support in the rule that where "language is of doubtful meaning, a reasonable construction must be given, looking to the purpose subserved thereby." People v. McFarlin, 389 Mich 557, 563; 208 NW2d 504 (1973) [quoting Webster v. Rotary Electric Steel Company, 321 Mich 526, 531; 33 NW2d 69 (1948)]. The construction industry has become much more specialized than it was in the Nineteenth Century when the mechanic's lien statute was enacted. To accept defendant's invitation to rule that an object is excluded from lien coverage unless expressly mentioned in the statute would have the effect of removing the specialty contractors from the protection of the statute. Most importantly, it would contravene the intent of the Legislature to provide a remedial, liberally construed statute "to establish, protect, and enforce by lien the rights of mechanics and other persons furnishing labor or materials for the" improvement of land.

Pursuant to GCR 1963, 853.2(4), in lieu of leave to appeal, we reverse the Court of Appeals in each case.

The Spartan Asphalt Paving Company case is remanded to the Fifth Circuit Court for proceedings not inconsistent with this opinion. The application for leave to cross-appeal is considered, and it is denied, because the cross-appellants have failed to persuade the Court that the question presented should be reviewed by this Court.

The Hodgkiss & Douma, Inc. case is remanded to the Thirty-Third Circuit Court for proceedings not inconsistent with this opinion.

No costs in either case, a public question.

/s/ Thomas Giles Kavanagh  
/s/ Blair Moody, Jr.  
/s/ Charles L. Levin  
/s/ Mary S. Coleman  
/s/ G. Mennen Williams  
/s/ John W. Fitzgerald  
/s/ James L. Ryan

## PISARRA, et. al. v. SIMPSON LAKE DEVELOPMENT, et. al.

## O P I N I O N

This cause is before the Court for determination of plaintiffs' motion for summary judgment to establish the priority of the mortgage of Continental Mortgage Investors over mechanic's liens. Other motions for summary judgment have been filed by parties asserting mechanic's liens in this cause. This Court by prior order indicated that it would determine the issue of priority of mechanic's liens over the first mortgage as the first phase of procedure in this matter.

This Court is satisfied that it must deny plaintiffs' motion for the reason that it appears that an issue of fact exists as to the "commencement of \* \* \* improvement" as provided in MCLA 570.9 and as defined in MCLA 570.1. This Court has examined the applicable authorities presented by the parties in their helpful briefs and is constrained to hold that in Michigan, our Legislature has defined the word "improvement" as used throughout the Mechanic's Lien Act as including the furnishing of engineering design or plans, and the furnishing of any survey, plat, plat of survey of any lot or parcel of land, as well as the renting or leasing of contractor's equipment for the purposes set forth in MCLA 570.1. That definition of the word improvement is applicable to MCLA §570.9, which preserves all mechanic's liens from the date of commencement of such improvements. The Court recognizes that in perhaps a majority of jurisdictions a contra rule prevails. The holdings of the courts in other jurisdictions are predicated upon the statutes there applicable. The Michigan Legislature has seen fit to define the word "improvements" with precision and the Legislature has expressly stated that the definition contained within Section 1 of the Act shall apply throughout the Act. Accordingly, on the facts as presented there is clearly a contention of furnishing of engineering designs prior to the date of recordation of Continental Mortgage Investors mortgage. Surveying work was performed prior to that date, and that work may well fall within the statutory language relating to furnishing of surveys.

Attached to this opinion is an opinion by Judge Philip C. Elliott, Genesee Circuit Court in Williams & Works, Inc. v. Springfield Corporation, et al, No. 74-30853 CH, in a case presenting similar issues. It is the understanding of this Court that that case is now on appeal to the Michigan Court of Appeals.

The Court is not satisfied on the present record that the work performed by Cavalloro Excavating Company constituted such earth moving activities as fall within the statutory definition. The briefs of the parties summarizing the state of the record indicate that such work involved removal of vegetation and clearing of the land so that surveys could be performed. This Court does not construe the statutory language contained in MCLA §570.1 relating to:

"\* \* \* excavating, ditching, earth removal, landscaping,  
leveling, grading or changing the contour of any land"

as contemplating the type of work generically defined by the parties as "grubbing." That language seems to contemplate work of the nature of excavation, and actual grading of the premises rather than site clearance.

It is the Court's perception of the present state of the record in this matter that issues of fact exist as to whether engineering or surveying services were performed within the contemplation of the Act. If the parties are able to agree that such services were indeed performed then this Court is prepared to hold that the mechanic's liens as a class are superior to the first mortgage of Continental Mortgage Investors.

Appropriate orders in conformity with this Opinion may be presented, if the parties can agree thereto. In the event that there is disagreement as to future procedures in this matter, the Court directs that the plaintiffs within thirty (30) days file a motion for settlement of an order.

Dated: June 3, 1977

/s/ Robert B. Webster  
Robert B. Webster, Circuit Judge

A TRUE COPY  
LYNN D. ALLEN  
Oakland County Clerk - Register of Deeds  
By /s/ M. Bruce Deputy

## REVISION OF TAX LIEN CHAPTER OF THE TITLE STANDARDS

by

Ralph Jossman

During the first half of 1977 the Title Standards Committee has been engaged in a revision of Chapter XX of the Standards, which deals with federal tax liens. This revision was undertaken because of certain changes in the provisions of the Internal Revenue Code, dealing with tax liens, which were made by the Tax Reform Act of 1976<sup>1</sup>.

Prior to the enactment of the 1976 legislation, a notice of federal tax lien was not effective against a purchaser, holder of a security interest, or mechanic's lienor (as those terms are defined in 26 USCA 6323(h), or a judgment lien creditor, if those parties became such prior to the filing of the notice<sup>2</sup>. The term "filing" was not defined in the Internal Revenue Code.

Since in Michigan notices of federal tax liens are recorded by the register of deeds, instead of being filed by him<sup>3</sup>, probably most Michigan attorneys thought that "filing" of a federal tax lien was synonymous with the recording of the instrument. Such opinion now appears to have been erroneous.

The case of Admas v. United States<sup>4</sup> held that the government's rights were not dependent upon any action of the officer with whom the notice of lien was filed. Mr. and Mrs. Adams had purchased a home, after a title search of the property disclosed no federal liens filed against their vendor. Subsequently, an attempt to seize the house was made by the Internal Revenue Service. It was then discovered that four notices of federal tax liens against the vendor had been filed with the county clerk, prior to the Adams' purchase. The clerk had, however, failed to index them into his records. The Internal Revenue Service had been given copies of the tax liens, on which their filing was endorsed, and was unaware that the liens had remained unindexed. As has been indicated, the Adams' were purchasers for value, and without notice of the liens.

Although it expressed sympathy for the innocent purchasers, the Court found against them for the United States. The Internal Revenue Service had done all it could when it filed the notices with the county clerk. Congress had used the word "filed" instead of "recorded" in the tax lien statute. A further requirement could not be read into the statute, and the rights of the federal government could not be avoided by the failure of a local official to maintain his indexes properly. The lien became effective against third parties, such as the plaintiffs, when it was filed for record.

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1 Public Act 94-455.

2 26 USCA 6323.

3 MCLA 211.672(a); MSA 7.753(12).

4 420 Fed Supp 27 (SD NY 1976).

The holding in Adams v. United States appears to be at variance with Michigan law relating to conveyances, which become of record when entered in the entry book.<sup>5</sup> But the provisions of the Secured Transactions Article of the Uniform Commercial Code relating to perfecting a security agreement through filing are to the same effect.

"Presentation for filing of a financing statement and tender of the filing fee on acceptance by the recording officer constitutes filing under this article."<sup>6</sup>

While provision is made in the U.C.C. for the indexing of financing statements,<sup>7</sup> perfection through filing is not dependent upon its being done.

As has been stated, the decision in Adams v. United States, was a hard one for the plaintiffs, who were innocent purchasers for value. To avoid further instances of this kind, Congress, in the Tax Reform Act of 1976, added language to the Internal Revenue Code providing for a centralized system of indexing for federal tax liens. This new language is as follows:

"The notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph 1 unless the fact of filing is entered and recorded in a public index in the District Office of the Internal Revenue Service for the district in which the property subject to the lien is situated."<sup>8</sup>

Hence, in order for a federal tax lien against Michigan real estate to constitute notice to third parties, it must have been filed for record with the register of deeds for the county in which the land is located and, in addition, been indexed in the public tax lien index in the office of the district director of Internal Revenue at Detroit.

This has made it necessary to revise a number of the present Michigan title standards, which deal with the priorities of a federal tax lien, and the problems in connection therewith, so as to show that the lien was filed for record, (instead of being recorded) and duly indexed.

Two new title standards are being added to take care of certain tax liens created by the Tax Reform Act of 1976. One of these relates to the special lien for estate tax deferred under 26 USCA 6166 or 6166A. The second of these deals with the scope and relative priority of the special lien for additional estate tax attributable to the value of real property used in the operation of a farm or other closely held business.

The adoption of these new standards, and the proposed elimination of certain material relating to tax liens filed many years ago, will result in a general renumbering and rearrangement of this chapter. Details of renumbering have not been worked out fully yet.

It is hoped that the revised Chapter on Federal Tax Liens will be available for distribution about the first of next year.

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5 Sinclair v. Slawson, 44 Mich 123 (1880).

6 MCLA 440, 9403 (1); MSA 19.9403 (1).

7 MCLA 440, 9403 (4); MSA 19.9403 (4).

8 USCA 6323 (f) (4).

THE LEGISLATIVE SCENE

Committee on Legislation  
Joseph H. Hollender, Chairman

The State Legislature began its summer adjournment on July 8, after having introduced 2,113 bills since the beginning of this session. Through August 4, 1977, 105 bills have been signed into law by the governor.

House Bill 4757, which extended the interest rate exemption on residential loans secured by a first mortgage and land contracts, was approved by the governor on July 6 and is now P.A. 56. The remainder of the bills previously reported on in "The Legislative Scene" are still awaiting further action by the legislature which will return on September 14.

Action on Previously Reported Bills

- H. B. 4050: Completed second reading with amendments on June 22.
- H. B. 4076: Completed third reading with amendments on June 8; amended on June 22; Passed; referred to Committee on Finance on June 23.
- H. B. 4189: Referred to Committee on Urban Affairs on June 23; referred to Committee on Appropriations with substitute on July 7.
- H. B. 4227: Completed second reading with substitute on June 27; completed third reading with amendments on June 30; Passed on June 30; referred to Committee on Corporations and Economic Development on July 1.
- H. B. 4236: Approved; P.A. 30; June 15.
- H. B. 4237: Approved; P.A. 29; June 15.
- H. B. 4238: Approved; P.A. 28; June 15.
- H. B. 4251: Completed second reading with substitute on June 27; completed third reading on June 30; amended and Passed on July 5; referred to Committee on State Affairs on July 6.
- H. B. 4329: Completed second reading with substitute on June 30.
- H. B. 4475: Public hearing on June 17.
- H. B. 4505: Completed second reading with amendment on June 15.
- H. B. 4579 & H. B. 4581: Completed second reading with amendments on June 8; completed third reading with amendments on June 15; Passed on June 20; referred to Committee on Municipalities and Elections on June 21.
- H. B. 4606: Completed second reading with amendments on June 1; completed third reading with amendments on June 8; Passed on June 13; referred to the Committee on Finance on June 14.

- H. B. 4757: Completed third reading on June 14; Passed on June 15; ordered enrolled on June 15; sent to Governor on June 27; Approved; P.A. 56 on July 6.
- H. B. 4845: Completed second reading with substitute on June 22; amended on June 30; amendments offered on July 7.
- H. B. 4846: Referred to Committee on Civil Rights on June 7; completed second reading with substitute on June 22.
- S. B. 144: General order with amendments on June 28; completed third reading with substitute on June 29; Passed on June 30; referred to Committee on Conservation and Environment on June 30; referred to Committee on Public Health on July 6.
- S. B. 153: General order with amendments on June 28; completed third reading with substitute on June 29; Passed on June 30; referred to Committee on Conservation and Environment on June 30; referred to Committee on Public Health on July 6.
- S. B. 174: Public hearing on July 11 and 12.
- S. B. 489: Public hearing on July 11 and 12.
- S. B. 630: Public hearing on July 11 and 12.

Newly Introduced Legislation

- H. B. 4993: Amends 1961 PA 236 by providing for transfer of cases to lower court by lot where amount of damages may be less than jurisdictionally required (introduced June 2, 1977, by Reps. Vaughn & Legel, and referred to the Committee on Judiciary).
- H. B. 5006: Amends the Probate Code, 1939 PA 288, by permitting modifications to marital agreements due to changes in circumstances (introduced June 7, 1977, by Reps. Busch, Bullard & Campbell, and referred to the Committee on Judiciary).
- H. B. 5007: Amends divorce act, 1846 RS 84 by providing for marital agreement and permitting revisions thereto (introduced June 7, 1977, by Reps. Busch, Bullard & Campbell, and referred to the Committee on Judiciary).
- H. B. 5010: Permits the department of natural resources to grant easements over state-owned land to individuals having landlocked property (introduced June 8, 1977, by Reps. Jowell & Ostling, and referred to the Committee on Conservation, Environment and Recreation).
- H. B. 5031: Amends 1909 PA 279 by permitting the annexation of certain lands by resolution of the annexing entity (introduced June 9, 1977, by Reps. Holcomb, T. Brown, Trim, et al, and referred to the Committee on Towns and Counties).
- H. B. 5040: Amends Housing Law of Michigan, 1917 PA 167, by making law applicable to entire state (introduced June 15, 1977, by Rep. R. Smith, and referred to the Committee on Urban Affairs).

- H. B. 5069: Amends 1972 PA 230 by prohibiting sale in state of plumbing material not approved by the construction code commission (introduced June 16, 1977, by Reps. Kennedy, Gast, Hoffman, et al, and referred to the Committee on Urban Affairs).
- H. B. 5073: A bill to regulate mortgage escrow accounts. Repeals 1966 PA 125 (introduced June 16, 1977, by Rep. Jondahl, and referred to the Committee on Consumers).
- H. B. 5080: Amends Revised Judicature Act, 1961 PA 236, by increasing homestead exemption to \$7,500.00 (introduced June 22, 1977, by Rep. Mathieu, and referred to the Committee on Judiciary).
- H. B. 5084: Amends State Construction Code, 1972 PA 230, by requiring individual meters on all new multiple-family dwellings (introduced June 22, 1977, by Rep. Brotherton, and referred to the Committee on Urban Affairs).
- H. B. 5087: Amends 1911 PA 44 by prohibiting reevaluation of a county until all other counties in the state are reviewed (introduced June 23, 1977, by Reps. Van Singel, R. Smith, Gast, et al, and referred to the Committee on Taxation).
- H. B. 5093: Amends the Tax Tribunal Act, 1973 PA 186, by permitting direct appeals to the tribunal during 1977 only, upon allegation that assessor failed to exclude normal repairs, etc., in determining assessment (introduced June 23, 1977, by Reps. Cawthorne & Mathieu, and referred to the Committee on Taxation).
- H. B. 5096: Amends the General Property Tax Act, 1893 PA 106, by requiring that a zoning change not increase valuation until land is used for new zoned purpose (introduced June 27, 1977, by Reps. DiNello, Gast, Spaniola, et al, and referred to the Committee on Taxation).
- H. B. 5120: Requires smoke detectors in residential housing (introduced June 29, 1977, by Rep. DiNello, and referred to the Committee on Urban Affairs).
- H. B. 5137: Requires smoke detection systems in new residential buildings (introduced June 30, 1977, by Rep. Hertel, and referred to the Committee on Urban Affairs).
- H. B. 5141: A bill to create the "truth in renting act." Prohibits inclusion of certain clauses in lease agreements that are violative of state law and prescribes penalties (introduced July 1, 1977, by Reps. Clodfelter, Bullard, Ryan, et al, and referred to the Committee on Civil Rights).
- H. B. 5159: Amends State Construction Code, 1972 PA 230, by requiring promulgation of rules relative to insulation standards (introduced July 1, 1977, by Rep. Gerald, and referred to the Committee on Urban Affairs).
- H. B. 5160: Amends State Construction Code, 1972 PA 230, by requiring promulgation of rules relative to water use efficiency (introduced July 1, 1977, by Rep. Gerald, and referred to the Committee on Urban Affairs).

- H. H. 5161: Amends 1893 PA 206 by exempting real property of persons 65 years of age or older with income of \$10,000.00 or less from taxation for school purposes and provides that state reimburse local areas for lost revenues (introduced July 1, 1977, by Reps. Bennett & Kelsey, and referred to the Committee on Taxation).
- H. B. 5177: A bill to provide for the acquisition, condemnation, etc. of real or personal property by public or private agencies Powers created intended to be in addition to powers created under existing law (introduced July 1, 1977, by Rep. Campbell, and referred to the Committee on Judiciary).
- H. B. 5184: Amends the General Property Tax Act, 1893 PA 206, by allowing actions for tax and special assessment refunds to be brought in circuit court in addition to the tax tribunal (introduced July 1, 1977, by Reps. Fessler, Campbell, Bryant, et al, and referred to the Committee on Taxation).
- S. B. 664: Amends 1939 PA 280 by providing for direct payment on behalf of welfare recipient of housing allowance to provider of shelter (introduced June 6, 1977, by Sens. Guastello & Snyder, and referred to the Committee on Health, Social Services & Retirement).
- S. B. 670: Amends 1899 PA 188 by allowing appeal of an inheritance tax determination by a Probate Judge to the tax tribunal (introduced June 6, 1977, by Sen. Corbin, and referred to the Committee on Finance).
- S. B. 692: Creates state land use commission and provides for state land use program (introduced June 9, 1977, by Sens. Allen, Derezinski, Faust, et al, and referred to the Committee on Conservation).
- S. B. 711: Amends Subdivision Control Act, 1967 PA 288, by modifying requirements for initiating court action (introduced June 13, 1977, by Sen. Toepp, and referred to the Committee on Corporations and Economic Development).
- S. B. 733: Requires smoke detectors in new homes (introduced June 15, 1977, by Sen. Brown, and referred to the Committee on State Affairs).
- S. B. 776: Amends 1941 PA 250 by permitting exemption from reassessment for redevelopment projects (introduced June 22, 1977, by Sen. DeMaso, and referred to the Committee on Corporations & Economic Development).
- S. B. 778: Amends 1972 PA 139 by allowing for platted roads regardless of when constructed. Repeals section 7 of 1972 PA 139 (introduced June 27, 1977, by Sen. Byker, and referred to the Committee on Municipalities & Elections).
- S. B. 800: Amends the General Property Tax Act, 1893 PA 206, by limiting qualifying disability for senior citizens, retirees, blind, or disabled (introduced July 1, 1977, by Sens. Toepp, Ziegler & Davis, and referred to the Committee on Finance).
- H. B. 5205: Amends 206 PA 1893 by providing for multi-year assessment period on real property (introduced July 7, 1977, by Reps. Stevens, Hertel, Bryant, et al, and referred to the Committee on Taxation).

- H. B. 5206: Amends 174 PA 1962 by general amendments to article 9 of uniform commercial code (introduced July 7, 1977, by Reps. Stevens, Hertel, Bryant, et al and referred to the Committee on Corporations & Finance).
- S. B. 834: Amends 265 PA 1964 by general amendments to the uniform securities act (introduced July 7, 1977, by Sen. Derezinski and referred to the Committee on Corporations & Economic Development).

State Agency Rules

None to report.

Federal Legislation and Rule Making

None to report.

Attorney General Opinions

None to report.

CASE BRIEFS

Committee on Significant Legal Decisions  
Maurice A. Merritt, Chairman

Mr. Merritt has reported no decisions for this issue.

SECTION NEWS

Our thanks to authors William F. Nern, who submitted his article as Chairman of the Committee on Land Use and Land Sales; to Ralph Jossman, whose article was published on behalf of the Title Standards Committee, and to Norm Gilmore for the latest chapter in the mechanic's lien saga. We also wish to thank Andrew Cooke for suggesting the quotation on the cover.

The October issue will include lead articles prepared by the Leases, Cooperatives and Condominium Committee, which is chaired by William T. Myers.

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NOTICE

The Real Property Law Section requests that all members who are not presently serving on one of its committees, or who may wish to switch committees, review the following list and indicate to Maurice S. Binkow, Chairperson-Elect, at the earliest possible date, which of the committees they would prefer to serve on for the next coming year:

- Commercial Transactions and Syndications
- Land Use and Land Sales
- Legislation
- General Liaison
- Leases, Cooperatives and Condominiums
- Mechanic's Liens
- Mortgages and Mortgage Foreclosures
- Publications
- Real Estate Titles, Taxes and Encumbrances
- Seminars, Workshops and Meetings
- Significant Legal Decisions
- Specialization

Please address all responses to Maurice S. Binkow, Esq., 2290 First National Building, Detroit, Michigan 48226, (313) 962-6700.

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The following report is from Section Chairman Ralph Jossman:

This will be my last contribution, as Section Chairman, to the Michigan Real Property Review. Before the next issue comes out, my term of office will have expired and a new chairman will have taken my place.

A report of the activities of this Section during the last year will appear in the issue of the State Bar Journal which deals with the annual meeting. It is believed that this has been a year of progress for the Real Property Law Section, in several ways. Whatever has been accomplished is due to the efforts of a number of our members. This is an appropriate time to offer some recognition of what they have done.

The officers of the Section and the other members of the Council have been diligent in their attendance at the meetings and in the performance of whatever duties were assigned to them. Many matters have been dealt with by the Council, harmoniously and in an effective manner.

In response to requests from the Chairman and the Council, the newly reorganized Section committees have submitted reports on proposed legislation and other matters promptly.

Under its new editor, the Michigan Real Property Law Review has been appearing at regular intervals, keeping the Section members abreast of current legislative developments and judicial decisions.

A diversified series of institutes is being sponsored by the Section. Those institutes held so far have been well attended. We are now working closely with the Institute for Continuing Legal Education, to our mutual advantage.

A new and improved system of reporting on legislative activity has been set up by the Section Committee on Legislation. We now have a more accurate idea of what bills have been introduced, and what action is being taken.

The Title Standards Committee is hard at work, revising the present Standards where needed. Their recent activities are discussed elsewhere in this issue.

For all this to be accomplished during the year, hard work and conscientious effort from many persons were required. As Rudyard Kipling has put it:

"It's not the individual  
Nor the army as a whole,  
But the everlasting teamwork  
Of every blooming soul."

I would like to express my sincere appreciation of the cooperation and assistance which I have received from my colleagues on the Section Council and the Chairmen and members of the various Section Committees. I trust that the same assistance will be given to the incoming chairman. I also wish to acknowledge the assistance of the State Bar's staff.

Finally, I want to say that we are offering some very informative programs in connection with the State Bar meeting. Let's have a good attendance at the Detroit Plaza on September 14. I hope to see many of you there.

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Dick Robbideau, Chairman of the Committee on Seminars, Workshops and Meetings, has submitted the following report:

The Second Annual Conference of the Real Property Law Section, held at the Bay Valley Inn July 14-16, 1977, brought more than one hundred Section members together for a variety of mini-courses on varied subjects of interest to real property lawyers. Judging from the enthusiastic reactions of the participants, the Conference was a success.

We would like to take this opportunity to recognize, and express our deep appreciation, to the Conference faculty:

Essel W. Bailey, Jr.  
John R. Baker  
Maurice S. Binkow  
Robert S. Bolton  
Charles F. Clippert  
Marvin C. Daitch  
James W. Draper  
Walter B. Freihofer  
G. Norman Gilmore  
Richard Griesinger  
John K. Grylls  
Edward J. McArdle  
Joel J. Morris  
William T. Myers  
Anthony V. Pieroni  
William K. Van't Hof  
Lawrence R. Van Til  
Michael A. Watson  
Myron Winegarden

Two institutes co-sponsored by the Institute for Continuing Legal Education and the Section, have been scheduled for late summer and early fall, and should be of interest to Section members.

The first, "Landlord/Tenant Rights and Remedies" is scheduled for Southfield August 4 and Kalamazoo August 11. Speakers at the Institute will be Alvin O. Brazzell, Dykema, Gossett, Spencer, Goodnow & Trigg; Robert L. Reed, Director, Michigan Legal Services; Arthur James Rubiner and David S. Snyder, Gurwin, Snyder & Weingarden.

On September 1 and 2 an intensive, day and one half Institute on "Mortgages and Land Contracts" will be offered in Kalamazoo, and repeated live in Southfield on September 7 and 8. The speakers are John Amerman, Honigman, Miller, Schwartz & Cohn; Allan Nachman, Hyman & Rice; Robert L. Nelson, Dykema, Gossett, Spencer, Goodnow & Trigg; Samuel Thomas, Jaffe, Snider, Raitt, Garratt & Heuer, P.C. and the Moderator will be Ben Wrigley. This program will be repeated by videotape in seven locations later in the fall, and interested Section members should watch for ICLE flyers giving dates and locations.

On September 15, 1977, Jerome Halperin of Coopers & Lybrand will address the Annual Meeting of the Real Property Section of the State Bar of Michigan at its meeting in the Detroit Plaza Hotel. Jerry is an outstanding speaker and has appeared at various institutes around the country; we are pleased and honored to have him as our speaker at the Annual Meeting this year. His topic will be "Real Estate Syndications: 1977."