

STATE OF MICHIGAN
COURT OF APPEALS

WOODWORK SPECIALTIES CO.,

UNPUBLISHED

June 3, 1997

Plaintiff-Appellee,

v

No. 186190

Kalamazoo Circuit Court

KAREN SUE SAXTON,

LC No. 93-1292 CH

Defendant-Appellee,

and

HOMEOWNERS CONSTRUCTION
LIEN RECOVERY FUND,

Defendant-Appellant,

and

DUTCHMAN REMODELING, INC.,
NATIONAL LOAN SERVICE CENTER
STANDARD FEDERAL BANK, and FIRST
OF AMERICA BANK, MICHIGAN, N.A.,

Defendants.

Before: Fitzgerald, P.J., and O'Connell and T.L. Ludington*, JJ.

PER CURIAM.

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

In this action tried before the bench, defendant Homeowners Construction Lien Recovery Fund (the “Fund” hereinafter) appeals as of right the order of the circuit court entering judgment against the Fund. We vacate the order appealed and remand.

As framed by the parties, the issue on appeal concerns whether the substantive provisions of the Construction Lien Act, MCL 570.1101 *et seq.*; MSA 26.316(101) *et seq.* (the “Act hereinafter”), allow plaintiff subcontractor to recover from the Fund under the particular facts of this case. However, as a predicate matter, it must be determined whether plaintiff subcontractor complied with the procedural requirements of the Act. Should it be found that plaintiff either failed to perfect its construction lien or that it failed to comply with the Homeowner Construction Lien Recovery Fund, MCL 570.1201 *et seq.*; MSA 26.316(201) *et seq.*, plaintiff will not be entitled to recover regardless of the merit of its legal argument.¹

Our review of the record indicates that plaintiff provided its notice of furnishing to the property owner some seventy-six days after it first furnished labor and materials.² The Act requires that notice be provided within twenty days. MCL 570.1109(1); MSA 26.316(109)(1). While only substantial compliance is necessary with respect to this procedural requirement, *Vugterveen Systems, Inc v Olde Millpond Corp*, ___ Mich ___; ___ NW2d ___ (Docket no. 102988, issued 3/18/97) slip op p 2, this tardy filing raises some question as to whether the construction lien was properly perfected. Further, assuming that plaintiff properly perfected its construction lien, we are not able to determine from the record that plaintiff complied with the requirements of the Homeowner Construction Lien Recovery Fund. MCL 570.1201(3); MSA 26.316(203)(3).

Therefore, because of these deficiencies in the record, we are unable to address the substance of the circuit court’s decision. Accordingly, we vacate that decision and remand to allow the court to address these predicate factual matters.

Vacated and remanded. The trial court is directed to make findings of fact and conclusions of law consistent with this opinion. The trial court shall hold the hearing and render its decision within 56 days of the issuance of this opinion. We retain jurisdiction.

/s/ Peter D. O’Connell
/s/ Thomas L. Ludington

¹ The perfection of the lien does not appear to have been a disputed issue below. However, our review of the lower court record indicates that if the lien was properly perfected, the “particular facts of this case” may not have arisen and, therefore, there would be no need to address the legal issue presented on this appeal. A condition precedent to the distribution of state monies is a properly perfected lien.

² We also note that Woodwork's notice of furnishing was furnished to Saxton well after she paid Dutchman in full.