

STATE OF MICHIGAN
COURT OF APPEALS

C.G. AUTOMATION & FIXTURE, INC.,

Plaintiff-Appellee,

v

AUTOFORM, INC. and AUTOLIV A.S.P., INC.,

Defendants,

and

KEY PLASTICS, L.L.C.,

Defendant-Appellant,

and

CHRYSLER, L.L.C.,

Defendant-Appellee.

FOR PUBLICATION

January 20, 2011

9:00 a.m.

No. 286361

Kent Circuit Court

LC No. 07-009314-CK

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

GLEICHER, J.

We granted leave in this case to consider a question of first impression arising under the Michigan ownership rights in dies, molds and forms Act, MCL 445.611 *et seq.*, also known as the molder's lien act. The precise question before us is whether an enforceable molder's lien attaches absent some form of permanently recorded information on the mold, die or tool identifying the name of the moldbuilder, its street address, city and state. We hold that an enforceable lien demands the presence of permanently affixed identifying details on the mold, die or tool, and that the dies here at issue lacked this essential record. We reverse the circuit court ruling to the contrary, and remand for further proceedings.

I. UNDERLYING FACTS AND PROCEEDINGS

Plaintiff C.G. Automation & Fixture, Inc. (C.G. Automation) manufactures tool and die equipment, and sells its products to automobile parts suppliers. Defendants Key Plastics, L.L.C. (Key Plastics) and Autoliv A.S.P., Inc. (Autoliv) supply parts to automobile manufacturers. Autoliv agreed to sell defendant Chrysler, L.L.C., spoke covers for use in its JS41 vehicle platform. Chrysler applied the spoke covers as decorative features on the spokes of Chrysler Sebring steering wheels.

In September 2005, Autoliv sent Key Plastics a letter of intent to purchase spoke covers for JS41 vehicles. Defendant Autoform, Inc. (Autoform) quoted Key Plastics a price for the tooling necessary to manufacture the JS41 components. The tooling included production molds and metal trim dies. Key Plastics agreed to buy the tooling at the price quoted by Autoform. Autoform then turned to C.G. Automation for the design, fabrication, and manufacture of a portion of the JS41 tooling that Autoform had agreed to sell Key Plastics. C.G. Automation duly produced the required molds and dies and provided them to Autoform. The dispute before us concerns only the dies.

In September 2006, C.G. Automation shipped the dies to Autoform. On the date of shipment, C.G. Automation placed an identification tag on the risers accompanying the dies. According to Michael Elliott, C.G. Automation's plant supervisor, a riser is "a precise metal bar that is machined and bolted to the bottom of the tool to establish a shut height or a tool shut height. You buy the die set If it doesn't meet the required shut height, you put risers underneath it, and you bolt them to the bottom, so when they go into a press, they meet a certain shut height."¹ Elliott admitted that the risers could be removed from the die and transferred to another tool. Nonetheless, Elliott characterized "[t]he risers" as "part of the die." When C.G. Automation shipped the dies to Autoform, C.G. Automation also filed a Uniform Commercial Code (UCC) financing statement identifying its possession of a lien on the tooling.

Autoform never paid C.G. Automation for the dies, and Autoform entirely ceased its operations in 2007. However, before Autoform closed its doors, it sold the dies to Key Plastics.² The parties agree that the dies arrived at Key Plastics's facility without the tagged risers. The dies currently reside in a Key Plastics plant in Pennsylvania, where the company has used the

¹ "Die shut height' is defined as the height of the die in the shut or closed position." David Alkire Smith, *Quick Die Change*, (Society of Manufacturing Engineers, 2d ed, 2004), ch 11, p 237. "In general, the shut height of a press is the maximum die height that can be accommodated for normal operation" Auto/Steel Partnership, Stamping Task Force, "Selected Stamping and Formability Measurements," §3.1.2 <http://www.a-sp.org/database/viewsec.asp?sec=594> (accessed October 5, 2010).

² Key Plastics and Autoform fought a separate legal battle over the dies in the Washtenaw Circuit Court. They resolved their differences after Key Plastics agreed to pay Autoform for the tooling.

dies since 2007 in the manufacture of JS41 plastic parts. The record does not reveal the current location of the risers formerly attached to the dies.

In September 2007, C.G. Automation sued Autoform, Key Plastics, Autoliv and Chrysler, pursuant to the Special Tools Lien Act, MCL 570.541 *et seq.*, seeking immediate possession of the tooling. C.G. Automation's complaint also alleged breach of contract and unjust enrichment claims. C.G. Automation later amended its pleadings by adding a claim under the molder's lien act. In November 2007, the circuit court entered a stipulated order dismissing the breach of contract and unjust enrichment claims against Key Plastics, Autoliv, and Chrysler. Subsequently, the circuit court entered a default judgment against Autoform and in favor of C.G. Automation.

In February 2008, C.G. Automation filed a second amended complaint, and a motion to enforce the molder's lien act and take immediate possession of the tooling. In May 2008, the circuit court conducted an evidentiary hearing, at which several witnesses testified. In a June 2008 written opinion and order, the circuit court explained, in pertinent part, that it would grant C.G. Automation's motions:

3. The testimony of the representatives of C. G. Automation are that the devices that left their plant ... had the markings which are required to be on a device pursuant to MCL 445.619(4) and UCC lien registrations were filed by C. G. Automation. This testimony was credible and believed by the Court.

4. As a result of the identification tags being placed ... and the UCC liens being registered for the devices ... the plaintiffs [sic] are entitled to immediate possession and/or payment by the entity in possession of the [dies].

In October 2008, this Court granted Key Plastics's application for leave to appeal. *C.G. Automation & Fixture, Inc v Autoform, Inc*, unpublished order of the Court of Appeals, entered October 24, 2008 (Docket No. 286361).

II. ANALYSIS

The construction and application of the molder's lien act presents a question of law that this Court considers *de novo* on appeal. *Delta Engineered Plastics, LLC v Autolign Mfg Group, Inc*, 286 Mich App 115, 119; 777 NW2d 502 (2009). We review for clear error a circuit court's findings of fact. MCR 2.613(C). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000).

In *Gateplex Molded Products, Inc v Collins & Aikman Plastics, Inc*, 260 Mich App 722, 726; 681 NW2d 1 (2004), another case arising under the molder's lien act, we set forth the following general principles governing statutory interpretation:

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature in enacting a provision. Statutory language should be construed reasonably, keeping in mind the purpose of the statute. The first criterion in determining intent is the specific language of the statute. If the

statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. However, if reasonable minds can differ regarding the meaning of a statute, judicial construction is appropriate. [Internal quotation omitted.]

Here, the parties ask that we construe several sections of the molder's lien act and determine whether, when harmonized, the act supports the imposition of a molder's lien. In undertaking this task, we must avoid construing the statute in a manner that renders any statutory language nugatory or surplusage. *Robinson v City of Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010). When discerning legislative intent, we read the entire act and interpret a particular word in one statutory section only "after due consideration of every other section, so as to produce, if possible, a harmonious and consistent enactment as a whole." *Grand Rapids v Crocker*, 219 Mich 178, 182-183; 189 NW 221 (1922). This Court considers both the plain meaning of critical words or phrases comprising the statute and their placement and purpose in the statutory scheme. *People v Blunt*, 282 Mich App 81, 84; 761 NW2d 427 (2009). In summary, "[w]e construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature." *People v Hill*, 269 Mich App 505, 515; 715 NW2d 301 (2006).

The pertinent portion of the molder's lien act, MCL 445.619, contemplates as follows:

- (1) A moldbuilder shall permanently record on every die, mold, or form that the moldbuilder fabricates, repairs, or modifies the moldbuilder's name, street address, city, and state.
- (2) A moldbuilder shall file a financing statement in accordance with the requirements of section 9502 of the uniform commercial code, 1962 PA 174, MCL 440.9502.
- (3) A moldbuilder has a lien on any die, mold, or form identified pursuant to subsection (1). The amount of the lien is the amount that a customer or molder owes the moldbuilder for the fabrication, repair, or modification of the die, mold, or form. The information that the moldbuilder is required to record on the die, mold, or form under subsection (1) and the financing statement required under subsection (2) shall constitute actual and constructive notice of the moldbuilder's lien on the die, mold, or form.
- (4) The moldbuilder's lien attaches when actual or constructive notice is received. The moldbuilder retains the lien that attaches under this section even if the moldbuilder is not in physical possession of the die, mold, or form for which the lien is claimed.
- (5) The lien remains valid until the first of the following events takes place:
 - (a) The moldbuilder is paid the amount owed by the customer or molder.

(b) The customer receives a verified statement from the molder that the molder has paid the amount for which the lien is claimed.

(c) The financing statement is terminated.

The plain language of MCL 445.619(1) dictates that a moldbuilder permanently record identification information on every die, mold, or form it produces. The statute does not define the term “permanently record.” “When considering a word or phrase that has not been given prior legal meaning, resort to a lay dictionary such as *Webster’s* is appropriate.” *Citizens Ins Co v Pro-Seal Service Group, Inc*, 477 Mich 75, 84; 730 NW2d 682 (2007). According to *Random House Webster’s College Dictionary* (2d ed, 1997), p 971, the relevant definitions of “permanent” include “(1) existing perpetually; everlasting. (2) intended to serve, function, etc., for a long, indefinite period,” and “(3) long-lasting or nonfading.” The relevant definition of “record” is “to set down in writing or the like, as for the purpose of preserving evidence.” *Id.* at 1087.

In MCL 445.619(2), our Legislature adopted a second mandatory obligation, that the moldbuilder file a financing statement in conformity with the uniform commercial code, MCL 440.9502. In MCL 445.619(1) and (2), the Legislature clearly and unambiguously commanded that molders seeking an enforceable lien undertake two actions: “a moldbuilder shall permanently record” specified identifying information on every die, mold, or form, subsection (1), and a moldbuilder “shall file a financing statement” under the UCC, subsection (2). Thus, the introductory subsections of the statute, subparagraphs (1) and (2), set forth two mandatory obligations relevant to the creation of a lien and its attachment. By placing these commandments at the beginning of the statute, the Legislature meant to convey that a moldbuilder seeking the benefits conveyed in the balance of the statute must comply with the predicate requirements.

Subsection (3) begins, “A moldbuilder has a lien on any die, mold, or form identified pursuant to subsection (1).” This is the only portion of the statute directly addressing the *creation* of a lien. Notably, the Legislature elected not to create a lien through the filing of a financing statement. It could have done so by adding a second sentence here, stating to the effect that “a moldbuilder has a lien on any die identified pursuant to subsection (2).” Moldbuilder’s liens are nonconsensual, and exist even absent privity of contract. Because those who ultimately acquire the tooling may have never agreed to a lien or entered into a security agreement with the moldbuilder, as occurred in this case, the statute creates a remedial security interest in the moldbuilder.

After subsection (3)’s language addressing the amount of a moldbuilder’s lien, the statute turns to the manner in which the moldbuilder must supply the world with *notice* of the lien it acquired by complying with subsection (1). The third sentence of subsection (3) reads, “The information that the moldbuilder is required to record on the die, mold, or form under subsection (1) *and* the financing statement required under subsection (2) shall constitute actual *and* constructive notice of the moldbuilder’s lien” (Emphasis added). With this sentence, the Legislature expressed that a moldbuilder who complies with both mandatory requirements has given the world actual and constructive notice of the lien.

Having established the legal components of an enforceable molder's lien, we now consider whether the circuit court clearly erred by finding that C.G. Automation had permanently recorded identifying information on the dies. The record evidence agreed that C.G. Automation permanently affixed its identifying information to metal risers that could be separated from the dies and transferred for use with other tools. A Key Plastics engineer testified that the risers "are just steel spacers that if you needed to adjust heights for some reason, but they would not be necessarily specific to a specific die." Although a C.G. Automation plant supervisor insisted at one point during the evidentiary hearing that the risers constitute a "part of the [dies]," substantial other evidence refutes this pronouncement. Abundant evidence establishes that a riser is not a die, but a separate and distinct device used in conjunction with a die. The two serve entirely different functions. "To treat them as synonymous ... would be reminiscent of Lewis Carroll's Humpty-Dumpty as he scornfully chastised Alice 'when I use a word it means just what I choose it to mean—neither more nor less.'" *Maki v East Tawas*, 385 Mich 151, 159; 188 NW2d 593 (1971).

By directing moldbuilders to "permanently record on every die, mold or form" identifying information, the Legislature clearly intended that subsequent possessors of a die would receive actual notice of the name and address of the moldbuilder. The Legislature elected to achieve this end by requiring a die fabricator to perpetually preserve its identity "*on every die . . .*" (Emphasis added). The circuit court's determination that a moldbuilder could comply with the statutory mandate by permanently affixing its information to an object readily removable from the die contravenes the plain meaning of MCL 445.619(1). Furthermore, that Key Plastics has successfully used the dies without the accessory risers confirms that the risers simply are not equivalent to the dies. Consequently, our review of the entire relevant record leaves us with the definite and firm conviction that the circuit court made a mistake in finding that C.G. Automation had placed its identifying information on the dies. *Massey*, 462 Mich at 379. Because C.G. Automation failed to perfect its lien in the manner prescribed under MCL 445.619, we reverse the decision of the circuit court and remand for proceedings consistent with this opinion.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Jane E. Markey
/s/ Brian K. Zahra

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Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

GLEICHER J. (*concurring*).

I fully concur in the majority opinion, but write separately to express my belief that MCL 445.619(4) renders that section of the molder's lien act ambiguous. In my view, legislative reconsideration of the statutory language would benefit the tool and die and automotive industries, as well as the legal community.

In MCL 445.619(1) and (2), the Legislature clearly and unambiguously commanded that molders seeking an enforceable lien undertake two mandatory actions: “[a] moldbuilder shall permanently record” specified identifying information on every die, mold, or form, subsection (1), and a moldbuilder “shall file a financing statement” under MCL 440.9502, subsection (2). However, at this point the waters of statutory interpretation become muddied. Subsection (3) envisions that a moldbuilder “has a lien on any die, mold, or form identified pursuant to subsection (1).” One reasonable interpretation of this language suggests that even absent the moldbuilder's filing of a financing statement, the moldbuilder acquires an enforceable lien if it

has permanently affixed identifying information on the tool. But subsection (3) then continues, “The information that the moldbuilder is required to record on the die, mold, or form under subsection (1) *and* the financing statement required under subsection (2), shall constitute actual *and* constructive notice of the moldbuilder’s lien” (Emphasis added). This sentence reasonably lends itself to construction in either of two ways. The first is that the combination of permanent moldbuilder identification and the filing of a UCC financing statement together amount to actual and constructive notice of a lien. Alternatively, the Legislature perhaps intended that permanent identification constitutes actual notice, while a filed UCC statement equates to constructive notice; acceptance of this alternate reading would essentially obligate a court to engraft onto the final clause of subsection (3) the notion that the permanent recording and the UCC filing “shall constitute actual and constructive notice[, *respectively,*] of the moldbuilder’s lien” (Emphasis added). Adoption of the second alternate reading of subsection (3) thus would ignore the well-established principle of statutory construction that a court “is not free to add language to a statute or to interpret a statute on the basis of this Court’s own sense of how the statute should have been written.” *Kirkaldy v Rim*, 478 Mich 581, 587 (concurring opinion by Cavanagh, J.); 734 NW2d 201 (2007); see also *In re Wayne Co Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998) (emphasizing that “[a] court must not judicially legislate by adding into a statute provisions that the Legislature did not include”).

Subsection (4) intensifies the interpretive difficulties presented by the molder’s lien act. That subsection provides that a moldbuilder’s lien attaches “when actual *or* constructive notice is received.” MCL 445.619(4) (emphasis added). In the estimation of federal bankruptcy Judge Phillip J. Shefferly, who construed the molder’s lien act in *In re Plastech Engineered Products, Inc*, 418 BR 235, 245 (ED Mich Bankr, 2009), subsections (3) and (4), when read together, render the statute “inescapably ambiguous.”¹ Judge Shefferly reasoned:

Subparagraph 4 injects an additional element of doubt in construing the statutes by providing that the lien “attaches when actual or constructive notice is received.” The problem caused by this language is that under subsection 3, the references to the information required to be inscribed on the tooling and the financing statement required to be filed are written with the conjunctive *and*, which suggests that both acts together constitute actual and constructive notice of the lien. However, subsection 4 arguably calls this construction into question by using the disjunctive *or* between “actual” and “constructive” notice. The disjunctive *or* in this sentence suggests that there might be actual notice without constructive notice and vice versa. In other words, if the lien can attach when there is only the actual notice provided by the inscription on the tooling, does this mean that attachment can occur without the constructive notice that a UCC financing statement provides? Similarly, if there is only a UCC financing

¹ Although this Court may choose to agree with the analysis of a federal court decision, “federal court decisions are not precedentially binding on questions of Michigan law.” *American Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 364; 604 NW2d 330 (2000).

statement that provides the constructive notice, can attachment occur without the actual notice that is provided by the inscription on the tooling? [*Id.* at 244 (emphasis in original).]

Judge Shefferly resolved the statute's apparent ambiguity by examining its structure, legislative history, applicable case law and secondary sources. *Id.* at 244-247. He concluded that MCL 445.619 "require[s] a two step process in order to obtain an enforceable lien: the permanent recording of information on the mold or tool, *and* the filing of a financing statement in accordance with section 9502 of the UCC." *Id.* at 247 (emphasis added). Judge Shefferly's reconciliation of the statutory language is entirely consistent with the result we reach today.

Our Supreme Court has emphasized that "a provision of the law is ambiguous only if it irreconcilably conflicts with another provision or when it is *equally* susceptible to more than a single meaning." *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 177-178 n 3; 730 NW2d 722 (2007) (internal quotation omitted, emphasis in original). I would hold that with regard to whether a molder's lien exists in the absence of a UCC filing statement, the statutory language is equally susceptible to more than a single meaning. I agree entirely with the sentiments expressed in an article published in the November 2010 Michigan Bar Journal, that the molders lien act is "in desperate need of overhaul," and that amendment "would foster more predictability in judicial construction and interpretation of the statutory language." Mears, *Amending the Michigan tooling lien statutes*, 89 Mich B J 11, p 40 (2010). Nevertheless, I believe that the statute clearly and unambiguously envisions that absent the permanent recording of identifying information, a moldbuilder possesses no lien.

/s/ Elizabeth L. Gleicher