STATE OF MICHIGAN

COURT OF APPEALS

ARCHITECTURAL STAINLESS, INC., doing business as ASI EQUIPMENT,

Plaintiff-Appellant,

v

KARET PROJECTS, LLC, and THOMAS LEFEVRE,

Defendants/Cross-Defendants,

and

TM PARTRIDGE CREEK MALL, LP,

Defendant/Cross-Defendant/Cross-Plaintiff-Appellee,

and

ROBERT C. LEITHAUSER and GWENDOLYN LEITHAUSER,

Defendants,

and

TOPLESS INTERIORS, LLC,

Cross-Plaintiff.

UNPUBLISHED
May 13, 2021

No. 353660
Macomb Circuit Court
LC No. 2018-002821-CB

Before: BOONSTRA, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's opinion and order, issued following a bench trial, entering a judgment of no cause of action in favor of defendant TM Partridge Creek Mall, LP (defendant), in this action under the Construction Lien Act (CLA), MCL 570.1101 *et seq.*, to foreclose a lien for kitchen equipment fabricated and installed by plaintiff for use in a tenant's restaurant on defendant's real property. We affirm.

I. BACKGROUND

Plaintiff designs, fabricates, and installs food service equipment for restaurant and institutional use. Defendant operates The Mall at Partridge Creek, which includes retail stores and restaurants.

In July 2016 defendant executed a lease of space at the mall to Karet Projects, LLC (Karet), for the purpose of operating a Muer Kitchens restaurant. Karet's chef approached plaintiff to provide design and installation services for the restaurant's kitchen. Between August 28 and December 6, 2017, plaintiff fabricated and installed stainless steel equipment, such as a dishwashing area, a chef island, a cooking line, a salad prep station, cocktail serving stations, and a sushi station, much of which was attached to the walls with anchors or pinned to the floor. Plaintiff billed Karet $274,424.20 for the project, but Karet paid only $61,035.00 of that amount. On December 11, 2017, plaintiff filed a construction lien in the amount of $213,389.20, naming defendant as the owner of the property.

The restaurant opened for business, but failed to pay any rent. This ill-fated project spawned several legal actions, including summary proceedings by defendant in the 41B District Court seeking possession of the premises, an appeal to the Macomb Circuit Court, and a breach-of-contract action by defendant against Karet and two individuals resulting in a consent judgment for defendant. Karet also filed an action in the Macomb Circuit Court challenging the validity of plaintiff's lien and asserting that the equipment fabricated and installed by plaintiff was not covered by the CLA. The court in that case initially declined to declare the lien invalid, but ultimately dismissed Karet's action.

Plaintiff filed the complaint in this case on July 26, 2018. In Count I, plaintiff sought foreclosure of its lien, alternatively requesting a sale of defendant's property to satisfy the lien or appointment of a receiver over the property to collect rents and profits to satisfy the lien.[1] Five days later, plaintiff filed a motion for summary disposition under MCR 2.116(C)(9) and (10), requesting that the court foreclose its construction lien and enter judgment for plaintiff in the amount of $213,389.20. Defendant filed a response to the motion, asserting in part that under MCL 570.1107(1), plaintiff's lien attached only to Karet's leasehold interest, and not to defendant's interest in the property. Two days later, defendant answered the complaint, denying

[1] Plaintiff also alleged various claims against defendants Karet and Lefevre, which are not relevant to this appeal.

plaintiff's entitlement to foreclosure against its property and asserting, as an affirmative defense, that plaintiff's lien attached only to Karet's leasehold interest, and not to defendant's property.[2]

On August 31, 2018, defendant's counsel e-mailed plaintiff's counsel, announcing defendant's intention to evict Karet from the premises and to allow Karet to remove its equipment from the restaurant and inviting plaintiff to attend a potential walk-through of the premises to "identify any equipment subject to its lien." On September 6, 2018, Karet was evicted from the property. In a letter to plaintiff's counsel, dated October 4, 2018, defendant's counsel noted that plaintiff had not removed any of the items described in its lien from the premises, repeated defendant's intention to remove those items, and invited plaintiff to advise him if plaintiff wished to recover any of those items from the premises.[3] On October 23, 2018, Karet began removing equipment and fixtures fabricated and installed by plaintiff from the premises; this removal process continued until December 18, 2018.

On November 21, 2018, the trial court denied plaintiff's motion for summary disposition. Plaintiff thereafter filed an amended complaint alleging that it had made improvements to the property pursuant to an agreement with Karet and with the knowledge and consent of defendant; that Karet owed $213,389.20 for the improvements made by plaintiff; that plaintiff had filed a claim of lien in that amount and had served a copy of the lien on defendant; and that plaintiff had performed all the steps prescribed by the CLA to perfect its claim of lien. Plaintiff again requested a sale of defendant's property or the appointment of a receiver to satisfy its lien claim.[4] Answering the complaint, defendant again denied plaintiff's entitlement to relief sought from defendant through foreclosure.

On February 15, 2019, defendant filed a motion for summary disposition of plaintiff's foreclosure claim, pursuant to MCR 2.116(C)(10), asserting that because Karet did not own the property and there was no agency relationship between Karet and defendant, plaintiff's lien attached only to the alleged improvements. Defendant also asserted that the equipment installed by plaintiff comprised trade fixtures that remained the personal property of Karet, the lessee. Finally, defendant noted that all of the equipment installed by plaintiff had been removed from the property by Karet and argued that enforcing the lien against defendant would place it in the position of guarantor of Karet's obligations to plaintiff.

Responding to the motion, plaintiff asserted that the lease obligated Karet to make the improvements, that the equipment installed by plaintiff was affixed to the premises and that, pursuant to § 6.02 of the lease between Karet and defendant, all improvements became property

---

[2] Defendant also filed a cross-claim alleging breach of contract against Karet.

[3] On October 8, 2018, the default of Karet was entered for failure to plead or otherwise defend the action.

[4] The amended complaint named Topless Interiors, LLC, Robert Lighthauser, and Gwendolyn Lighthauser as necessary parties under the CLA and repeated plaintiff's claims for breach of contract, unjust enrichment, account stated, and fraudulent misrepresentation against Karet and Lefevre. Topless Interiors also filed a cross-complaint against defendant and Karet. The claims against defendant were dismissed by a stipulated order entered before the trial of this matter.

of defendant upon attachment to the premises. Thus, plaintiff reasoned, defendant became the owner of the improvements after evicting Karet and the lien was enforceable against defendant's property. Plaintiff disputed defendant's characterization of the equipment as trade fixtures, noting that the CLA contains no provisions regarding trade fixtures. Plaintiff cited MCL 570.1107(2) in support of its assertion that defendant had acquired all legal or equitable interest in the equipment, requested that the court deny defendant's motion for summary disposition, and requested summary disposition pursuant to MCR 2.116(I)(2).

In a reply brief, defendant asserted that Karet was not its agent in law or in fact, citing *Rowen & Blair Electric Co v Flushing Operating Corp*, 399 Mich 593; 250 NW2d 481 (1977), in support of the proposition that where a tenant's improvements are removed from the property, a construction lien attaches only to the removed improvements. Defendant also asserted that the lien did not attach to the real property because defendant did not require the improvements and, therefore, there was no agency relationship.

In an opinion and order issued on April 24, 2019, the trial court granted defendant's motion for summary disposition. Citing MCL 570.1107(1) and (3), the court explained that a contractor who contracts with a lessee generally has a construction lien only on the interest of the lessee and that where a party with no legal title to the property contracts for an improvement to the property, a lien attaches only to the improvement. However, citing *J & I Serv Station, Inc v Wash Wagon of Mich, Inc*, 120 Mich App 533, 537; 327 NW2d 518 (1982), the court recognized an exception to the general rule: where a lease requires the lessee to make the improvements, the lessee becomes an agent of the lessor, who is then bound by the improvements. Applying this rule to the facts of this case, the court held that plaintiff had cited no provision of the lease that required Karet to install the equipment, and thus presented no evidence of an agency relationship between Karet and defendant. The court further held that Karet's abandonment of the property did not expand the scope of the lien, and that the CLA does not address whether an improvement is permanent or removable. Finding no evidence that defendant contracted for the equipment, the court granted summary disposition for defendant.

Plaintiff filed a motion for reconsideration pursuant to MCR 2.119(F). Citing *Norcross Co v Turner-Fisher Assoc*, 165 Mich App 170; 418 NW2d 418 (1987), plaintiff asserted that the court had erred by holding that an agency relationship could only be established if the lease required the tenant to make improvements to the property. Citing the lease between Karet and defendant, plaintiff asserted that because the equipment it fabricated and installed was required by the lease and the lease required Karet to obtain defendant's approval of each step in the construction, there was ample evidence of an agency relationship between Karet and defendant. The trial court granted plaintiff's motion for reconsideration, holding that in light of the lease provisions cited in plaintiff's motion, a finder of fact could conclude that an agency relationship existed.

Thereafter, a bench trial was conducted on plaintiff's foreclosure claim against defendant. In his opening statement, defense counsel asserted, for the first time, that judgment must be entered for defendant because plaintiff failed to provide a sworn statement as required by the CLA. The next day, plaintiff's counsel noted that the issue of the sworn statement had not been raised earlier and requested that the record reflect that a sworn statement was being presented to defendant's counsel. Rather than address the issue, court continued hearing testimony. At the conclusion of plaintiff's case, defendant moved for a directed verdict, premised on plaintiff's failure to provide

a sworn statement before filing the complaint in this case. The court took the motion under advisement.

On May 20, 2020, the trial court issued its opinion and order. The court concluded that the services provided by plaintiff constituted an improvement and that plaintiff qualified as a contractor, supplier, or laborer under the act. Citing MCL 570.1107(1), the court observed that a construction lien generally attaches to the interest of the party who contracted for the improvement, in this case a lessee whose interest in the property had been terminated. Noting plaintiff's assertion that its lien attached to the real property because the equipment was affixed to the property or became the property of the defendant under the terms of the lease, the court found that plaintiff cited no authority supporting that interpretation of the CLA.

The court recognized that the CLA does permit a contractor's lien to reach the property interest of a noncontracting owner where the owner *required* the improvement, but held that plaintiff had not cited any provisions in the lease that required the improvements. Noting that the lease expressly disclaimed an agency relationship, the court found that the lease permitted, but did not require, the improvements. Moreover, the court found no significance in the provisions deeming the improvements to be the property of the lessor, concluded that nothing in the lease required Karet to install the various equipment fabricated by plaintiff, and held that plaintiff had failed to show how its lien attached to defendant's real property. Thus, the court found no cause of action and entered judgment for defendant. The court did not address defendant's motion for a directed verdict, concluding that its decision rendered the motion moot.

Plaintiff appeals as of right, asserting that the trial court erred by finding that its lien did not attach to defendant's real property. We disagree.

II. STANDARD OF REVIEW

This Court reviews a trial court's findings of fact at a bench trial for clear error. A finding of fact is clearly erroneous if it lacks evidentiary support or if this Court is left with a definite and firm conviction that a mistake has been made. *Chelsea Inv Group LLC v City of Chelsea*, 288 Mich App 239, 250-251; 792 NW2d 781 (2010). The trial court's conclusions of law are reviewed de novo. *Id.* at 250. The proper interpretation of the CLA is also reviewed de novo, *DLF Trucking, Inc v Bach*, 268 Mich App 306, 309; 707 NW2d 606 (2005), as is the proper interpretation of a contract. *AFP Specialties, Inc v Vereyken*, 303 Mich App 497, 504; 844 NW2d 470 (2014) (citation omitted).

III. ANALYSIS

The CLA, which took effect on January 1, 1982, replaced mechanics lien laws dating back to 1891, and was "intended to protect the interests of contractors, workers, and suppliers through construction liens, while protecting owners from excessive costs." *Vugterveen Sys, Inc v Olde Millpond Corp*, 454 Mich 119, 121; 560 NW2d 43 (1997). While the CLA must be liberally construed to effectuate its purpose, "the act's clear and unambiguous requirements should not be ignored." *Id.* Thus, where a statutory provision is unambiguous, "it needs no construction, liberal or otherwise, to determine its meaning." *AFP Specialties*, 303 Mich App at 505.

Section 107(1) of the CLA provides that a "contractor, subcontractor, supplier, or laborer who provides an improvement to real property has a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property . . . ." MCL 570.1107(1). A construction lien also attaches to "the interest of an owner who has required the improvement." *Id.* Moreover, the lien "attaches to the entire interest of the owner or lessee who contracted for the improvement, including any subsequently acquired legal or equitable interest." MCL 570.1107(2). Where the party contracting for the improvement has no legal title to the real property, a contractor providing an improvement has a construction lien upon the improvement, and the termination of the contracting party's interest does not defeat the lien upon the improvement. MCL 570.1107(3).

As this Court succinctly explained in *Norcross*, 165 Mich App at 179, under the CLA, a lien attaches to the interest of an owner or lessee who contracted for the improvement, an owner who subordinated the interest to a mortgage for the improvement, or an owner who has required the improvement. While the lien attaches to the entire interest of an owner or lessee who contracted for the improvement, "if the party contracting for the improvement did not have legal title in the property, the lien only attaches to the improvement." *Id*. at 180.

As an initial consideration, the CLA defines "improvement" to include, *inter alia*, engineering and architectural planning, construction management, erecting, constructing, altering, repairing, leasing equipment, and installing or affixing a fixture or material, pursuant to a contract. MCL 570.1104(6). The trial court concluded that plaintiff qualified as a contractor under the CLA and that the services provided by plaintiff "constitute an improvement under the CLA." Neither party challenges this conclusion.

Because plaintiff provided the improvements under a contract with defendant's tenant, under the express language of the CLA plaintiff's lien could attach to defendant's real property interest if plaintiff established that defendant required the improvements. MCL 570.1107(1). In addition, Michigan courts have repeatedly held that a construction lien may also attach to a lessor's property "where, in fact or law, the lessee becomes the lessor's agent with authority to contract for improvements which will be of substantial benefit to the reversion." *Rowen & Blair Electric Co*, 399 Mich at 600.

In the *Rowen & Blair Electric* case, which interpreted earlier mechanics lien laws, the landlord leased land and a building to be used as a bakery and agreed to pay $45,000 "for improvements to the leased property and for replacement of fixtures as may be required." *Id.* at 596. The tenant then contracted with the plaintiff to provide labor and materials for the installation of trade fixtures and equipment. The landlord paid a number of invoices for improvements to the property, including two of the plaintiff's, but refused to pay any further invoices after the $45,000 total for the property was reached. The plaintiff then filed a lien on the property, listing both the landlord and the tenant as owners, and filed a complaint to foreclose the lien. *Id.* at 597-600. After the trial court found that an agency relationship existed between the landlord and the tenant, this Court affirmed. *Id.* at 600.

On appeal from this Court, our Supreme Court explained that "an agency is not created by the mere relationship of landlord and tenant." *Id.* at 601. Rather, there must be the possibility for unjust enrichment, and the primary focus must be "whether the lessee in fact was, or in equity should be viewed as, the lessor's agent in contracting for improvements." *Id.* An important factor

in determining the existence of an agency relationship is whether the lessor required the lessee to make improvements that benefited the lessor. *Id.* at 602.

The Supreme Court noted that the parties did not contemplate the building of a permanent structure on the property, but simply alterations and improvements to a vacant building "in order to make the leased premises suitable for the operation of a wholesale bakery[.]" *Id.* at 602. The Court observed that the alterations and improvements were of primary value to the lessee and that the lessee was not obligated to make the improvements, which were essential to the operation of the lessee's business. Finally, the Court noted that none of the improvements added any value to the property, having been seized by the IRS or repossessed by other secured parties. *Id.* at 603.

After engaging in this analysis, the Supreme Court held that "it is not necessary to the proper disposition of this case that we pass upon the rulings of the lower courts that an agency relationship was created by the terms of the lease," *id.* at 604, but instead affirmed the judgment of this Court because it found no evidence in the record to support binding the lessor beyond the $45,000 limit stated in the lease. *Id.* Thus, the Supreme Court's discussion regarding the existence of an agency relationship was not essential to its decision; it is dictum and does not constitute binding precedent. See *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 436-437; 751 NW2d 8 (2008).

Nevertheless, 10 years later, in *Norcross*, this Court adopted the Supreme Court's dictum in *Rowen & Blair Electric* to affirm a lower court's finding of an implied agency relationship in a case arising under the recently-enacted CLA. In *Norcross*, a property owner entered into an option agreement to sell real property for the purpose of making "alterations, renovations, and improvements to the building," which would then be sold or leased as office space. *Norcross*, 165 Mich App at 173. Even though the purchaser failed to make a lump-sum payment required by the agreement, the seller subsequently acknowledged and approved past and future improvements by the purchaser. *Id.* at 174-175. After the purchaser failed to make additional payments and filed for Chapter 11 bankruptcy, the option agreement and the purchaser's rights to the property were terminated. Various claimants filed construction liens against the purchaser and later filed suit against the property owner. Following a bench trial, the circuit court held that the CLA should be liberally construed and found that the property owner was liable to the lien claimants because, after the owner acknowledged and approved past and future improvements, an implied agency was created between the property owner and the purchaser. *Id.* at 175-177. On appeal, the owner argued that the trial court erred by construing the CLA liberally, that the liens attached only to the improvements because the plaintiffs contracted with the purchaser and not the property owner, and that no lien attached to the real property because the owner neither required nor assented to the improvements. *Id.* at 177-179.

This Court first agreed with the trial court's liberal interpretation of the statute, finding that "the language of the statute supports the court's conclusion that the statute should receive a liberal interpretation." *Id.* at 178. Next, this Court explained that "a lien will not attach if the owner merely authorizes the improvements but does not require them," *id.* at 181, citing *Rowen & Blair Electric*, 399 Mich at 602. This Court noted that the lower court had recognized this limitation and had instead premised its decision on a finding that there was an implied agency relationship between the owner, as principal, and the purchaser, as agent, "for the construction of the improvements." *Norcross*, 165 Mich App at 181. Again citing *Rowen & Blair Electric*, this Court

then held that "the court's finding that an implied agency existed . . . with respect to the improvements was not clearly erroneous." *Id*. at 182. In support of this finding, this Court noted that the owner had acquiesced in the improvements even though the purchaser was in arrears on payments, had made no efforts to limit the improvements to the property, and had even encouraged future improvements. *Id.*

More recently, in *AFP Specialties*, 303 Mich App 497, this Court applied the holdings in both *Rowen & Blair Electric* and *Norcross* to reverse a trial court decision granting a lien foreclosure premised on an implied agency. In that case, the property owner entered into a land contract for the sale of property, knowing that the purchaser intended to convert a vacant building on the property into a restaurant. *AFP Specialties*, 303 Mich App at 500. The purchaser entered into a contract with the plaintiff for the installation of a fire-suppression system in the building. *Id*. When the purchaser was unable to make payments on the land contract, the owner brought a forfeiture action and obtained a judgment of possession. *Id*. at 501. The plaintiff then filed a breach-of-contract action, obtained a partial summary disposition against the purchaser, and sought to foreclose its construction lien on the property, alleging that the purchaser had acted as the owner's agent when he contracted for the installation of the fire-suppression system. *Id*. at 501-502. After finding that an implied agency existed between the owner and the purchaser, the trial court granted summary disposition for the plaintiff, holding that the plaintiff's lien attached to the owner's entire interest in the property, first, because the purchaser acted as the agent of the owner when contracting for the installation of the fire-suppression system, and, second, because the land contract required the installation of the system. *Id.* at 502-503.

On appeal, this Court first held that the trial court "erred by applying the liberal rule of construction for interpreting the CLA, set forth in MCL 570.1302(1), when considering whether an implied agency existed," both because the pertinent statutory provision is unambiguous and needs no construction, and because "whether an implied agency arises is not a question of statutory interpretation but a matter of fact, dependent on common-law principles." *Id.* at 505.

This Court then held that the trial court had erred by finding, as a matter of law, that the purchaser was acting as the owner's implied agent when contracting for the fire-suppression system. *Id.* at 511. The Court explained that an agency relationship "cannot arise by implication if the alleged principal expressly denies its existence," but may arise from facts and circumstances that are known to the alleged principal, that are within the control of the alleged principal, and that are acknowledged or acquiesced in by the alleged principal. *Id.* at 507. Noting that under the land contract the owner retained no control over the improvements made to the property, *id.* at 509, the Court held that "because the improvements here were permitted but not required, no implied agency arose," *id.* at 510, citing *Rowen & Blair Electric*, 399 Mich at 602, 604. Next, this Court noted that while the land contract required the purchaser to comply with all government regulations, nothing in the land contract required that the property be used as a restaurant; rather, it was the purchaser's decision to use the property as a restaurant that triggered the inspection that caused the restaurant to close. *AFP Specialties*, 303 Mich App at 515. Thus, the trial court erred by holding that the land contract required the installation of the fire-suppression system. *Id*. at 515-516.

Although the Supreme Court's explanation of the implied agency theory in *Rowen & Blair Electric* is dictum, this Court's holdings in *Norcross* and *AFP Specialties* clearly establish the

applicability of the implied agency rationale to cases arising under the CLA. Moreover, *AFP Specialties*, decided in 2014, is binding under MCR 7.215(J)(1). In light of this precedent, the trial court correctly held that "either under the express terms of MCL 570.1107(1), or under the judicially created exception based on agency principles, the question becomes whether [defendant] required the improvements [plaintiff] provided."

A. REQUIRED IMPROVEMENTS

The lease in this case, comprising more than 70 pages, is quite detailed in defining the responsibilities of both Karet, as tenant, and defendant, as landlord, and plaintiff cites numerous provisions of the lease to support its assertion that the improvements were required by the lease. For example, plaintiff notes that the lease required that the premises were to be used "solely for the purpose of a 'Muer Kitchens' restaurant." Plaintiff also observes that Exhibit B to the lease defines "Tenant's Work" to mean "Tenant's total responsibilities (or any portion thereof) for the construction and improvement of the Premises" and defines "Leasehold Improvements" as "all of Tenant's Work described and performed pursuant to this Exhibit B for the purpose of the Lease." Plaintiff also points to various lease provisions defining tenant's work in detail, including installation of furniture, fixtures, and equipment required to complete the premises, and requiring the preparation and submission of preliminary and final drawings for defendant's approval. Plaintiff also refers to various provision of the lease requiring defendant's approval, such as § II(A), which states that "Tenant's Work shall be subject to Landlord's prior approval and shall be designed and constructed to comply with the requirements set forth in the most current edition of Landlord's criteria for the Shopping Center." Plaintiff asserts that these and other provisions demonstrate that defendant "not only maintained control over what improvements Karet could make, by requiring the approval of the Mall, but required Karet to make the improvements."

The trial court disagreed with plaintiff's interpretation of the lease, and instead interpreted the lease as "not to mean what the landlord requires from tenant, but rather what Tenant's business needs requires." This finding is supported by the evidence. Defendant's operations director testified that the tenant accepted the property "as is," that "tenant's work basically means anything the tenant needs to run its business," that he was not aware of any improvements that defendant required Karet to make to the premises, and that the purpose of the lease provision describing the permitted use of the premises is to show "what you're going to be using the land for or the building for, lease space." He testified that the leased space was not designated as a restaurant space and may be used for different purposes by a subsequent tenant, and that Karet was allowed to remove the equipment installed by plaintiff "[b]ecause it's not going to be used. A new tenant that would move in would change everything."

This evidence indicates that any improvements made to the premises by Karet were primarily for the benefit of the tenant, rather than the landlord, and were improvements essential to Karet's business operations, as in *Rowen & Blair*, 399 Mich at 603. Although the lease seems to require that Karet make improvements necessary to conduct the business operations for which the space was leased, the trial court's finding that the lease did not require the improvements installed by plaintiff within the meaning of MCL 570.1107(1) is not clearly erroneous.

B. IMPLIED AGENCY

Although plaintiff argues that an agency relationship is not necessary to enforce its lien against defendant's property under the CLA, plaintiff asserts that an agency relationship was nevertheless created in this case. Plaintiff relies on the same lease provisions cited in support of the argument that the lease required the improvements installed by Karet, including the requirement that the premises be used solely for the purpose of a Muer Kitchens restaurant, the definitions and requirements for tenant's work, and the requirement that the tenant submit detailed plans conforming to defendant's construction requirements. In addition, plaintiff cited the lease addendum specifying a construction reimbursement allowance to Karet in the amount of $850,314.

The existence of an agency relationship "is not a question of statutory interpretation but a matter of fact, dependent on common-law principles." *AFP Specialties*, 303 Mich App at 505. The trial court's finding that no agency relationship existed between defendant and Karet is correct, for three reasons.

First, as the trial court noted, § 27.03 of the lease explicitly disclaims any agency relationship between defendant and Karet, stating:

> Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint ventures between the parties hereto, it being understood and agreed that neither the method of computation of Rental, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

As this Court held in *AFP Specialties*, 303 Mich App at 507, "[a]n agency cannot arise by implication if the alleged principal expressly denies its existence . . . ."

Second, as the trial court also noted, the lease provisions regarding tenant's work referred to Karet's business requirements rather than improvements required for defendant's purposes. This finding is supported by the testimony of defendant's operations manager, who stated that defendant allowed Karet to remove the equipment because defendant did not want it and a new tenant "would change everything." Moreover, as the trial court correctly held, requiring approval of improvements is not tantamount to requiring that the improvements be made. A lease that permits, but does not require, improvements does not create a principal-agent relationship.

Third, a finding of implied agency requires a showing that the improvements are "of substantial benefit to the lessor." *Norcross*, 165 Mich App at 181. In this case, plaintiff has not shown that the equipment it installed provided any benefit to defendant. Again, as defendant's witness testified, defendant did not want the equipment installed by plaintiff to remain in the premises and Karet was allowed to remove the equipment because it would not have been used by a new tenant.

Plaintiff attempts to distinguish this case from *AFP Specialties* on the ground that in this case, unlike *AFP Specialties*, "the lease specifically required Karet to use the leased premises as a restaurant." However, *AFP Specialties* did not involve a lease, but rather the sale of property under

a land contract, an entirely different situation. Because defendant is in the business of leasing space to various tenants for various retail and restaurant purposes, the retention of a greater degree of control by the landlord does not create an implied agency. See *AFP Specialties*, 303 Mich App 509.

Plaintiff also attempts to establish an agency relationship with defendant through a lease provision stating that "Tenant's Architect and Engineers may act as Tenant's agents for all Tenant design and plan development purposes and obligations." From this, plaintiff reasons that it acted as Karet's agent when it installed the improvements to the premises and "therefore had an agency relationship with the Mall." This assertion has no logical basis. Even if plaintiff had acted as Karet's agent for design purposes, that does not create an agency relationship between plaintiff and defendant. Moreover, the only agency relationship that is relevant in this context is one in which the landowner is the principal and the tenant is the agent.

Plaintiff also asserts that the trial court erred by concluding that the CLA requires an agency relationship. However, the court made no such holding, but merely cited Michigan law holding that the existence of an agency relationship may result in the attachment of a lien to the principal's property. The CLA unambiguously states that a construction lien attaches to the interest of the party contracting for the improvement to real property, whether an owner or a lessee, or to the interest of an owner who required the improvement. MCL 570.1107(1). "It is a longstanding legal principle that a duly authorized agent has the power to act and bind the principal to the same extent as if the principal acted." *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). Thus, if a lessee is acting as an agent of the lessor when dealing with a contractor, the contractor's lien attaches to the property of the lessor under the CLA.

In a somewhat confusing argument, plaintiff contends that because the CLA provides that "a construction lien attaches to the entire interest of the owner or lessee who contracted for the improvement, including any subsequently acquired legal or equitable interest," MCL 570.1107(2), defendant remained the owner of the premises after Karet was evicted and owned all of the improvements made by plaintiff and any other contractors. Plaintiff reads this language to mean that a "subsequently acquired legal or equitable interest" refers to defendant's ownership of the improvements themselves. However, this provision only makes sense if it is read to refer to a legal or equitable interest in the property to which the lien attaches, and not to the improvements. Plaintiff has cited no authority to support the proposition that where the property owner acquires ownership of the improvements through forfeiture or otherwise, the construction lien is then extended to the entire property interest. This interpretation places a landowner in the position of guarantor of payment for improvements made by the tenant, clearly not the aim of the CLA.

Plaintiff's assertion that the trial court's interpretation would lead to the abuses described in *Rowen & Blair Electric*, 399 Mich at 601, is incorrect. The fraud described in *Rowen & Blair Electric* occurs when a landowner contracts with a tenant to make improvements beneficial to the property and then refuses to pay the contractor when the tenant is unwilling or unable to do so. However, that situation is clearly addressed under the CLA: if the landowner requires the improvements to the property, the construction lien attaches to the landowner's interest in the property. Similarly, if the tenant contracts for improvements as an agent for the landowner, the lien attaches to the landowner's interest in the property. MCL 570.1107(1). Because the trial

court's analysis is supported by the CLA and Michigan common law, plaintiff is not entitled to appellate relief on these grounds.

Plaintiff also contends that the trial court erroneously relied on caselaw interpreting the prior mechanics lien statutes. Although the issue is phrased as a general challenge to the trial court's citation of caselaw predating the CLA, plaintiff's own reliance on *Rowen & Blair Electric*, which predated the CLA by five years, and *Kolton v Nassar*, 352 Mich 337; 89 NW2d 598 (1958), decided 24 years before enactment of the CLA, indicates that plaintiff specifically objects only to the trial court's citation of *J & I Serv Station*, 120 Mich App 533.

In *J & I Serv Station*, the tenant leased property to operate a truck wash under a lease that the tenant could terminate if unable to obtain the necessary permits within 90 days. *Id*. at 535. The tenant hired a contractor to convert the facility to a truck wash; when the tenant failed to pay the balance, the contractor did not notify the landowner of its intent to file a mechanic's lien on the plaintiff's property, but nevertheless recorded a lien on the property. *Id*. at 536. When the landowner sued the contractor to quiet title in the property, the trial court granted the landowner's motion for summary disposition. *Id.* The contractor appealed to this Court, challenging the trial court's holding that notice was deficient under the mechanics lien statute. The contractor asserted that the tenant was an agent of the plaintiff, thus, notice to the tenant was sufficient under the statute and the trial court erred by requiring strict compliance with the notice requirement. *Id.* at 536-537.

Citing *Rowen & Blair Electric*, 399 Mich at 600-601, and *Sewell v Nu Markets, Inc*, 353 Mich 553, 558-559; 91 NW2d 861 (1958), this Court first held that because the tenant was not required to make the improvements to the property, and the tenant could terminate the contract if the improvements could not be made, the trial court correctly found that the tenant was not an agent of the plaintiff. *J & I Serv Station*, 120 Mich App at 537. Second, this Court also held that the trial court properly found that the plaintiff was entitled to summary disposition because the contractor "did not strictly comply with the requirements of the statute when it did not send notice of intention to claim a lien to [the landowner]." *Id.* at 538.

In this appeal, plaintiff asserts that the trial court erroneously relied on *J & I Serv Station* as authority for its conclusion that no agency was created because defendant did not require Karet to make the improvements. To support this assertion, plaintiff correctly observes that in *Norcross*, 165 Mich App at 179, this Court stated that *J & I Serv Station* was wrongly decided because the Court improperly applied a strict construction of the mechanics lien statute. However, plaintiff's argument is otherwise flawed. The Court in *J & I Serv Station* employed a strict construction of the mechanics lien statute only in the context of the notice requirements, and not in the analysis of the agency relationship. *J & I Serv Station*, 120 Mich App at 537-538. When analyzing the agency issue, *id.* at 537, the Court in *J & I Serv Station* relied on the Supreme Court's decision in *Rowen & Blair Electric*, not on a strict construction of the mechanics lien statute. The *Norcross* Court's statement that *J & I Serv Station* was wrongly decided did not apply to its analysis of the agency relationship. Thus, the trial court's citation of *J & I Serv Station* is not erroneous and does not warrant reversal of the trial court's judgment for defendant.

C. SWORN STATEMENT

Defendant asserts that plaintiff's failure to provide a sworn statement before filing the complaint is a defect fatal to plaintiff's foreclosure claim. Accordingly, defendant requests that if this Court remands this case to the trial court, it do so with instruction to grant defendant's motion for a directed verdict. Because we affirm the entry of judgment for defendant, we decline to address this issue.

IV. CONCLUSION

Because the trial court's findings that the lease did not require the improvements installed by plaintiff and that no agency relationship was created between defendant and its tenant are not clearly erroneous, we affirm the judgment for defendant of no cause of action.

Affirmed. Defendant is entitled to tax costs as the prevailing party. See MCR 7.219(A).

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Michael F. Gadola