

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

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CANTALUPO HOMES & DEVELOPMENT,  
INC.,

UNPUBLISHED  
July 6, 2006

Plaintiff/Counterdefendant-  
Appellant,

v

No. 261327  
Oakland Circuit Court  
LC No. 01-033851-CH

GP ENTERPRISES, INC., d/b/a VENUS DAY  
SPA, NEWBERRY SQUARE, INC., and  
AMERICAN TOWER DELAWARE  
CORPORATION,

Defendants/Cross-Defendants-  
Appellees,

ON REMAND

and

LIVONIA BUILDING MATERIALS,

Defendant/Counterplaintiff/Cross-  
plaintiff/Third-Party Plaintiff-  
Appellee,

and

LONG MECHANICAL, INC., and INTERCON  
CORPORATION,

Defendants/Counterplaintiffs/Cross-  
Plaintiffs/Cross-Defendants-  
Appellees,

and

WALTER GOLABECK,

Third-party Defendant-Appellee,

and

COLUMN FINANCIAL, INC., CHASE  
MANHATTAN BANK, as Trustee for  
COMMERCIAL MORTGAGE PASS, ARBOR  
DRUGS, INC., and NEW PAR, d/b/a AIR TOUCH  
CELLULAR,

Defendants/Cross-Defendants,

and

RAY DE STEIGER, INC., d/b/a RAY ELECTRIC,

Defendant/Counterplaintiff/Cross-  
Plaintiff/Cross-Defendant.

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Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

This action to enforce a construction lien against improvements to real property owned by defendant Newberry Square, Inc., but contracted for by its lessee, defendant GP Enterprises, Inc., returns to this Court on remand from our Supreme Court. In our prior decision we affirmed the trial court's grant of summary disposition in favor of Newberry on the ground that the lien at issue could not be enforced by plaintiff through foreclosure against Newberry's ownership interest in the real property. See *Cantalupo Homes & Development, Inc v GP Enterprises, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued September 1, 2005 (Docket No. 261327). In doing so, however, we declined to address whether plaintiff nonetheless remained entitled to a lien against the improvements, title to which had been surrendered to Newberry upon default of the lease agreement by GP Enterprises, for the reason that plaintiff raised in its statement of questions presented only the issue whether it was entitled to foreclose against Newberry's ownership interest in the real property. *Id.*, slip op at 6 n 1.

In a subsequent application for leave to appeal to the Supreme Court, plaintiff argued that the question whether, pursuant to MCL 570.1107(3), its lien against the improvements continued regardless of any surrender or forfeiture of the interests of GP Enterprises was properly raised before this Court, and that resolution of that question required a finding of a continuing lien against the improvements. In lieu of granting plaintiff's application, the Supreme Court remanded the matter to us "for consideration of the question whether plaintiff is entitled to a continuing lien on the improvements under MCL 570.1107(3)." *Cantalupo Homes & Development, Inc v GP Enterprises, Inc.*, 474 Mich 1090 (2006). On consideration of this question, we find that MCL 570.1107(3) plainly and unambiguously operated to ensure continuation of plaintiff's lien against the improvements following the surrender of GP Enterprises' interest in the improvements to Newberry. However, as explained below, we further find that because the trial court's order—and by extension this Court's affirmance thereof—granted summary disposition of plaintiff's complaint for foreclosure solely on the ground that

plaintiff could not enforce its lien by foreclosure against Newberry's ownership interest in the real property, summary disposition in favor of Newberry was nonetheless proper.

There is no dispute that plaintiff acquired a valid lien against the improvements at issue here pursuant to the provisions of the Construction Lien Act, MCL 570.1101 *et seq.* Regarding the attachment and continued validity of a lien against improvements to real property that have been contracted for by someone other than the owner of the property to which the improvements were made, MCL 570.1107(3) provides:

Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property to which the person contracting for the improvement had no legal title shall have a construction lien upon the improvement for which the contractor, subcontractor, supplier, or laborer provided labor, material, or equipment. *The forfeiture, surrender, or termination of any title or interest held by any owner or lessee who contracted for an improvement to the property or by any owner who subordinated his or her interest to the mortgage for the improvement, or by any owner who has required the improvement shall not defeat the lien of the contractor, subcontractor, supplier, or laborer upon the improvement.* [Emphasis added.]

When a statute's language is clear and unambiguous, this Court will assume that the Legislature intended its plain meaning, and will enforce the statute as written. *Krug v Ingham Co Sheriff's Office*, 264 Mich App 475, 481; 691 NW2d 50 (2004). As recognized in our prior opinion, the language emphasized above both plainly and unambiguously "provides that forfeiture, surrender, or termination of [a] lessee's interest in [an] improvement shall not defeat the lien of [a] contractor upon the *improvement.*" *Cantalupo, supra*, slip op at 6 (emphasis in original). Thus, plaintiff is correct that, pursuant to MCL 570.1107(3), its lien against the improvements continued regardless of any surrender or forfeiture of the interests of GP Enterprises in the improvements.<sup>1</sup>

However, we note that the trial court did not hold that plaintiff's lien against the improvements had been extinguished, but rather only that plaintiff could not enforce its lien in the manner and fashion sought, i.e., against Newberry's ownership interest in the real property. Similarly, in affirming the trial court's order granting summary disposition, we held only that the trial court did not err in finding that plaintiff could not enforce the lien in such a manner. Accordingly, we hold that while MCL 570.1107(3) operated to ensure the lien's continuation after GP Enterprises lost its interest in the improvements, for the reasons stated in our prior opinion in this matter, the trial court's grant of summary disposition in favor of Newberry must be affirmed.

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<sup>1</sup> We wish to emphasize that, in answer to the limited question addressed to us on remand, we hold only that MCL 570.1107(3) operated to ensure the lien's continuation after GP Enterprises lost its interest in the improvements, but express no opinion regarding whether, and to what extent and against whom the lien may now be enforceable.

Affirmed.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Jane E. Markey