

STATE OF MICHIGAN
COURT OF APPEALS

DALE GABARA,

Plaintiff/Counter-Defendant-
Appellee,

v

KERRY D. GENTRY, and LINDA L. GENTRY,

Defendants/Counter-Plaintiffs-
Appellants.

UNPUBLISHED
December 19, 2006

No. 262603
Sanilac Circuit Court
LC No. 04-029750-CZ

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Following a bench trial, defendants appeal as of right from the judgment for plaintiff, arguing that the trial court erroneously denied their motions to dismiss. Specifically, defendants argue that the residential builders act, MCL 339.2401 *et seq.*, barred plaintiff's claim because he did not have a residential builder's license. We reverse and remand for entry of judgment in favor of defendants.

Plaintiff orally agreed to oversee construction of defendants' residence, obtain supplies for the project, hire contractors, use funds provided by defendants to order and pay for materials, and perform finish work and other labor at an hourly rate. After defendants had paid plaintiff \$188,000 to fund construction of the home, the relationship between the parties collapsed because of plaintiff's questionable billing practices, and defendants began paying the contractors directly. Plaintiff sought the balance allegedly owing on the contract for labor, material, and the rental of construction equipment.

First, defendants argue that plaintiff was barred from bringing suit under MCL 339.2412 because he was an unlicensed residential builder. Essentially, defendants claim that the trial court erred when it denied their MCR 2.116(C)(5) motion for summary disposition because plaintiff lacked the legal capacity to bring a suit to recover for unpaid labor, materials, and equipment rentals. We agree. We review *de novo* a grant or denial of summary disposition under MCR 2.116(C)(5). *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000).

The pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties must be considered by the court

when ruling on the motion. MCR 2.116(G)(5). This Court must review the record to determine whether the moving party is entitled to judgment as a matter of law. *Kuhn [v Secretary of State]*, 228 Mich App 319, 333; 579 NW2d 101 (1998)]. Further, whether a party has standing to bring an action is a question of law reviewed de novo. *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 384; 600 NW2d 406 (1999). [*Id.*]

Moreover, we review questions of statutory interpretation de novo. *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005).

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. *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. The words of a statute provide “the most reliable evidence of its intent” *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). [*Id.*]

MCL 339.2412(1) provides in pertinent part as follows:

A person . . . 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.

Under the statute, a builder may not bring an action for collection of compensation unless it can establish that it possesses a residential builder's license. *Stokes v Millen Roofing Co*, 466 Mich 660, 664-665; 649 NW2d 371 (2002).

The parties do not dispute that plaintiff lacked a residential builder's license. Plaintiff argues that he did not need a license because he was not a residential builder. MCL 339.2401(a) defines a residential builder as follows:

“Residential builder” means a person engaged in the construction of a residential structure . . . who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another or offers to undertake or purports to have the capacity to undertake with another for the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement, wrecking of, or demolition of, a residential structure [MCL 339.2401].

In his first amended complaint, plaintiff sought to recover compensation for his involvement in the construction of defendants' home, other than “wages for personal labor only,” including

compensation for his payments to subcontractors, for the rental of construction equipment, and for construction supplies. Plaintiff is a residential builder for purposes of the statute. Because plaintiff did not have a builder's license, MCL 339.2412(1) bars his claim to recover compensation for these expenditures. Accordingly, the trial court erred when it failed to grant defendants' MCR 2.116(C)(5) motion for summary disposition and dismiss plaintiff's claim.¹

Plaintiff argues that he was not seeking compensation when he filed this cause of action to recover the cost of supplies that he ordered and paid for because he worked only for personal wages and did not seek to profit from providing these materials. However, a party seeking payment for the reasonable value of materials seeks compensation under MCL 392.2401(a).² *Stokes, supra* at 665-666. In addition, MCL 339.2401(e) provides that a person is not "engaged in the construction of a residential structure . . . [for] wages for personal labor only . . ." if he also supplies materials.³ Although plaintiff claimed in his complaint that he worked for "wages" for

¹ Plaintiff argues that he did not make any "improvements" to the house when he supplied contractors, tools, and equipment to the construction site, because applying a broad definition of the term "improvement" would require suppliers and manufacturers to obtain builder's licenses. We reject this argument because defendant's agreement to supply these materials was not independent of his agreement to oversee the general use and application of these materials as the general contractor for the project. *Stokes, supra* at 666.

² The *Stokes* Court explained:

Because "compensation" is not defined in the act and is not a term of art, we apply a dictionary definition. *Random House Webster's College Dictionary* (1995) defines "compensation" as

something given or received as an equivalent for services, debt, loss, injury, etc.; indemnity; reparation; payment." [sic]

Applying that meaning of "compensation," we find that § 2412 disallows an action for the reasonable value of materials conveyed, because such an action seeks "payment" or "something given or received as an equivalent for [a] debt" or "loss." [*Stokes, supra* at 665-666.]

³ MCL 339.2401(e) provides:

"Wages" means money paid or to be paid on an hourly or daily basis by an owner . . . of a residential structure . . . as consideration for the performance of personal labor on the structure by a person who does not perform or promise to perform the labor for any other fixed sum, price, fee, percentage, valuable consideration, or other compensation and who does not furnish or agree to furnish the material or supplies required to be used in the performance of the labor or an act defined in [MCL 339.2401(a)]

sanding, caulking, and finishing defendants' home, he also furnished materials to perform the sanding and caulking, including caulking and supplies, sandpaper, and lumber, and sought payment for these materials. Plaintiff's argument that he did not attempt to profit by supplying materials to defendants is immaterial because nothing in the residential builders act suggests that a person furnishes supplies only if he profits from the activity. Plaintiff essentially asks us to impermissibly read the term "profit" into MCL 339.2401(e), which we decline to do. See *People v Spann*, 250 Mich App 527, 532; 655 NW2d 251 (2002), aff'd 469 Mich 904 (2003) ("Nothing will be read into a statute that is not within the manifest intention of the Legislature as gathered from the act itself.").

Plaintiff claims that defendants' argument that the parties' contract cannot be bifurcated and that plaintiff cannot recover for activities not requiring the license is irrelevant because plaintiff did not perform an act requiring him to hold a residential builder's license. However, as discussed *supra*, plaintiff sought compensation for payments he made to subcontractors, for the rental of construction equipment, and for construction supplies, making him a residential builder pursuant to MCL 339.2401(a). Further, the *Stokes* Court ruled that MCL 339.2412(1) prohibited bifurcation of a contract to permit an unlicensed residential builder to recover for the components of the building contract that could be performed without holding a residential builder's license:

Even if, normally, the contract could be bifurcated, the statute prohibits it. Section 2412 bars a suit for compensation if a license was necessary for performance of "an act or contract." The statute requires us to look for either an act or a contract requiring a license. It does not make provision for bifurcating building contracts into separate labor and supply components. [*Id.* at 667].

Because plaintiff is an unlicensed residential building contractor and bifurcation of the contract is impermissible under the statute, plaintiff does not have a cause of action to recover under any aspect of his agreement with defendant to oversee construction of the house.⁴

Second, defendants argue that the trial court erred when, at the conclusion of the bench trial, it denied defendants' renewed motion to dismiss. Because we find that the trial court should have granted defendants' motion for summary disposition under MCR 2.116(C)(5) and dismissed plaintiff's complaint before trial, and we instruct the trial court to enter judgment in favor of defendants to rectify this error, we need not consider whether the trial court later erred when it denied defendants' renewed motion for summary disposition after the close of proofs or whether this renewed motion was timely.

⁴ Plaintiff asserts that the *Stokes* Court held that a contract barred by the residential builders act could be bifurcated if the agreement to supply material was independent from the duty to install material. However, the *Stokes* Court did not hold that the claims of an unlicensed contractor should be bifurcated. Instead, it discussed bifurcation when addressing the dissent's proposed bifurcation test, arguing that the plaintiff's claim would fail even if the dissent's proposed test were applied. *Stokes, supra* at 666-667.

Reversed and remanded for entry of judgment in favor of defendants. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Helene N. White
/s/ Joel P. Hoekstra