STATE OF MICHIGAN

COURT OF APPEALS

GENSON'S PLUMBING, INC.,

Plaintiff-Appellant,

v

KEITH T. KWASNY and ADELE FROMM,

Defendant-Appellees,

and

WASHTENAW MORTGAGE COMPANY and FIRST OF AMERICA BANK,

Defendants.

UNPUBLISHED
April 1, 1997

No. 189353
Washtenaw Circuit Court
LC No. 95-004536

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach,* JJ.

PER CURIAM.

In this lien foreclosure action, plaintiff plumbing company appeals from the circuit court's order granting summary disposition in favor of defendants Kwasny and Fromm. We affirm.

MCL 570.1114; MSA 26.316(114) ("Right of contractor to construction lien on residential structure; contract") states in relevant part:

> A contractor shall not have a right to a construction lien upon the interest of any owner or lessee in a residential structure unless the contractor has provided an improvement to the residential structure pursuant to a written contract between the owner or lessee and the contractor and any amendments or additions to the contract shall be in writing.

Plaintiff urges this Court to construe the section liberally in accordance with MCL 570.1302; MSA 26.316(305).[1] Specifically, plaintiff argues that the *proposed* written contract, when reviewed in

* Circuit judge, sitting on the Court of Appeals by assignment.

light of other documents which suggest defendants' acceptance of the proposal, constitutes an enforceable contract in substantial compliance with § 1114, and thus supports the validity of plaintiff's claim of lien. We disagree.

In the construction lien act, the term "contract" is defined as "a contract, of whatever nature," presumably encompassing written, oral and implied contracts. MCL 570.1102(4); MSA 26.316(102)(4). However, the specific portion of the construction lien act applicable here (where the dispute arises out of construction on a residence), is § 1114, which expressly refers to a "*written* contract."

Omission of a phrase in one portion of a statute which is included in another should be construed as intentional. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993). We assume that every word used in a statute has meaning and therefore we avoid any construction which would render a statute or any part of it surplusage or nugatory. *Altman v Meridian Twp*, 439 Mich 623, 635; 487 NW2d 155 (1992). Plaintiff's suggested construction of the section would render the word "written" in § 1114 meaningless.[2]

Because the record does not contain a written contract between the parties for the improvements of defendants' residential property, plaintiff is not entitled to a lien on the property. Accordingly, the circuit court did not err in granting summary disposition to defendants.

Affirmed. As prevailing parties, defendants Kwasny and Fromm are permitted to tax costs.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Harry A. Beach

[1] MCL 570.1302; MSA 26.316(305) provides in relevant part:

> (1)This act is declared to be a remedial statute, and shall be liberally construed to secure the beneficial result, intents, and purposes of this act. Substantial compliance with the provisions of this act shall be sufficient for the validity of the construction liens provided for in this act, and to give jurisdiction to the court to enforce them.

[2] Indeed, plaintiff's construction would render the entire section nugatory in light of the more general "Right to Contractual Lien" section, MCL 570.1107; MSA 6.316(107), which would certainly encompass residential property, had the Legislature not distinguished it in § 1114.