

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SERVICLEAN ONE LLC,

Plaintiff/Counter-Defendant-  
Appellee,

v

MARC BRICKER and TAMMY BRICKER,

Defendants/Counter-Plaintiffs-  
Appellants.

UNPUBLISHED

June 27, 2006

No. 258903

Berrien Circuit Court

LC No. 00-004069-CK

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Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action seeking compensation for services rendered, defendants appeal as of right the trial court's orders entering judgment in favor of plaintiff and dismissing defendants' counterclaims. We affirm.

I. Basic Facts and Procedural History

Following a flood of their basement during a thunderstorm, defendants contacted water and fire restoration service provider plaintiff Serviclean One LLC (Serviclean). A Serviclean representative inspected the premises and provided defendants with an estimate of the likely cost to clean and remove the water, mud, and other debris that had accumulated in defendants' basement during the storm. After receiving the estimate, defendants authorized Serviclean to commence the proposed "cleaning and restoration services." However, soon after Serviclean began its work, concerns arose regarding whether defendants' homeowners' insurance carrier would cover the cost of Serviclean's services and, before the project was complete, Serviclean halted work on defendants' basement. Serviclean thereafter sent defendants an invoice requesting compensation for the following services rendered:

Initial damage containment. Remove debris and mud, extract water, remove carpet, remove padding, apply anti-microbial, remove structure in areas damaged, pack-out contents, bring to shop for storage, clean floor, clean contents stored at shop. Provide dumpster.

Defendants made only nominal payments toward the invoice over the next year, prompting Serviclean to file suit to collect the remainder of the amount due. In response to the suit, defendants asserted several counterclaims, including allegations that plaintiff had failed to in fact treat defendants' basement with an antimicrobial solution to prevent fungus and mold growth in defendants' home. Finding no genuine issue of material fact regarding whether defendants had breached a valid agreement for services with Serviclean, the trial court granted summary disposition in favor of Serviclean on the issue of liability. The court thereafter bifurcated the parties' claims and, following a bench trial on the issue of Serviclean's contractual damages, entered a money judgment against defendants. Concluding that its findings and rulings at the bench trial resolved all issues raised in the suit, the trial court also granted summary disposition of defendants' counterclaims in favor of Serviclean.

## II. Analysis

### A. Licensure under the Occupational Code

Before trial in this matter, defendants dismissed their attorney and obtained new counsel who, for the first time and only shortly before trial was to begin, moved to dismiss Serviclean's claim for compensation on the ground that its failure to obtain licensure under article 24 of the Occupational Code, MCL 339.2401 *et seq.*, statutorily precluded it from recovering for the performance of its work. See MCL 339.2412(1). However, finding defendants' claim of statutory preclusion to be an affirmative defense required to have been raised in their first responsive pleading, see MCR 2.111(F)(2), the trial court declined to address the issue and the matter proceeded to trial on the question of Serviclean's damages. Following trial, defendants renewed their argument in a motion for new trial. The trial court, recognizing that the statutory bar asserted by defendants affects the capacity of a plaintiff to sue and thus could be raised at any time, see, e.g., *Reynolds v College Park Corp*, 63 Mich App 325, 327-328; 234 NW2d 507 (1975), acknowledged its error in earlier declining to address the issue and agreed to address the matter post-trial. In doing so, however, the court found that article 24 of the code did not require that Serviclean be licensed to conduct the work performed for defendants and that, therefore, Serviclean was not precluded from bringing this suit.

On appeal, defendants argue that the trial court erred in rejecting their claim that Serviclean is precluded by article 24 of the Occupational Code from maintaining an action to collect compensation for its work on their home. We disagree.

This Court reviews de novo questions of law involving statutory interpretation and construction. *Michigan Mun Liability and Prop Pool v Muskegon Co Bd of Co Rd Comm'rs*, 235 Mich App 183, 189; 597 NW2d 187 (1999). When construing the provisions of a statute, the primary task of this Court is to discern and give effect to the intent of the legislature. See *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). "This task begins by examining the language of the statute itself." *Id.* Where the plain language of the statute is unambiguous, the Legislature is presumed to have intended the meaning clearly expressed and no further judicial construction is required or permitted. *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005). Rather, the statute must be enforced as written. *Id.*

Article 24 of the Occupational Code defines and regulates the activities of residential builders and maintenance and alteration contractors and, in conjunction with article 6 of the code, MCL 339.601 *et seq.*, requires that those engaged in such activities be licensed by the state. See, e.g., *Stokes v Millen Roofing Co*, 466 Mich 660, 664-665; 649 NW2d 371 (2002). With regard to maintenance of a suit for compensation for such activities, § 2412(1) of article 24 provides, in relevant part, that

a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract. [MCL 339.2412(1).]

The parties here do not dispute that Serviclean lacks licensure by the state that would satisfy article 24 of the code. Thus, the question before us is whether the compensation sought by Serviclean stems from “the performance of an act or contract for which a license is required by [the] article.” MCL 339.2412(1). Defendants argue that by removing water-soaked paneling, insulation, and other damaged materials from their basement, Serviclean engaged in the act of “demolition” or “wrecking” within the meaning of MCL 339.2401(b). Thus, defendants assert, Serviclean was required to be licensed as a residential maintenance and alteration contractor in order to bring this action for compensation. We do not agree.

MCL 339.2401(b) defines a “residential maintenance and alteration contractor,” in relevant part, as follows:

“Residential maintenance and alteration contractor” means a person who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another for the repair, alteration, or an addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination residential and commercial structure . . . .

As noted by defendants, because the Occupational Code does not itself define the activities outlined in MCL 339.2401(b), these terms must be accorded their plain and ordinary meanings. *Polkton Charter Twp v Pellegrum*, 265 Mich App 88, 102; 693 NW2d 170 (2005). With respect to a building or structure, the term “demolish” is commonly defined as to “destroy” or “ruin utterly.” See *Random House Webster’s College Dictionary* (1992), p 360. “Wrecking” is similarly defined as the reduction of a building or structure to “ruin.” *Id.* at 1538. Neither the record nor the parties’ agreement for services support the conclusion that Serviclean’s removal of materials from defendants’ basement equates to the level of destruction or ruin contemplated by the commonly understood meanings of these terms. Thus, we conclude that, given the limited and incidental nature of such activities reflected by the record, Serviclean did not engage in “demolition” or “wrecking” within the meaning of MCL 339.2401(b) when it removed water-soaked insulation, paneling, ceiling tiles, and other damaged components of defendants’ basement. Consequently, Serviclean was not required to be licensed as a residential maintenance and alteration contractor to perform the work it undertook at defendants’ home and the trial court

did not, therefore, err in rejecting defendants' claim that Serviclean is precluded by article 24 of the Occupational Code from maintaining an action to collect compensation for its work.

### B. Antimicrobial Application and Storage Fees

Defendants next argue that the trial court erred in concluding at the bench trial that Serviclean in fact applied an antimicrobial treatment to defendants' basement, and in determining that Serviclean was entitled to compensation for unpaid storage fees. To support their position, defendants argue that several statements made by Serviclean's attorney constitute binding judicial admissions that Serviclean failed to apply microbacterial treatment to defendants' home and was not seeking damages to compensate it for unpaid storage fees. Again, we disagree. The question whether statements made by Serviclean's counsel constitute a judicial admission is one of law reviewed by this Court de novo. See *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001).

"A statement is a judicial admission only if it is a statement made by a party or his attorney during the course of trial, and is a distinct, formal, solemn admission which is made for the express purpose of dispensing with formal proof of that particular fact at trial." *Gojcaj v Moser*, 140 Mich App 828, 833-834; 366 NW2d 54 (1985). Each of the statements defendants contend constitute binding judicial admissions were made by Serviclean's attorney while arguing Serviclean's motion for summary disposition. Although some statements regarding antimicrobial treatment and storage fees made during arguments at a summary disposition hearing by plaintiff's then counsel were contrary to plaintiff's interests, nevertheless, our review of the record indicates that these statements were not distinct, formal, solemn admissions made by counsel to dispense with formal proof of any fact at trial and, therefore, were not judicial admissions. See, e.g., *Guarantee Bond & Mortgage Co v Hilding*, 246 Mich 334, 344; 224 NW2d 643 (1929) (statements in pleadings, though admissible as admissions against interest, are not conclusive); see also *Holloway Const Co v State*, 44 Mich App 508, 533; 205 NW2d 575 (1973).

Defendants also contend that plaintiff's counsel indirectly admitted that Serviclean did not apply an antimicrobial treatment to defendants' basement when he failed to object at the hearing on Serviclean's motion for summary disposition to defense counsel's statement that "the mold stuff wasn't done." However, because a judicial admission must be a distinct, formal, solemn admission made by plaintiff or his counsel, mere silence by plaintiff's counsel during defendant's argument does not constitute a judicial admission.

Defendants provide no other authority to support their argument that the trial court erred in determining plaintiff applied microbacterial treatment to defendants' basement. Furthermore, while defendants argue that plaintiff was not entitled to an award of damages for unpaid storage fees because it failed to raise a claim for such fees in its original complaint and no express contractual agreement for the payment of storage fees exists, defendants provide no authority to support these claims. It is well settled that

"[i]t is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." [*LME v ARS*, 261

Mich App 273, 286-287; 680 NW2d 902 (2004), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Consequently, because defendants have not presented any additional authority to support their positions, we do not address these issues further. See *Byrne v Schneider's Iron & Metal, Inc*, 190 Mich App 176, 183; 475 NW2d 854 (1991).

### C. Summary Disposition of Defendants' Counterclaims

Finally, defendants claim that the trial court erred in granting summary disposition of their counterclaims in favor of Serviclean. In doing so, defendants appear to assert that because the trial court erred in finding that Serviclean was not subject to the licensing requirements of article 24 of the Occupational Code and in fact applied an antimicrobial treatment to defendants home, its use of these legal and factual findings as the basis for its decision to dismiss defendants' counterclaims was also error. However, as discussed above, the trial court did not err in concluding that Serviclean was not subject to the licensing requirements of article 24 of the Occupational Code. Furthermore, Serviclean's attorney made no binding admissions regarding application of an antimicrobial treatment to defendants' basement. Because defendants provide no other authority to support their argument that the trial court erred in dismissing their counterclaims, we do not address the issue further. *Byrne, supra*.

Affirmed.

/s/ Patrick M. Meter  
/s/ Joel P. Hoekstra

I concur in result only.

/s/ Jane E. Markey