

# MICHIGAN REAL PROPERTY REVIEW

## REAL PROPERTY LAW SECTION

### STATE BAR OF MICHIGAN

Vol. 7, No. 2

April, 1980

Chairman: James W. Draper

Editor: George J. Siedel, III  
Graduate School of  
Business Administration  
The University of Michigan

#### CONTENTS

	<u>Page</u>
Pending Legislation Regarding Michigan's Mechanic's Lien Law by Richard W. Pennings	38
Expanded application of Builders Trust Fund Act by Stanley M. Weingarden	46
Mechanic's Liens and Residential Builders Licenses by Gary A. Trepod	52
Status of <u>Williams and Works, Inc., v. Springfield Corporation, et. al.</u> by James W. Batchelor	55
The Legislative Scene by Mary P. Levine	57
Case Briefs by Nicholas Batch	62
Section News	63

-----

What would you say they are - the three most interesting subjects in the world? Sex, property and religion. By the first we can create life, by the second we maintain it, by the third we hope to continue it in the world to come.

Dale Carnegie

PENDING LEGISLATION REGARDING  
MICHIGAN'S MECHANIC'S LIEN LAW

By

Richard W. Pennings  
Chairman, Mechanic's Lien Committee

A resurgence of interest in the state's mechanic's lien law is evident in the current session of the legislature. Three bills have been introduced in the Senate and referred to the State and Veteran's Affairs Committee and two bills have been introduced in the House and referred to the Consumer Affairs Committee. In addition, Mr. Ralph Jossman, at the request of the Real Property Section, has prepared a redraft of one of the Senate Bills, Senate Bill No. 586, which is also being considered by the legislative committees as a possible vehicle for mechanic's lien reform. As of February 29, 1980, one hearing had been held by the State and Veteran's Affairs Committee of the Senate and two hearings had been held by the Consumer Affairs Committee of the House. More hearings are anticipated.

The basic approach to the subject of mechanic's lien reform of each of the bills is summarized as follows:

- a. House Bill No. 5418 would repeal the current act with no replacement.
- b. Senate Bill No. 908 would repeal the current act and replace it with the "Construction Debt Act" proposed by the Michigan Law Revision Commission.
- c. Senate Bill No. 586 would repeal the current act and replace it with a substantially overhauled mechanic's lien system.
- d. The Real Property Section Draft is based on an earlier draft of Senate Bill 586 and takes the same basic approach with differences described elsewhere in this article.
- e. Senate Bill No. 350 would amend the existing act to provide certain protections to subcontractors and fringe benefits and pension trusts at the expense of other parties to the construction process.
- f. House Bill No. 4053 would amend Section 1 of the existing act in an attempt to eliminate the possibility of double payment by an owner.

A more complete discussion of Senate Bills 586, 350, 908 and the Real Property Section Draft follows.

Senate Bill No. 586

Senate Bill No. 586 provides a system whereby lien claimants can easily obtain and rely on information necessary to perfect lien rights. Before beginning "actual physical improvements" on a project, the owner is obligated to prepare, record, post the project site with, and provide upon request, a Notice of Commencement which contains essential lien information including the name and address of each owner, mortgage lender, or other encumbrancer, the name and address of a "designee" to

receive Notices of Furnishing described hereafter and the project legal description. Failure by the owner, lessee, or their agent to provide the Notice of Commencement relieves the lien claimant of providing a Notice of Furnishing (Section 8(7)). The Notice of Commencement has attached to it a Notice of Furnishing which the claimant must serve within 60 days after provision of his first work. Service can be made and is complete upon mailing. Failure by the claimant to give the Notice of Furnishing will not defeat the lien; however, if the required notice is not timely made, the owner is protected as to funds disbursed in reliance on the contractor's sworn statement and waivers of lien prior to service of the Notice of Furnishing. The requirement of a Notice of Commencement does not apply in instances where the total amount of improvements is less than \$10,000 and the owner lives in the property to be improved. The bill also provides uniform statutory forms for partial, conditional and full waivers of lien and sworn statements. The remaining steps required in perfecting the lien are basically the same as those under current law and include filing a Claim of Lien within 90 days after last work and commencing an action for foreclosure within one year after recording of the Claim of Lien.

Additional new provisions include the following:

- a. Section 7(4) extends the scope of the lien beyond the amount of the owner's contract with the contractor to the full value of the project (Section 7(4)).
- b. Section 7(5) subjects the interests of owners, spouses and lessees to lien claims notwithstanding the absence of their consent to the contract, where such persons have not rejected the contract and its benefits (Section 7(5)).
- c. Section 14 prohibits the use of contract provisions demanding waiver of lien rights in advance of performance of work. Waivers given in contravention of these provisions are void.
- d. Section 14 provides that acceptance of a promissory note or other evidence of indebtedness does not by itself serve to waive or discharge otherwise valid lien rights.
- e. Section 17(4) enables a construction lender to obtain and maintain priority through periodic loan advances of its loan as against the lien claims provided the mortgage is recorded prior to commencement of "actual physical improvements" and sworn statements and unconditional lien waivers for the full amount then due are obtained within certain prescribed time limits from persons who either appear on the sworn statement or have provided Notices of Furnishing as required elsewhere in the bill (Section 17(4)).
- f. Section 18 shortens the redemption period following a foreclosure sale to a maximum of four months.
- g. Section 21 provides that where a person contracting for a project or improvement fails to pay a contractor, subcontractor, supplier or laborer amounts justly due at the time they are due or fails in another material respect to perform under the contract, and the failure continues for twenty days, the aggrieved party may discontinue performance. If one of the mentioned parties has discontinued performance, that party may also proceed to repossess materials which have not been incorporated into the real property.

Provisions which will, in the opinion of the writer, improve the state of existing law include those which will 1) streamline the access to information necessary to assert lien rights, 2) simplify service of required documents, 3) simplify the definition of "improvement," 4) clarify the use and effect of lien waivers, 5) shorten the redemption period, 6) eliminate the technical defense to otherwise legitimate lien claims that a spouse has not signed a written contract, 7) reaffirm the ability of a construction lender to obtain and maintain the priority of loan disbursements as against lien claimants, 8) enable the appointment of a receiver to complete a troubled project.

Provisions which have already generated a great amount of controversy include those relating to the ability of one owner or lessee to subject the interests of other owners and lessees to lien rights, exposure of a project to lien claims in amounts in excess of the owner's contract with the original contractor, the creation of a statutory right to discontinue performance in the event of nonpayment or material nonperformance and the right to repossess unincorporated materials under certain circumstances.

#### Real Property Section Draft

This draft, prepared by Mr. Ralph Jossman at the request of the Real Property Section, was based on an earlier draft of what is now Sb 586 and consequently it incorporates many of the same concepts. This proposal contains the following significant differences from SB 586:

1. The liens cannot exceed in total the amount the owner agreed to pay the contractor.
2. A rebuttable rather than conclusive presumption of agency is raised as to one owner acting on behalf of other owners.
3. The lien claimant has 20 rather than 60 days after furnishing first work to serve a Notice of Furnishing.
4. Where the Notice of Commencement has not initially been properly provided by the owner, but is provided at a later date, the lien claimant would still have the obligation to serve a Notice of Furnishing within 20 days thereafter to completely preserve his lien rights rather than being completely excused from so doing.
5. The issue of priority as between a properly perfected construction mortgage and contractor or subcontractor retainage is addressed.
6. Where a receiver has been appointed to complete a troubled project, the court is clearly given the authority to determine the priority of a lender who provides funds to complete.
7. The defined right of an unpaid subcontractor, or supplier to discontinue performance or repossess unincorporated materials is eliminated and the question is left to existing contractual remedies.

## Senate Bill No. 350

In contrast with Senate Bill No. 586 and the Real Property Section Draft, which offer some constructive suggestions to old problems, Senate Bill No. 350 not only fails to address many serious deficiencies in the current statute, it creates new problems as well.

Section 9 of the Bill perpetuates the problem created for the construction lending and title insurance industries by the decision in Williams and Works, Inc. v. Springfield Corp. 265 N.W.2d 328, 81 Mich. App. 355 (1978), motion for leave to appeal granted 406 Mich. 871 (1979). Because of the interaction of 1) the definition of "improvement" which includes architectural drawings and surveys, 2) subsection 9(2)(a) which gives equal priority to all lien claimants and 3) subsection 9(2)(c) which gives preference or priority to mechanic's liens over encumbrances which attach subsequent to commencement of improvements, the present lending practice of requiring a survey and architectural drawings prior to disbursement would result in an automatic loss of priority of the mortgage lien to all mechanic's lien claimants on the job. Part of this problem may be addressed when the Michigan Supreme Court renders its opinion in Williams and Works. (See the article prepared by James Batchelor elsewhere in this issue.)

Subsection 9(2)(d) goes on to destroy any protection which could be obtained by the construction lender/title insurance company through early recording or obtaining waivers of lien even assuming the problems raised in the preceding paragraph were addressed. That section states "A lien for labor or material shall not (emphasis added) be subject to a prior recorded construction mortgage, regardless of the time of recordation, advancement of money, commencement of construction, default in payment, or performance of the borrower unless the Mortgagee (or its officers, designees, employees or agents) performs the following acts:"

The requirements and the problems raised by each of the requirements listed are specified as follows:

- a. Before disbursing the net proceeds of a residential or commercial construction loan, the lender must determine whether a Construction Notice has been recorded in the office of the Register of Deeds in the county where the property to be improved is located. The Construction Notice is to contain basically the same information as the Notice of Commencement proposed in Senate Bill No. 586. It is not clear as to what the lender is to do if a recorded Notice is not found.
- b. The lender must require the borrower, owner, or the owner's agent or prime contractor to execute a sworn statement stating that the Construction Notice has been posted and will remain posted conspicuously on the premises where the work is to commence for the duration of the project and that a copy of this notice will be given to each subcontractor who will furnish labor and/or material to the job site.
- c. The lender must require the borrower, owner, the owner's agent or the principal contractor to provide a list of the names, addresses, and telephone numbers of each subcontractor who will furnish labor and/or materials on the project at each stage of construction, together with a brief description of the subcontractor's contract.

d. The lender must receive from each subcontractor who is or shall be entitled to a lien under this Act, before the subcontractor begins providing labor or furnishing material, a written "Disbursal Notice." The Disbursal Notice is to contain information as to the subcontractor, his contract, the property, and the names of any lower tier subcontractors. Each subcontractor who is required pursuant to a collective bargaining agreement to pay supplementary fringe benefits into an express trust fund, as defined by Section 302(c)(5)(a) of the Labor Management Relations Act, 1947 USC 186 (C)(5)(a) must also include in the subcontractor's Disbursal Notice to the lender (a) the identity and address of each express trust and (b) the estimated amount of labor hours, rate of contributions, and total contributions due the trust at each stage of construction when a progress payment or full payment to the subcontractor is due, or a statement that the subcontractor is not or will not be indebted to the trust with respect to labor performed at the job site.

It is not clear as to whether the lender is entitled to rely on the list of subcontractors given under subsection 9(2)(d)(ii)(b) or must independently verify the identity of the subcontractors. It is clear that no priority can be retained unless the lender is entitled to rely on the list of subcontractors provided and all subcontractors are identified before any disbursements occur.

e. The lender cannot disburse any funds for work performed by a subcontractor which has an obligation to an express trust and retain priority unless it has received, apparently before each draw, a written statement of "no indebtedness" from the trustees or administrator of each fund or has segregated an amount which the trustees or administrator of the affected trust states is due. This amount would have to be paid directly to the trust, or, if disputed in whole or part, deposited in a "fiduciary savings account."

The requirement of this section will very likely result in extended delays in the processing of periodic construction draws (progress payments) because of the necessity of obtaining what is in effect a waiver of lien from each trust prior to each disbursement. This concept had been raised in earlier conversations with proponents of trust fund remedies but was deemed infeasible because of the inability of the trusts to make the kinds of determinations required under this or a similar waiver type section in a timely manner.

f. Upon receipt of the disbursal notice or trust disbursal notice, and before disbursing funds to the person designated in the notice, the lender is to verify the amount due the subcontractor or express trust on a disbursement date, and pay that amount directly to the claimant out of undisbursed funds available and due to the person.

This section imposes the broadly defined requirement on lenders to "verify" amounts due the claimants on the disbursement date. The only way this requirement could be met would be by way of written "verifications" signed prior to each draw by the owner, the general contractor and each subcontractor and, where applicable, the trustees to receive funds, stating the amount of funds due on the next

disbursement date. This would be an additional paperwork burden on all parties and would undoubtedly slow processing of progress payments.

The section mandates direct disbursements to the subcontractors rather than to the general contractor, a requirement which will likely be repugnant to general contractors and higher tier subcontractors.

Section 5 provides an aggrieved claimant with a wide assortment of remedies beyond those given to the typical mechanic's lien claimant including equitable garnishment, injunctive relief against foreclosure or use of funds to apply to the Mortgagor's debt or completion of the project, imposition of equitable liens on undisbursed loan proceeds or proceeds of sale, and limitation of mortgagee's priority.

In effect the statute creates a new higher class of mechanic's liens in addition to the traditional mechanic's lien. The availability of title insurance coverage against such claims is questionable. The relationship between this section and waivers of lien is unclear. As written it would appear that waivers of lien would have no effect as against a claimant where the lender failed to comply totally with subsection 9(2)(d)(iv) which requires verification and direct payment. It is also unclear as to the effect of failure to comply with subsections other than 9(2)(d)(iv).

In summary, the most significant problems apparent in Senate Bill No. 350 are as follows:

1. The Bill perpetuates the problem now experienced by the prudent lender under the Court of Appeals interpretation in Williams and Works, where the requirement of a survey and architectural drawings will create priority problems for the lender as to competing mechanic's lien claims.
2. Even if the priority problem addressed in the first point were resolved, the lender is faced with numerous additional burdens in order to maintain its priority. These will require a significant increase in paperwork and, because of the inability of the industry segment which stands to gain from the bill to make timely response to informational requirements, will greatly increase the time for processing progress payments, a phenomenon which will be to the detriment of many parties the bill is to benefit.
3. The Bill would require disbursement directly to subcontractors and trust funds; this has not been palatable to general contractors in the past and would significantly alter payment procedures in the construction industry.
4. The Bill would create a new "super lien" in addition to the traditional mechanic's lien which can attach to undisbursed loan proceeds and proceeds of a foreclosure sale and which can alter already secured priorities. The relationship between these liens and the traditional liens is unclear as is the efficacy of traditional means of addressing mechanic's lien issues such as title insurance and waivers of lien.

SENATE BILL NO. 908

(also known as "The Construction Debt Act")

This bill, drafted by the Michigan Law Revision Commission, would repeal the existing Mechanic's Lien statute and eliminate mechanic's liens entirely. In place of lien rights the bill would establish "Construction Debt Mortgages" for loans over \$50,000 which will allow the mortgagor to create "Construction Debt Certificates" by which it would assign all or part of its right to receive construction loan funds to a third party (generally suppliers of labor or material). The Construction Debt Mortgage would have priority as to subsequent advances up to the full face amount of the mortgage plus the cost of performing any other obligations including the interest and the cost of completion if the mortgagor is obligated to complete.

Construction Debt Certificates would be freely assignable and would give a holder a direct contract right of action against the lender for payment. Creation and assignment of the certificates would not be binding on the mortgagee unless written notice were delivered to it. There would be no right of action against the realty except of course for the mortgage lender's right of action. Since the Construction Debt Certificate is not a negotiable instrument and is not within the purview of Article 9 of the UCC, defenses to payment available to the mortgagee are available against "holders" of the debt certificates. Payments made "in good faith" by the lender are binding on all holders of certificates. The mortgagee is required upon request of a holder of a certificate to indicate within 10 days of the request all defenses to payment then existing and, on failure to do so, is barred from later raising these objections.

This bill also contains provisions as to the appointment of receivers to finish incomplete troubled projects. The receiver would be entitled to possession of the property and would be given, upon approval of the court, the right to complete construction and advance or borrow funds for that purpose. Funds advanced or borrowed would be recouped in priority to all other claims from the proceeds of the foreclosure sale. The receiver would have considerable flexibility in disposing of the property; he could use public or private sale and could sell for cash or other terms as may be designated by the court. There would be no right of redemption if the property were sold by the receiver. Many of the provisions dealing with appointment of a receiver originally introduced in the earlier version of this bill have been incorporated into Senate Bill No. 586 and the Real Property Section Draft.

This bill would eliminate the conflict and confusion generated by the mechanic's lien law as it exists today. In addition, it provides for clear priority of the construction loan as to subsequent advances, even to the extent of funds over and above that provided on the face of the mortgage where necessary to complete construction. The bill also provides for greater availability of receivers and eliminates the six month redemption period, thereby clearing the way for prompt completion of foreclosed projects.

The bill would necessitate additional paperwork in processing and verifying the debt certificates and would create a certain danger to the mortgagee of loss of defenses to payment for failure to assert them within 10 days after request is made by the holder of a certificate. Since this is the chief protection available to a certificate "holder," it is very unlikely that this provision would be removed; however it could become very burdensome where a substantial number of projects are underway. Consequently, if the bill receives further serious consideration, it is

likely that an attempt would be made to lengthen the response time. If the bill were enacted, it would be necessary to keep very close track of each project to compensate for this new danger. Because of the fact that many groups keenly interested in the mechanic's lien area perceive lien rights as providing important protection to their right to payment, adoption of this bill appears unlikely.

#### Conclusion

Numerous approaches to dealing with the problems of Michigan's mechanic's lien statute have been proposed. Most of them are descendants in whole or part of legislative initiatives which died in committee during earlier sessions. However, in view of the fact that serious attention is given to the subject in legislative committees, the fact that two of the approaches, SB 586 and the Real Property Section Draft, embody substantial compromises from earlier positions, and the fact that most of the parties interested apparently recognize the need for further compromise in order to protect the unsophisticated consumer, it appears that the time for mechanic's lien reform in Michigan may be near.

EXPANDED APPLICATION OF BUILDERS TRUST FUND ACT

By

Stanley M. Weingarden  
Hyman, Gurwin, Nachman, Friedman & Winkelman

A remedy that is being increasingly utilized by counsel for unpaid subcontractors and materialmen on construction projects is that afforded by the Michigan Builders Trust Fund Act, MCLA §570.151-153. Moreover, at a time when recent decisions of the Michigan Supreme Court have liberalized and broadened the application of the Michigan Mechanic's Lien Act (see Volume 5, Michigan Real Property Review, Number 5, Page 11, Mechanic's Lien Update), other recent decisions, mostly by federal courts have expanded and extended the application of the Builders Trust Fund Act. In Parker v. Klochko Equipment Rental Co., Inc., 590 F2d 649 (6th Cir. 1979) for instance, the 6th Circuit has ruled that the Builders Trust Fund Act even applies to Public Construction projects as well as private ones. The remedy provided by the Michigan Builders Trust Fund Act thus is a significant weapon in the arsenal of practitioners and may be used in addition to as well as instead of remedies provided by the Michigan Mechanic's Lien statute and statutory required payment bonds. It is also important in connection with priority disputes with other creditors of the defaulting contractor, especially trustees in Bankruptcy.

Section 1 of the Act provides:

"In the building construction industry, the building contract fund paid by any person to a contractor...shall be considered by this act to be a trust fund, for the benefit of the person making the payment, contractors, laborers, subcontractors or materialmen, and the contractor or subcontractor shall be considered the trustee of all funds so paid to him for building construction purposes."

Section 2 of the Act defines the statutory fraud and defines the penalty. Section 3 of the Act states what shall be evidence of intent to defraud.

HISTORY OF THE ACT

While this Depression Era Act was enacted as a supplement to the Mechanic's Lien Act, the first case to interpret it, Club Holding Company v. Flint Citizens Loan and Investment Co., 272 Mich 66 (1935) held that this penal act did not provide a civil remedy and it did not apply to public construction projects.

In 1966, however, in the case of B. F. Farnell Co. v. Monahan, 377 Mich 552 (1966), the Michigan Supreme Court overruled the first basis for the decision in Club Holding and held that the Michigan Building Contract Fund Act did create a civil remedy. The Farnell case involved a contractor who filed a voluntary bankruptcy and paid funds to the trustee in bankruptcy which he had received upon the construction project. After the contractor was discharged in bankruptcy, he was sued by an unpaid materialman. The court held on page 555 and 557:

"When a statute provides a beneficial right but no civil remedy for its securance, the common law on its own hook

provides a remedy, thus fulfilling law's pledge of no wrong without a remedy.

"It is clear that a contractor or subcontractor, by delivering to his trustee in bankruptcy what he himself holds as trustee under the act of 1931, cannot thereby defeat the common law remedy this court has provided in favor of those who under the act are aggrieved by his statutory violation."

Since the Farnell case, the act has been applied as against the estate of a contractor. Reiter v. Kuhlman, 59 Mich App 54 (1975) held:

When defendant, whether as administrator of Milton J. Kuhlman's estate or in his individual capacity, collected the sum of \$11,300 in payment for completing the contract, he thereby received this amount as a "subcontractor" within the meaning of the building contract fund act. Funds for building construction purposes, received by a subcontractor as a trustee under MCLA 570.151 et seq.; MSA 26.331 et seq., do not become part of his estate when he dies nor do they become a part of his estate because such funds are paid to the administrator of his estate.

In National Bank of Detroit v. Eames & Brown, Inc., 396 Mich 611 (1976), it was held that beneficiaries of the trust fund have priority over perfected secured creditors of the defaulting contractor. The court stated on page 621:

The rationale of Farnell also lends support to defendants' position that Continental did not have an assignable interest in accounts receivable held in trust for the materialmen. The contractor or subcontractor cannot defeat the purpose of the Act by granting a security interest in those funds held in trust for the materialmen's benefit.

The court stated, however, on page 622:

If the money provided by the secured creditor was in fact used to pay laborers, subcontractors, or materialmen on the specific job in question, the purpose of the Act is carried out. To that extent, there is no reason why the secured creditor should not have a right to the accounts receivable of the contractor.

The burden of proving that any or all of the funds provided were in fact used to pay laborers, subcontractors and materialmen on this project rests on the secured party.

People v. Miller, 78 Mich App 336 (1977) was the first appellate case interpreting the penal aspect of the act. It is interesting also because the complaining witness was the owner of the property. Owners are also intended to be benefited by the act, as well as unpaid subcontractors and suppliers. In Miller, the owner had made a down payment which the contractor used for other purposes than the construction project. The court held that the act applied and the contractor had violated the trust even if no actual subcontractors had been obtained for the project.

1979 CASES

In 1979, the 6th Circuit has decided three cases interpreting the Michigan Builders Trust Fund Act. Selby v. Ford Motor Co., 590 F.2d 642 (1979) involved a claim by a Trustee in Bankruptcy that payments by the contractor in Bankruptcy and the owner of the project to subcontractors within four months of the contractor's bankruptcy are preferences which may be set aside. The contractor had authorized the owner Ford Motor Co. to pay the subcontractors directly and to deduct that amount from Ford's indebtedness. The court held that these statutory trust funds were neither the debtor's "property" nor a statutory lien which would not be effective against the trustee unless perfected. The court stated on page 647:

Under Michigan law, the Builders Trust Fund Act creates a private, civil action in favor of the beneficiaries of the statutory trust, National Bank of Detroit v. Eames & Brown, 396 Mich 611, 242 NW2d 412 (1976). Michigan courts have also determined that, to the extent state law controls the federal question, the beneficial interests of subcontractors and materialmen under the statutory trust are not the "property" of the bankrupt debtor or his trustee in bankruptcy under §70 of the Bankruptcy Act. B. F. Farnell Co. v. Monahan, 377 Mich 552, 141 NW2d 58 (1966). We agree with the Michigan courts and believe that federal bankruptcy law should recognize and enforce the property rights created by state law under the Michigan statutory trust.

The court correctly noted that the Michigan Act was enacted in 1931 before the 1938 revision of the Bankruptcy Act and could not be intended to undermine the Bankruptcy Act.

The Michigan Builders Trust Fund Act is designed to remedy problems in the construction industry. Like the law merchant of an earlier day, the building trades have gradually created a set of commercial expectations as the result of the customs and practices of the industry. The nature of the industry is such that the commercial expectations of the parties are defeated when a building contractor or subcontractor does not use accounts paid to him on a job to pay subcontractors or materialmen. Unless the parties see that construction funds are properly applied down the line, the liabilities of the parties up the line are affected. The unpaid workers must undertake the lengthy and wasteful process of filing, perfecting and foreclosing on their mechanic's liens. The owner's property and the construction lender's security are encumbered.

Most important for practitioners of today, the court also drew support for its finding from the new Bankruptcy Act which took effect October 1, 1979. Thus in Selby, the Federal 6th Circuit Court has agreed with the Michigan Supreme Court that the trust created by the Michigan Builders Trust Fund Act is not property of the bankrupt or his trustee in bankruptcy and has recognized the property right created by state law, and has indicated it would rule that same way under the new Bankruptcy Act.

In Parker v. Klochko Equipment Rental Co., 590 F.2d 649 6th Circuit (1979), the court, as previously indicated extended the application of the Builders Trust Fund Act to public construction jobs. In this case, joint checks were made by a contractor on a public construction job to the bankrupt subcontractor and four of his materialmen which were endorsed over to said materialmen within four months of the subcontractor's bankruptcy. As the court correctly noted, the issues presented in this case were identical to the Selby case except that in Selby it was a private construction job, and here it was a public job. The court stated that the statute by its very terms applies to the building contract fund paid by any person to a contractor or subcontractor, public or private. To justify its decision, the court had to come to grips with the decision of Judge Wade McCree in General Insurance Co. of America v. Lamar Corp., 482 F.2d 856, (6th Circuit, 1973), a case in which a general contractor on a public job paid a materialman with construction funds which the materialman applied against a debt owed for prior unrelated work. The surety on the performance bond for the defaulting general contractor then sued the materialman. Judge McCree ruled that under Michigan law, i.e. the Club Holding case, that the Michigan Act does not apply to public projects. Judge McCree also tried to support his conclusion by interpreting the apparent purpose of the legislation on page 860:

During the boom period of the 1920's speculative builders often undertook to construct projects too large for their available capital to finance, and they frequently paid suppliers and materialmen on older projects with funds received as payment on more current operations. With the advent of the crash of 1929 and the consequent widespread insolvency of many building contractors, these pyramided empires also collapsed and many subcontractors and suppliers were never paid. Subcontractors and materialmen on private projects were left only with mechanic's liens as remedies, and these were often ineffective.

On the other hand, suppliers of labor and material on public projects were protected by statutorily required payments and performance bonds. These bonds required for public projects were intended to afford protection to the suppliers of labor or materials, similar to that afforded under the mechanic's lien laws in the case of private buildings or construction.

It does not appear, in the usual case, that these measures were meant to apply also to public projects since subcontractors on those jobs were adequately protected by statutorily required bonds.

Judge McCree also held that the materialman was under no duty to apply the funds in the absence of fraud or express direction of the contractor. The Parker court held that this alternate ground was a sufficient basis for decision and that the language concerning the applicability of the Builders Trust Fund Act to public projects was dicta although the language in the General Insurance opinion indicated exactly the contrary. The Parker court thought that the Club Holding case is not viable authority anymore.

The court then proceeded to convincingly rebut the reasoning of the General Insurance case on page 652:

The opinion states that the statutory requirement that contractors on public projects provide a payment bond protects subcontractors

and materialmen and makes the statutory trust unnecessary for their protection on public projects. 452 F2d at 860. But in order for subcontractors and materialmen on public projects to establish their rights to payment from the surety under the statutory payment bond, they must perfect their claims and file notice as if they were perfecting a mechanic's lien. The main purpose of the Michigan statutory trust, as our opinions in General Insurance and Selby recognized, was to provide a better remedy than those provided by the mechanic's lien and similar state laws. We were in error in stating in General Insurance that, under Michigan law, subcontractors and materialmen are better protected under the statutory payment bond applicable to public construction projects than under the mechanic's lien laws applicable to private jobs. (Comparing specific requirements necessary to perfect a claim pursuant to Michigan Public Construction Bond Statute MCLA 129.207 with requirements under Michigan Mechanic's Lien MCLA 570.1)

#### LIMITATIONS

Some words of caution about the extension of the applicability of the Michigan Builders Trust Fund Act. The Parker decision was a 2 to 1 decision. The dissenting judge thought that, under Michigan law, public jobs are not covered by the act. The Michigan courts have not spoken. The issue is far from settled.

Also, in Koppers Co., Inc. v. Garling and Langlois, 594 F2d 1094 (1979), the Sixth Circuit refused to apply the Builders Trust Fund Act to a situation where a subcontractor was accusing an owner and his title company disbursing agent of diverting construction loan proceeds to pay off the owner's obligation on another similar construction project. As the court correctly noted, the statute imposed a trust over construction funds in the hands of a contractor, not an owner. The funds only become subject to the statutory trust when it comes into the hands of the contractor. The court stated on page 1099:

Nor are we persuaded by Koppers that we should ignore the plain language of the Act in order to give effect to its "purpose," for the purpose of the Act is not, as Koppers argues, simply to insure that subcontractors get their money. As we have only recently had occasion to observe, the Act was designed to protect both subcontractors and owners from financially irresponsible general contracts by creating an alternative to the mechanic's lien laws, which were deemed by the legislature to provide inadequate protection to subcontractors while at the same time unfairly encumbering owners' property. The statute simply does not address the problem that allegedly resulted in the failure to pay the subcontractors on this project - malfeasance by the owner before the loan proceeds were ever paid over to a "contractor."

Moreover, although it appears that the use of the Michigan Builders Trust Fund Act will be an ever more effective tool to impose liability upon defaulting contractors and the officers of a corporate contractor, it is clear that a tracing problem will exist necessitating obtaining records not only of the contractor (sworn statements, check registers, ledgers, etc.), but owner and mortgagee as well. Despite the difficulties of tracing, it would seem apparent that anyone representing clients who are the intended beneficiaries of this act should explore the possibility of adding a count based upon this act, in addition to the other remedies to which the client may be entitled.

MECHANIC'S LIENS AND RESIDENTIAL BUILDERS LICENSES

By

Gary A. Trepod  
Willingham, Cote', Hanslovsky, Griffith & Foresman, P.C.

On June 19, 1979, the Michigan Court of Appeals decided Michigan Roofing & Sheet Metal, Inc. v Dufty Road Properties (90 Mich App 732), a case involving both the Residential Builders Act (MCL 338.1501 et seq.; MSA 18.86(101) et seq.) and the Mechanic's Lien Act (MCL 570.1 et seq.; MSA 26.281 et seq.). Since both of these Acts were applied, Michigan lawyers involved with construction law should be especially interested in the reasoning of the case, as well as in its outcome.

The sequence of events (always important in mechanic's lien cases) was:

- 3-17-72 - Soil borings performed, at job site, by a sub of John Casey Development Company (Casey was the general contractor attempting to foreclose its lien)
  - Casey obtained a residential builder's license (exact date not given)
- 4-1-72 - Casey executed the construction contract with Defendant landowner (Dufty)
  - Casey completed the engineering plans and began demolition of existing structures on the land
- 5-2-72 - Dufty executed the construction loan agreement and gave a mortgage to Continental Mortgage Investors (C.M.I.)
- 5-26-72 - The mortgage was recorded
- 10-8-75 - Casey recorded a statement of account and lien and later filed a cross-claim against Dufty to foreclose its mechanic's lien

The mortgagee (C.M.I.) moved for summary judgment on two grounds: (1) Casey's lien was unenforceable because Casey had not complied with the Residential Builders Act; and/or (2) C.M.I.'s mortgage had priority over the mechanic's lien. The trial court granted the mortgagee's motion for summary judgment on both grounds. The Michigan Court of Appeals reversed on both grounds.

I. MECHANIC'S LIEN ACT

The Court's holdings with respect to the Michigan Mechanic's Lien Act were consistent with prior law.

- A. NOTICE. The Court held that a Notice of Intention to Claim a Mechanic's Lien was not a condition precedent to a valid mechanic's lien for a contractor who dealt directly with the owner. Burton Drywall, Inc. v Kaufman, 402 Mich 366, 263 NW2d 249 (1978).  
Comment: The purpose of these Notices is to inform an owner of all parties who might claim a lien in order to protect against having to pay twice. If the owner has notice, he can pay the subcontractor directly and offset any such amount against his debt to the contractor. However, if the owner is dealing directly with a contractor, he does not need a Notice of Intent since he already knows the contractor is supplying labor and/or materials to the job and the owner can pay him directly.

B. PRIORITY: The Court also held that mechanic's liens have preference over any other encumbrance "given or recorded subsequent to the commencement of said building, or buildings, erection, structure or improvement" (MCL 570.9; MSA 26.289). It said that engineering services are "improvements" as defined by the Mechanic's Lien Act (MCL 570.1; MSA 26.281). Therefore Casey's mechanic's lien had priority over C.M.I.'s mortgage because the mortgage was recorded after certain engineering services were rendered. Williams & Works, Inc. v Springfield Corp., 81 Mich App 355, 362-363; 265 NW2d 328 (1977).

Comment: Although various types of engineering services were rendered prior to the recording of C.M.I.'s mortgage--some physically on the property and some presumably at the contractor's place of business--the Court did not specifically identify any of the various engineering services rendered as qualifying "improvements." The engineering services included soil borings, preparation of engineering plans and the commencement of demolition. The Court merely stated that since engineering services were performed prior to the giving or recording of C.M.I.'s mortgage, Casey's lien takes precedence.

## II. RESIDENTIAL BUILDERS ACT

The Court relaxed the literal requirements of the Act by holding that a builder who had "substantially" complied with the Act was not barred from maintaining an action for compensation. The relevant statutory language is:

No person engaged in the business or acting in the capacity of a residential builder and/or residential maintenance and alteration contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this act without alleging and proving that he was duly licensed under this act at all times during the performance of such act or contract. (MCL 338.1516; MSA 18.86(116) (underlining added))

The majority opinion adopted the California test of "substantial compliance," saying an insignificant variance should not preclude the contractor from maintaining his foreclosure action. Four reasons were stated by the Court for its holding under the facts of this particular case: (1) Casey was the general contractor for over 40 months, but was only unlicensed the insignificant length of time of 13 days; (2) Casey had a valid license at the time he executed the construction contract with Dufty; (3) There was no indication that Casey was not qualified to obtain a license during the 13-day period; and (4) There was no proof that Casey was not a competent and responsible contractor throughout the term of the contract.

The Court felt the Residential Builders Act was a prophylactic measure for the protection of homeowners from incompetent, inexperienced and fly-by-night contractors and was not intended to relieve persons from paying their legitimate obligations. It felt adoption of the substantial compliance test fully protected homeowners without saddling contractors with oppressive and total forfeiture for trivial and inconsequential deficiencies.

This decision, on the residential builder's license issue, will probably not have much application because of its presumed unusual fact situation. However, it does represent a limited deviation from the literal requirement of having to be duly licensed at all times during the performance of a contract.

In these limited cases it raises an issue as to when there is "substantial compliance." To some degree it increases uncertainty since it may not be necessary for a Court to determine whether there is "substantial compliance" as opposed to the literal requirement of the Act. (Note: The dissent felt it was up to the Michigan Legislature whether the Act itself should be amended.)

This case represents a conflict between the policy of protecting homeowners from bad contractors and the policy of not permitting a statute to be used as an "unwarranted shield for the avoidance of a just obligation." The Court pointed out that the cost of literal application would result in forfeitures that eventually would be paid by subsequent homebuyers.

Comment: This case involved the contractor against the mortgagee regarding priority. QUERY whether a conflicting lienor (as opposed to the owner) is within the class of persons which the Residential Builders Act was designed to protect.

QUERY also whether the Court could have avoided adopting the California substantial compliance test by focusing on the words "act" or "contract" in the statute. The Court apparently assumed, without expressly deciding, that "performance" of the contract began when the soil borings were made by a subcontractor--before the contract was signed.

The Court might have held that Casey was barred from suing for performance of an "act" performed prior to signing the contract, since Casey was not licensed; but could have held that Casey could sue for the performance of the "contract," which was fully performed while he was licensed.

Note: The subcontractor who performed the "act" of soil borings could have collected via its own mechanic's lien pursuant to the following provision of the Residential Builders Act:

Provided, however, that nothing herein contained shall be construed to defeat the right of a mechanic's lien on the part of any person who in good faith sells materials or performs labor for such residential builder and/or residential maintenance and alteration contractor. [MCL 338.1516; MSA 18.86(116)].

STATUS OF WILLIAMS AND WORKS, INC., v.  
SPRINGFIELD CORPORATION, et. al.

By

James W. Batchelor  
Russell, Ward & Hodgkins

On October 31, 1979, oral arguments were presented before the Michigan Supreme Court in the appeal of Williams and Works, Inc. v. Springfield Corporation, et. al., 265 NW2d 328, (1977). The sole issue before the Court is the crucial question of the priority between mortgages and mechanic's liens. The Court is being asked to interpret Section 9 of the Michigan Mechanic's Lien Act (MCLA 570.9) and to decide whether Michigan will follow the majority so-called "first spade" rule or adopt the so-called "first pencil rule" contained in the decisions of the Trial Court and Court of Appeals. Section 9 of the Michigan Mechanic's Lien Act relates the priority of mechanic's liens back to "the commencement of said building or buildings, erection, structure of improvement." The question is thus whether the term is a term of art, as appellants argue, meaning visible commencement on the site, or literal commencement consisting of the first preliminary work done by an architect or engineer, as the appellees argue.

Appellants, in their brief and oral arguments, take the position that visible commencement was clearly intended by the legislature and that approximately 100 years of treatises and Court decisions interpreting both the priority section of the Michigan statute and virtually identical provisions in the statutes of other states prove this intention. Appellants further argue that the visible commencement standard was chosen by the legislature for two very important policy reasons:

First, when visible operations are commenced on the site, notice of potential mechanic's lien is given to potential purchasers or lenders and the entire world in general.

Second, until the construction is actually begun on the site, there is nothing on which to place a lien.

It is interesting to note that the concept that there is nothing on which to place a lien until physical commencement is actually begun on the site was recently cited by a panel of the Court of Appeals in Sullivan v. The Thomas Organization, P.C., 88 Mich. App. 77 (January, 1979).

Lawyers Title Insurance Corporation, appearing as a amicus curiae, argued that the Lower Court's use of the Section 1 coverage definition of "improvement" to interpret Section 9 does not make sense in the context of Section 9. If one reads engineering services, which is one of the definitions of improvement found in Section 1, in place of the term improvement in Section 9, the statute loses its clear meaning. Appellants and amicus curiae both noted that the legislature has not seen fit since 1891 to amend the priority of Section 9.

Appellees argued that the definition of improvement in Section 1 is applicable to all sections of the Michigan Mechanic's Lien act, and that unless commencement is to be defined as the first engineering services, mechanic's lien claimants will never be able to obtain priority over construction mortgages. Appellees further

argued that Section 27 of the Michigan Mechanic's Lien Act, the so-called "liberal construction provision," requires the Court to interpret Section 9 to protect and enforce the lien rights of contractors, subcontractors, and material men by providing priority based upon commencement of engineering services.

The Supreme Court has taken the matter under advisement and a decision which will lay to rest the thorny issue of priority of mechanic's liens should be forthcoming this session.

## THE LEGISLATIVE SCENE

Committee on Legislation  
Mary P. Levine, Chairperson

Legislation dealing with the state's economy has become increasingly more important in the capital these past two months with the fear that a severe recession and high unemployment will soon strike the state. A number of bills reported in this issue of the Review reflect this growing apprehension. HB 5501, commonly known as the Chrysler Loan Bill was enacted into law on March 8th as Public Act 30 (given immediate effect). The new Act will allow the state to tap certain state funds to make loans to Chrysler taking as security real property (factory facilities) the company owns.

The Governor also signed into law SB 1040 on March 21st (Public Act 48, given immediate effect). This piece of legislation will allow counties to issue delinquent tax revolving fund notes at a more favorable rate of interest than they previously were allowed. In the same vein two bills have been introduced to increase the allowable interest rate on land contracts from the current 11% to 14½% and 15% respectively.

Finally, some of the most controversial and timely legislation affecting the housing industry has been introduced. These bills, HB 5577, 5578, 5579 and 5580 would dramatically change the procedures for the conversion of apartments to condominiums. The bills call for the institution of life lease options for senior citizens; the financing of low interest loans to individuals seeking to purchase converted condominiums and for developers wishing to finance the life lease options for senior citizens through the State-Housing Development Authority.

ACTION ON PREVIOUSLY REPORTED BILLS:

- HB 4249     2/28/80 Com. on Judiciary.
- HB 4250     2/28/80 Com. on Judiciary.
- HB 4371     2/21/80 general orders with Amendments; 3/3/80 third reading with amendments; 3/10/80 amended, passed, I.E.; 3/17/80 Senate amendments concurred in, I.E., ordered enrolled; 3/21/80 presented to Governor.
- HB 4587     2/4/80 Committee on Environmental and Agricultural Affairs.
- HB 4611     3/6/80 second reading with amendments.
- HB 4652     2/11/80 general orders with amendments; 3/3/80 third reading with amendments; 3/6/80 amended, passed, I.E.; 3/18/80 Senate amendments concurred in, as amended, I.E.; 3/25/80 House amendments concurred in; 3/27/80 presented to the Governor.
- HB 4858     2/6/80 third reading with amendments; 2/7/80 passed, I.E.; 2/11/80 Committee on Corporations and Economic Development.

- HB 5078 2/5/80 second reading; 2/7/80 third reading; 2/11/80 passed, I.E.; 2/13/80 Committee on Municipalities and Elections; 3/26/80 general orders.
- HB 5083 3/6/80 general orders; 3/20/80 third reading; 3/24/80 passed, I.E.; 3/25/80 ordered enrolled; 3/27/80 presented to Governor.
- HB 5222 3/19/80 general orders; 3/27/80 third reading.
- HB 5227 2/7/80 Committee on Towns & Counties with substitute.
- HB 5236 2/5/80 passed, I.E.; 2/6/80 Committee on Finance.
- HB 5245 2/7/80 Committee on Towns and Counties.
- HB 5257 12/14/79 second reading with substitute; 12/15/79 substitute adopted as amended; 2/26/80 third reading with substitute as amended; 2/27/80 amended, passed, I.E.; 3/3/80 Committee on Finance.
- HB 5340 2/19/80 second reading with amendments; 2/26/80 amended; 3/3/80 third reading with amendments, passed, I.E.; 3/4/80 Committee on Finance.
- HB 5385 3/10/80 second reading with substitute.
- HB 5454 2/26/80 Committee on Roads and Bridges.
- SB 209 2/13/80 second reading with amendments; 2/26/80 third reading with amendments; 2/27/80 amended, passed, I.E.; 3/4/80 House amendments concurred in I.E., ordered enrolled; 3/10/80 presented to Governor; 3/17/80 approved by Governor, P.A. 42, I.E.
- SB 551 3/26/80 general orders.
- SB 630 3/13/80 general orders; 3/27/80 third reading with amendments.
- SB 631 3/13/80 general orders; 3/27/80 third reading.
- SB 685 3/27/80 general orders.
- SB 738 2/6/80 second reading; 2/7/80 third reading; 2/12/80 passed, I.E.; 2/14/80 given I.E., ordered enrolled; 2/25/80 presented to Governor; 3/7/80 approved by Governor, P.A. 24, I.E.
- SB 755 2/14/80 general orders with amendments; 2/26/80 third reading with amendments; 2/27/80 passed; 2/27/80 Committee on State Affairs; 3/12/80 second reading.
- SB 758 2/14/80 third reading with amendments; 2/20/80 passed; 2/20/80 Committee on Agriculture; 3/25/80 second reading.
- SB 766 3/27/80 general orders.
- SB 782 2/20/80 general orders with amendments; 3/3/80 third reading with amendments; 3/6/80 passed; 3/6/80 Committee on Corporations and Finance; 3/19/80 second reading; 3/25/80 third reading, passed, I.E.; 3/26/80 given, I.E., ordered enrolled.

NEWLY INTRODUCED LEGISLATION:

- HB 5464 The bill would amend section 8 of P.A. 338 of 1974 to require payment of prevailing wage and fringe benefit rates. (Introduced by Reps. Conroy, et al on 2/6/80 and referred to the Committee on Economic Development and Energy; 2/12/80 Committee on Labor; 2/21/80 second reading with amendments); 3/20/80 third reading with amendments.
- HB 5477 The bill would amend sections 2, 3, 4, 8 & 11 of P.A. 222 of 1976 to provide general amendments to the Sand Dune Protection and Management Act. (Introduced by Rep. Cushingberry on 2/13/80 and referred to the Committee on Conservation, Environment & Recreation).
- HB 5501 The bill would amend the title and section 3 of P.A. 105 of 1855 to allow the state treasurer to use surplus funds to make certain contracts as to certain commercial and industrial real and personal property; "The Chrysler Loan Bill." (Introduced by Reps. Spaniola and Padden on 2/14/80 and referred to the Committee on Senior Citizens and Retirement - this bill enacted into law on 3/8/80 as P.A. 30, I.E.).
- HB 5532 The bill would amend section 1c of P.A. 326 of 1966 to provide the maximum interest rates on second mortgages. (Introduced by Rep. Clodfelter on 2/20/80 and referred to the Committee on Corporations and Finance).
- HB 5541 The bill would regulate retainage amounts in construction contracts with certain state agencies. (Introduced by Rep. Ryan on 2/21/80 and referred to the Committee on Urban Affairs).
- HB 5546 The bill would amend P.A. 184 of 1943 by adding section 16g which prohibits township ordinances preventing installation of energy conservation devices and provide other installation prohibitions. (Introduced by Reps. Bullard, et al on 2/21/80 and referred to the Committee on Towns and Counties).
- HB 5547 The bill would prohibit discriminatory covenants, ordinances, rules or regulations against alternate energy systems and provide other installation prohibitions by local governments. (Introduced by Reps. Bullard, et al on 2/21/80 and referred to the Committee on Towns and Counties).
- HB 5548 The bill would amend P.A. 207 of 1921 by adding section 3c which would prohibit city ordinances prohibiting energy conversion devices. (Introduced by Reps. Bennane, et al on 2/21/80 and referred to the Committee on Towns and Counties).
- HB 5549 The bill would amend P.A. 183 of 1943 by adding section 16g which would prohibit county ordinances prohibiting energy conversion devices. (Introduced by Reps. Bennane, et al on 2/21/80 and referred to the Committee on Towns and Counties).
- HB 5577 The bill would provide for increased notice to tenants living in apartments being converted to condominiums and provide for life lease options for senior citizens who wish to remain in converted apartments and provide for general amendments to the Condominium Act. Amends section 3, 5, 6, 10, 21, 54, 71, 81, 83, 84, 86, 87, 93, 104, 131 and 154 of P.A. 59 of 1978. (Introduced by Reps. Forbes, Bennett, Ryan, et al on 3/6/80 and referred to the Committee on Towns and Counties).

- HB 5578 The bill would amend section 4 of P.A. 454 of 1978 by providing notice language of possible conversion of condominiums be placed in tenants' leases. (Introduced by Reps. Forbes, Bennett, Ryan, et al on 3/6/80 and referred to the Committee on Towns and Counties).
- HB 5579 The bill would amend section 44 of P.A. 346 of 1966, the State Housing Development Authority Act, to provide long-term financing for purchase of conversion condominiums by individuals. (Introduced by Reps. Forbes, Bennett, Ryan, et al on 3/6/80 and referred to the Committee on Towns and Counties).
- HB 5580 The bill would amend section 1 of P.A. 346 of 1966, the State Housing Development Authority Act, and add new sections 24f and 24g thereto, by providing for loans to certain developers of conversion condominiums. (Introduced by Reps. Forbes, Bennett, Ryan, et al on 3/6/80 and referred to the Committee on Towns and Counties).
- HB 5600 The bill would amend section 1c of P.A. 326 of 1966 so as to raise the interest rate ceiling for land contracts from 11% to 14½%. (Introduced by Reps. Siljander, Cropsey, Lincoln, et al on 3/12/80 and referred to the Committee on Corporations and Finance).
- HB 5610 The bill would amend section 2 of P.A. 198 of 1974 to include gasohol distilleries in industrial development districts. (Introduced by Reps. T. Brown, Sietsema, McCollough, et al on 3/18/80 and referred to the Committee on Taxation).
- SB 919 The bill would amend the Open Meetings Act, P.A. 267 of 1976 to exempt considerations concerning the sale of real property by a public body. (Introduced by Sens. Plawecki and DiNello on 1/23/80 and referred to the Committee on State and Veterans' Affairs).
- SB 955 The bill would amend sections 2, 5, 6, 7, 8, 9, 10 and 12 of P.A. 94 of 1925 to increase the tax and state payments on commercial forests and provide general amendments. (Introduced by Sen. Irwin on 1/31/80 and referred to the Committee on Finance; same as HB 5443).
- SB 975 The bill would amend sections 3, 10, 89 and 104 of P.A. 59 of 1978 and adds sections 87(1) and 87(b) to provide lifetime lease options for senior citizens and pay relocation expenses for other tenants. (Introduced by Sen. Faxon on 2/7/80 and referred to the Committee on State and Veterans' Affairs).
- SB 1021 The bill would amend section 3 of P.A. 225 of 1976 by revising the household income ceiling for property tax purposes to \$10,000 for senior citizens. (Introduced by Sens. Geake, et al on 2/27/80 and referred to the Committee on Finance).
- SB 1038 The bill would amend section 1c of P.A. 326 of 1966 to provide for 15% interest rate on land contracts until 12/31/81. (Introduced by Sen. Bishop on 3/3/80 and referred to the Committee on Corporations and Economic Development).

SB 1040 The bill would amend sections 59, 60, 74, 84, 87c of P.A. 206 of 1893 to increase the interest rate for delinquent tax revolving fund notes and on various delinquent tax payments. (Introduced by Sen. Corbin on 3/3/80 - this bill enacted into law on 3/21/80 as P.A. 48, I.E.).

SB 1052 - same as HB 5577 (see preceding).

SB 1053 - same as HB 5578 (see preceding).

SB 1054 - same as HB 5579 (see preceding).

SB 1055 - same as HB 5580 (see preceding).

(These bills introduced by Sens. Ross, Sederburg, Pierce, et al on 3/12/80 and referred to the Committee on State and Veterans' Affairs).

CASE BRIEFS

Nicholas C. Batch, Case Editor  
Assistant Professor, Law Area  
College of Business  
Western Michigan University

Mr. Batch was unable to submit his article before the publication deadline.

## SECTION NEWS

The four articles which appear in this issue were prepared by members of the Mechanic's Liens Committee. Our special thanks to the Chairman of the Committee, Richard W. Pennings, for authoring one of the articles and for arranging for the preparation of the other articles.

Mr. Pennings is a cum laude graduate of Wayne State University and was admitted to the Bar in 1975. He has been with the Michigan State Housing Development Authority since 1974 and is currently the Authority's Deputy Director of Legal Affairs. Mr. Pennings is in his second year as Chairman of the Committee on Mechanic's Liens.

Stanley M. Weingarden is a cum laude graduate of Wayne State University Law School and was admitted to the bar in 1964. He is a partner in the law firm of Hyman, Gurwin, Nachman, Friedman and Winkelman where he specializes in litigation, bankruptcy and mechanic's liens. He is also a member of the Oakland County Bar Association and Southfield Bar Association. Mr. Weingarden is vice-chairman of the Committee on Mechanic's Liens.

Gary A. Trepod received his B.S. degree in Industrial Engineering from the University of Michigan in 1966, where he was a member of Alpha Pi Mu, the National Industrial Engineering Honorary. In 1970 he received his J.D. from the University of Michigan. He is a member of the American Bar Association, the State Bar of Michigan, the Ingham County Bar Association and the Greater Lansing Home Builders Association. Mr. Trepod is designated as an approved loan-closing attorney by the Farmer's Home Administration, U. S. Department of Agriculture, and specializes in construction law, mechanic's liens, real estate and real estate development. Mr. Trepod is with Willingham, Cote', Hanslovsky, Griffith & Foresman, P.C., in East Lansing.

James W. Batchelor is a native of Virginia and a graduate of the University of Virginia Law School. He has been with Russell, Ward and Hodgkins in Grand Rapids since 1975 and was one of the attorneys for the appellant in Williams and Works, Inc. v. Springfield Corp. Mr. Batchelor has also served on the faculty of the Institute for Continuing Legal Education course in mechanic's liens.

\* \* \*

#### Michigan Oil and Gas Law--An Update

"Michigan Oil and Gas Law--An Update," a one-day course from the Institute of Continuing Legal Education, will be held at Long's Convention Center, Lansing, on Friday, May 23, 1980.

This ICLE course is co-sponsored by the Real Property Law Section and the Oil and Gas Committee, State Bar of Michigan. It features a faculty of both legal and industry experts. Course topics include rights and obligations under the oil and gas lease...special oil and gas title problems...regulations affecting oil and gas law...financing oil and gas transactions...and pricing problems.

The registration fees are: Standard--\$90; Real Property Law Section--\$80; Young Lawyer (admitted to the bar after 2/75)--\$65. Lunch is included in the registration fees.

For more information, please call or write to ICLE, Hutchins Hall, Ann Arbor, MI 48109. (313) 764-0533.

\* \* \*

Two Real Estate Appraisal Courses have been announced by the Michigan Chapter of the American Institute of Real Estate Appraisers of the National Association of Realtors. Registrations are now being taken for the first course/exam, "Real Estate Appraisal Principles," which will be held at Orchard Ridge Campus of Oakland Community College April 11-26. The course is a comprehensive overview of the valuation process and is a fundamental course which discusses the three approaches to value. The instructors are Terrell Oetzel Mai, Oetzel Appraisal Services, Lansing, and Jay Messer Mai, Lambrecht Realty Company, Detroit. Registration fee is \$200. The course is open to all students entering the field of Real Estate Appraisal whether or not they are currently interested in seeking the institute's RM or MAI designation. The second course/exam, "Residential Valuation," will be held September 12-28, and enrollment will be limited to students who passed the exam for "Real Estate Appraisal Principles" or the appraisal institute's old course VIII or IA.

Each of the courses is presented on two consecutive Fridays and Saturdays 9 A.M. to 5 P.M. with the exam on the third Saturday.

The institute has recently completed a major revision of its curriculum which is effective in these two courses. For course brochure and further information, contact Michigan Chapter No. 10, (313) 573-6987.