

**STATE OF MICHIGAN  
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY**

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**BIRMINGHAM SEALCOAT, INC., d/b/a  
BSI PAVING,**

**Plaintiff,**

**v**

**PRECISION ASPHALT SEALERS, LLC,  
CHRIS BISHOP, CHRISTIAN CONGREGATION  
OF JEHOVAH’S WITNESSES, and NANCY LYNN,**

**Defendants.**

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**OPINION & ORDER**

**CASE NO. 24-862-CB**

**HON. JAMES S. JAMO**

At a session of said Court  
held in the city of Lansing, county of Ingham,  
this 2nd day of June, 2025.

PRESENT: HON. JAMES S. JAMO, Circuit Court Judge

This matter comes before the Court on Defendant Christian Congregation of Jehovah’s Witnesses’ (Christian Congregation) Motion for Summary Disposition. This Court, being fully apprised of the premises, DENIES Christian Congregation’s motion.

**FACTS**

Christian Congregation owns a parcel of property commonly identified as 1331 Eifert Road, Holt, Michigan, 48842 (the Property). Complaint, ¶14. In early 2024, Christian Congregation, through its affiliate, JW Congregation Support, entered into a contract with Precision Asphalt Sealers (Precision) for the reconstruction of a parking lot located on the Property, which would subsequently be followed by several change orders for additional costs as construction work was actually performed. Answer to Complaint, Ex. 1. In total, Christian Congregation agreed to pay \$174,065.00. *Id.*, “Remittance Advice.” Christian Congregation did not, at any time, record a notice of commencement with the register of deeds pursuant to the Construction Lien Act (the Act). Plaintiff’s Response Brief, Ex. 4.

Precision subsequently entered into a series of contracts with Plaintiff BSI Paving (BSI), for BSI to provide certain subcontractor work with regards to the reconstruction of the parking lot. Complaint, ¶¶ 19-21. In total, Precision agreed to pay BSI \$160,090.00 for the work specified in those contracts. *Id.*, ¶2. Those contracts, to which Christian Congregation was not a party, include an arbitration clause for any disputes arising between Precision and BSI. *Id.*, Ex. 1.

Work on the Property began on April 24, 2024. *Id.*, Ex. D. On May 1, 2024, BSI completed its work on the Property. *Id.*, ¶23. Precision then issued a “Full Conditional Waiver” to Christian Congregation on May 1, 2024, releasing any construction lien rights on actual payment of \$174,065.00. Answer to Complaint, Ex. 1. On May 8, 2024, 14 days after the initial provision of labor and materials, BSI issued a Notice of Furnishings to Christian Congregation. Complaint, Ex. D.

Christian Congregation issued payment to Precision in the amount of \$174,065.00, on May 22, 2024. Answer to Complaint, Ex. 1. On June 7, 2024, Precision made a partial payment to BSI for \$100,000.00. Complaint, ¶25. When the remaining amount due to BSI by Precision was not paid, BSI recorded a claim of lien on the Property on July 18, 2024. *Id.*, Ex. D. On July 22, 2024, July 24, 2024, August 2, 2024, and August 7, 2024, Precision made additional partial payments to BSI, totaling \$10,090.00, leaving a total balance of \$50,000.00 owed to BSI under the contracts, exclusive of interest and costs of collection. *Id.*, ¶27.

This suit followed. Counts I through IV are exclusive to Defendants Precision and Chris Bishop. The only count at issue in the present motion before the Court, and the only count alleged against Defendant Christian Congregation, is Count V, foreclosure of the construction lien.

### **STANDARD OF REVIEW**

Summary disposition under MCR 2.116(C)(7) is proper where the claims are barred by “release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, *an agreement to arbitrate or to litigate in a different forum*, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.” Emphasis added.

Summary disposition under MCR 2.116(C)(8) is proper when “[t]he opposing party has failed to state a

claim on which relief can be granted.” In considering a motion under MCR 2.116(C)(8), “[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” *Id.* at 119-120. A motion brought under MCR 2.116(C)(8) may only be granted where the alleged claims are unenforceable to the extent that no factual development will justify recovery. *Id.* (citing *Wade v Dept of Corr*, 439 Mich 158, 162; 483 NW2d 26 (1992)).

Summary disposition under MCR 2.116(C)(10) is proper when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” In determining whether a genuine issue of material fact exists, the Court asks “whether the kind of record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue upon which reasonable minds might differ.” *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994).

## **ANALYSIS**

Christian Congregation raises two primary arguments in its motion for summary disposition. First, Christian Congregation argues the arbitration clause included in the contract between Precision and BSI bars this action. Second, Christian Congregation argues the Construction Lien Act bars a construction lien for a sum in excess of the amount a property owner agreed to pay, less payments made, MCL 570.1107(6). Since it paid its obligations in full, Christian Congregation argues the lien recorded by BSI is invalid. Finally, in supplemental briefing made following oral argument before this Court, parties addressed the effect of Precision’s waiver of lien, provided to Christian Congregation on May 1, 2024, and the effect of Precision’s failure to provide, or Christian Congregation’s failure to request, a sworn statement pursuant to the Act, MCL 570.1110(1)(a), on the applicability of the Act.

### **I. Arbitration**

The contracts entered into between BSI and Precision included an arbitration clause to submit “[a]ny dispute arising out of this contract” to an arbitrator. Christian Congregation argues this arbitration clause now prevents BSI from pursuing its claims against both Precision and Christian Congregation. In

contrast, BSI argues that the arbitration clause pertains exclusively to disputes between the parties to the contracts, and does not pertain to payment defaults or the exercise of lien rights, and thus no arbitrable claims have been made in the case against Christian Congregation. Further, even if there were arbitrable claims, BSI argues the arbitration clause can only be applied to disputes between BSI and Precision as the signatories to the contracts in which this clause is contained. Christian Congregation was not a party or signatory to these contracts, and thus BSI argues Christian Congregation cannot invoke this clause to bar this litigation under MCR 2.116(C)(7).

“Arbitration, which is a matter of contract, cannot be imposed on a party that was not legally or factually a party to the agreement wherein an arbitration provision is contained.” *AFSCME Council 25 v Wayne County*, 292 Mich App 68, 80 (2011). “However, nonsignatories of arbitration agreements can still be bound to an agreement pursuant to ordinary contract-related legal principles, including incorporation by reference, assumption, agency, veil-piercing/alter-ego, and estoppel.” *Id.* In the present case, Christian Congregation has presented no evidence indicating there was some incorporation by reference, assumption, agency, veil-piercing/alter-ego, or estoppel, such that the arbitration clause should be found to encompass Christian Congregation as a nonsignatory to the agreement. The arbitration clause limits its scope to disputes between the signatories to the contracts—that being BSI and Precision. The Court therefore finds Christian Congregation cannot invoke the arbitration clause contained in the contracts entered into and Christian Congregation is not entitled to relief under MCR 2.116(C)(7).

## II. The Construction Lien Act

The Construction Lien Act is remedial and equitable in nature, and substantial compliance is sufficient to meet the relevant requirements of the Act. MCL 570.1302(1); *Vugterveen Systems, Inc v Olde Millpond Corp*, 454 Mich 119, 121 (1997). However, clear and unambiguous provisions and requirements should not be ignored. *Id.* The Act lays out a series of notices and documents to be provided among property owners, contractors, and subcontractors, intended to facilitate the flow of information among all relevant parties and to allow each party to protect their interests.

Christian Congregation argues that because Christian Congregation paid Precision the full amount of the contract owed, the Act protects it from the construction lien registered by BSI. MCL 570.1107(6) provides:

If the real property of an owner or lessee is subject to multiple construction liens, the sum of the construction liens shall not exceed the amount the owner or lessee agreed to pay the person with whom he or she contracted for the improvement as modified by all additions, deletions, and other amendments, less payments made by or on behalf of the owner or lessee, pursuant to either a contractor's sworn statement or a waiver of lien, in accordance with this act.

In the present case, Christian Congregation agreed to pay Precision \$174,065.00, and Christian Congregation did pay Precision that amount in full pursuant to Precision's waiver of lien. Any construction lien therefore cannot exceed the remaining amount owed, which is zero.

BSI argues Christian Congregation cannot claim the defense of MCL 570.1107(6) because Christian Congregation failed to comply with other provisions of the Act. First, Christian Congregation failed to record a notice of commencement pursuant to MCL 570.1108(1). Second, Precision did not provide, and Christian Congregation did not request, a sworn statement pursuant to MCL 570.1110(4), which would have provided notice to Christian Congregation that a subcontractor performed work on the Property and allowed Christian Congregation to withhold payment from Precision in order to pay BSI directly. Third, BSI provided its notice of furnishing pursuant to MCL 570.1109(1) on May 8, 2024, 14 days after it first provided labor and materials and well within the deadline set forth in the Act; although the notice of furnishing was provided after Precision issued its waiver of lien, it was provided before Christian Congregation made its payment to Precision on May 22, 2024, and therefore Christian Congregation did not make its payment "pursuant to a contractor's sworn statement or waiver of lien, in accordance with th[e] act."

The Court finds Christian Congregation's failure to record a notice of commencement is not fatal to its defense under MCL 570.1107(6). MCL 570.1108, which lays out the requirements for the notice of commencement, also provides the consequence for failure to record or provide such a notice: the contractor's or subcontractor's deadline to file a notice of furnishing is extended to 20 days following the provision of the notice. §1108(10)-(13). Failure to post the notice of commencement at the construction site allows a lien

claimant to claim all actual expenses incurred in obtaining the information otherwise provided in the posting. §1108(14). Although the Court is not persuaded by Christian Congregation’s position that Precision should have been responsible for the notice of commencement under the contract provision that Precision comply with all laws, regulations, and standards—§1108(1) clearly lays the responsibility for the notice of commencement at the feet of “the owner or lessee contracting for the improvements”—BSI and Precision also failed to request a notice of commencement, as required by the contracts between them. When considered in light of the equitable nature of the Act, the failure of Christian Congregation to record a notice of commencement does not affect BSI’s current claims in any way beyond the circumstances otherwise contemplated by §1108, and the Court finds any ramifications to BSI and/or Precision as a result are adequately provided for in §1108.

Similarly, the Court also finds the failure of Precision to provide Christian Congregation with a sworn statement pursuant to MCL 570.1110, and Christian Congregation’s failure to request the same, is not fatal to the defense under MCL 570.1107(6). First, MCL 570.1107(6) allows a property owner to rely on a sworn statement *or* a waiver of lien. Second, MCL 570.1110(1)(a) gives a contractor an affirmative duty to provide a sworn statement when a payment is due or requested, but §1110(1)(b) allows, rather than requires, an owner to make a demand for the sworn statement. Certainly, had Christian Congregation made a demand for the sworn statement, each of the parties involved may have found themselves in a more protected position; however, §1107(6) allows Christian Congregation to rely on Precision’s waiver of lien, if that waiver and subsequent payment are otherwise valid under the Act.

The primary question, therefore, is whether the Precision’s waiver of lien and Christian Congregation’s subsequent payment are otherwise valid under the Act. Christian Congregation argues that because BSI’s notice of furnishing was untimely provided after the waiver of lien, it has no effect on the waiver and the subsequent payment was made in valid reliance on it. BSI argues that not only was the notice of furnishing provided timely, it was provided two weeks prior to the payment made by Christian



