

STATE OF MICHIGAN
COURT OF APPEALS

FALLON CONSTRUCTION, LLC,

Plaintiff-Appellant,

v

LOWE'S HOME CENTERS, INC.,

Defendant-Appellee,

and

SUPERIOR INTERIORS,

Not Participating.

UNPUBLISHED

March 25, 2003

No. 238409

Genesee Circuit Court

LC No. 01-069863-CH

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's summary dismissal of plaintiff's action to foreclose on a construction lien, MCL 570.1101 *et seq.*, on the ground that it was time-barred. We reverse.

On March 2, 2000, pursuant to MCL 570.1111, plaintiff filed its claim of lien against property owned by defendant with the Genesee County Register of Deeds. On November 22, 2000, plaintiff filed a complaint to enforce its construction lien through foreclosure in the Wayne County Circuit Court. On January 16, 2001, defendant's counsel informed plaintiff's counsel that venue was improper and requested a stipulation changing venue to Genesee County. On January 30, 2001, by stipulation, an order was entered transferring the case from the Wayne County Circuit Court to the Genesee County Circuit Court. A letter dated February 6, 2001, was sent by the Wayne County Clerk's Office to the Genesee County Circuit Court indicating that the complete files regarding the matter were enclosed.

However, inexplicably, the Genesee County Clerk's Office did not enter the case into its docketing system until March 8, 2001. Thereafter, relying on MCL 570.1117(1) which requires that such foreclosure actions be filed within one year of the date the claim of lien was recorded, defense counsel submitted an affidavit of untimely filing to the Genesee County Clerk's Office, MCL 570.1128. The Clerk's office then issued a certificate of untimely commencement, which was subsequently recorded with the Genesee County Register of Deeds, extinguishing the effect

of plaintiff's claim of lien, MCL 570.1128. Defendant then filed a motion for summary disposition arguing that, because plaintiff's construction lien was invalid, plaintiff's foreclosure action must be dismissed; the trial court agreed and this appeal followed.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because plaintiff's complaint to foreclose on the construction lien was timely filed and an order transferring the matter to the proper court was entered before the one-year statute of limitations expired. We agree. The trial court's decision on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

MCL 570.1117(1) provides:

Proceedings for the enforcement of a construction lien and the foreclosure of any interests subject to the construction lien shall not be brought later than 1 year after the date the claim of lien was recorded.

In effect, MCL 570.1117(1) is a statute of limitations. Pursuant to MCR 2.101(B), "[a] civil action is commenced by filing a complaint with a court." Here, plaintiff recorded its claim of lien in Genesee County on March 2, 2000, and filed its complaint with the Wayne County Circuit Court on November 22, 2000; therefore, plaintiff initiated "[p]roceedings for the enforcement of a construction lien and the foreclosure of any interests subject to the construction lien" within one year of "the date the claim of lien was recorded."

However, MCL 570.1118(1) provides, in pertinent part:

An action to enforce a construction lien through foreclosure shall be brought in the circuit court for the county where the real property described in the claim of lien is located.

Defendant claimed, and the trial court agreed, that plaintiff's action was untimely because it was not "brought in the circuit court for the county where the real property described in the claim of lien is located" by March 2, 2001. Defendant argued that the untimely transfer of the action from the Wayne County Circuit Court to the Genesee County Circuit Court should be charged against plaintiff, causing plaintiff's action to be time-barred. Defendant cited no supporting authority and failed to offer any argument for its position that a change of venue impacts a statute of limitations.

To the contrary, in *Saba v Gray*, 111 Mich App 304; 314 NW 597 (1981), this Court held that once a circuit court executes and enters an order changing venue, that court loses jurisdiction over the case and the transferee court is vested with jurisdiction over further proceedings in the action, regardless of whether the court file was actually transferred. *Id.* at 311-312. Consistently, MCL 600.1651 provides that "[t]he court for the county to which the transfer is made shall have full jurisdiction of the action as though the action had been originally commenced therein." Therefore, although plaintiff's complaint was not originally "brought in the circuit court for the county where the real property described in the claim of lien is located," the Genesee County Circuit Court became vested with jurisdiction when the transfer order was entered by the Wayne County Circuit Court. Therefore, regardless of when the matter was

docketed, the action was pending in the proper venue within the required time. Accordingly, defendant was not entitled to summary disposition on the ground that the action was time-barred.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff, having prevailed in full, may tax costs pursuant to MCR 7.219(F).

/s/ William B. Murphy

/s/ Mark J. Cavanagh

/s/ Janet T. Neff