

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILL H. HALL & SON, INC.,

Plaintiff/Counterdefendant-  
Appellant,<sup>1</sup>

v

CAPITOL INDEMNITY CORPORATION,

Defendant-Appellee,

and

UNITED STATES FIDELITY AND GUARANTY  
COMPANY,

Third-Party Defendant.

UNPUBLISHED

June 15, 2001

No. 222262

Genesee Circuit Court

LC No. 97-057960-CK

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Before: Hoekstra, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiff, Will H. Hall & Son, Inc., appeals as of right from the trial court's order granting defendant Capitol Indemnity Corporation a directed verdict in this claim involving a performance bond. We reverse.

In deciding a motion for a directed verdict, the court examines all the evidence presented up to the time of the motion to determine whether a question of fact exists. The testimony and all legitimate inferences that may be drawn from that testimony are viewed in a light most favorable to the nonmoving party to determine whether there is a prima facie case. *Auto Club v General Motors*, 217 Mich App 594, 603-604; 552 NW2d 523 (1996). This Court reviews the trial

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<sup>1</sup> The complaint filed by plaintiff alleged a breach of contract and a fraud claim against Ace Masonry Construction, Inc., the subcontractor. Plaintiff also alleged a claim on the bond against defendant-appellee Capitol Indemnity Corp. Ace filed a counter complaint against plaintiff. After the trial court granted a directed verdict in favor of Capitol, plaintiff and Ace stipulated to dismissal of their claims against one another.

court's ruling on a directed verdict de novo. *Gauntless v Auto-Owners Ins*, 242 Mich App 172, 176; 617 NW2d 735 (2000).

In granting defendant's motion for directed verdict, the trial court gave little explanation, noting only a "failure of proof regarding compliance with conditions precedent, including failure to declare default." Plaintiff did not use the word "default" in a notice to the subcontractor. There was evidence, however, that plaintiff was in constant contact with defendant's agent regarding the subcontractor's refusal to perform, that defendant's agent confirmed with the subcontractor that it had, indeed, walked off the job, that plaintiff put the subcontractor on notice that someone else would be hired to complete the work, and that plaintiff filed a claim with defendant. Viewing this evidence in a light most favorable to plaintiff, *Auto Club, supra*, we conclude that a reasonable factfinder could find that defendant received notice that the subcontractor committed a material breach, that plaintiff regarded the subcontractor to have failed to meet its contractual duties, and that plaintiff was asking defendant to perform under the terms of the bond. See *L & A Contracting Co v Southern Concrete Services, Inc*, 17 F 3d 106, 111 (CA 5, 1994).

To the extent the trial court found plaintiff's notice to defendant untimely, we note that the only time frame provided in the performance bond is the two-year limitations period for filing a lawsuit. Where the time of performance is indefinite, performance may be required to be rendered within a reasonable time. *Soloman v Western Hills Development Co*, 88 Mich App 254, 257; 276 NW2d 577 (1979). The question regarding the reasonableness of plaintiff's claim, which was filed less than three months after Ace walked off the job, should have been submitted to the jury. *Auto Club, supra*.

Reversed.

/s/ Joel P. Hoekstra  
/s/ Michael J. Talbot  
/s/ Brian K. Zahra