

**THE STATE OF MICHIGAN
IN THE 6TH JUDICIAL CIRCUIT COURT
COUNTY OF OAKLAND**

COMMUNITY CHOICE CREDIT UNION,

Plaintiff,

v.

Case No. 2024-208612-CB

Hon. Victoria Valentine

FARMINGTON HILLS REAL ESTATE, LLC,
a Michigan limited liability company; HAMZA
SIKANDER, an individual; NAVEED MAHFOOZ,
an individual; RASHID IQBAL, an individual;
MOHAMED ALI, an individual; MOHAMED
S. ALI REVOCABLE LIVING TRUST u/a/d
APRIL 4, 2014; J.V. ELECTRIC, INC., a
Michigan corporation; BOSTWICK EXCAVATING,
INC., a Michigan corporation; MILLER-BOLDT, INC.,
a Michigan corporation; MICHIGAN AIR PRODUCTS CO.,
a Michigan corporation; J&J CONSTRUCTION CO., a
Michigan corporation; MID-AMERICAN CONTRACT
CARPET, INC. d/b/a SOLAR CONTRACT CARPET, INC.,
a Michigan corporation; BROKEN ARROW
CONSTRUCTION, LLC, a Michigan limited liability company,
and NATIONAL TIME & SIGNAL CORPORATION, a
Michigan corporation,

Defendants.

OPINION AND ORDER REGARDING JOINT MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(10) FILED BY PLAINTIFF, COMMUNITY CHOICE CREDIT
UNION, AND DEFENDANT, FARMINGTON HILLS REAL ESTATE LLC

and

OPINION AND ORDER REGARDING MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(10) FILED BY DEFENDANTS LIEN CLAIMANTS, MILLER-
BOLDT INC AND MICHIGAN AIR PRODUCTS COMPANY

and

OPINION AND ORDER REGARDING MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(10) FILED BY DEFENDANT LIEN CLAIMANT J&J
CONSTRUCTION COMPANY

and
OPINION AND ORDER REGARDING MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(10) FILED BY DEFENDANT LIEN CLAIMANT
J.V. ELECTRIC INC

At a session of said Court, held in the
County of Oakland, State of Michigan
October 9, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the following four (4) Motions for Summary Disposition, filed pursuant to MCR 2.116(C)(10):

1. Joint Motion filed by Plaintiff, Community Choice Credit Union (“CCCU”), and Defendant Farmington Hills Real Estate LLC’s (“FHRE”). This motion seeks a determination that CCCU’s Mortgage holds senior priority status over all known lien claimants.¹
2. Motion filed by Defendants Lien Claimants Miller-Boldt Inc (“Miller-Boldt”) and Michigan Air Products Company’s (“MAP”) against Global Development and Construction Solutions LLC (“Global”) and FHRE:
 - a. Miller-Boldt seeks:
 - A determination that its two construction liens in the amounts of \$410,258 and \$303,118 are valid and have priority over CCCU’s mortgage;
 - A judgment against Global in the amount of \$727,018.65 for Global’s breach of contract; and
 - A judgment against FHRE in the amount of \$725, 816 for FHRE’s unjust enrichment;²
 - b. MAP seeks:
 - A determination that its construction lien in the amount of \$74,094 is valid and has priority over CCCU’s mortgage;

¹ Two Responses have been filed in opposition to the Joint Motion for Summary Disposition filed by CCCU and FHRE: one by the group identified as the “Construction Lien Claimants” (“Construction Claimants”), and a separate Response by Lien Claimant National Time & Signal Corporation (“National”), which additionally seeks Summary Disposition pursuant to MCR 2.116(I)(2). For purposes of clarity and consistency, both will be collectively referred to herein as the “Lien Claimants.”

² The principal amount of \$725,816.99 allegedly owed to Miller-Boldt includes the amount of \$74,094, which is allegedly owed to MAP.

- A judgment against FHRE and Global in the amount of \$74,094.00 for unjust enrichment.
3. Motion filed by Defendant Lien Claimant J&J Construction Company's ("J&J") against Global and FHRE seeks:
- A determination that its construction lien in the amount of \$75,870.73 is valid and has priority over CCCU's mortgage;
 - A judgment against Global in the amount of \$75,870.73 for Global's breach of contract; and
 - A judgment against FHRE in the amount of \$75,870.73 for FHRE's unjust enrichment.
4. Motion filed by Defendant Lien Claimant J.V. Electric Inc's (JV") against Global and FHRE seeks:
- A determination that its construction lien in the amount of \$403,161.73 is valid and has priority over CCCU's mortgage; and
 - A judgment against Global in the amount of \$403,161.73 for Global's breach of contract.

This Court has reviewed the extensive court record along with parties' submissions and heard oral arguments. For the reasons below, the Court enters this Opinion and Order.

PREFACE

The material facts are not in dispute. Central to all four pending motions is the key issue of whether CCCU's Construction Mortgage, recorded on November 28, 2022, holds priority over the construction liens asserted by the various lien claimants. It is undisputed that the Construction Mortgage was recorded *after* August 17, 2022--the date on which the first actual physical improvement was made to the Property at issue.

Additionally, on October 1, 2025, the Receiver submitted its Monthly Financial Report for August 2025. The Report indicates that an offer in the amount of \$2.35 million dollars was received, accepted by the Receiver, and approved by the Court.³ The sale is

³ Order dated 9/5/25.

scheduled to close by October 10, 2025, following the expiration of the 21-day appeal period. It is undisputed that the sale proceeds are insufficient to satisfy the outstanding balance of \$8,492,370.66,⁴ owed under the 2022 Mortgage and Promissory Note.⁵

FACTUAL OVERVIEW

On or around November 12, 2021, Defendant FHRE and Plaintiff CCCU entered into a Construction Loan Agreement.⁶ Pursuant to the Agreement, CCCU loaned FHRE \$4,000,000.00 for FHRE's acquisition of property located at 31525 West Twelve Mile Road, Farmington Hills, MI ("Property").⁷ The parties' Agreement also contemplated a future conversion to a construction loan of up to \$9,155,000.⁸

Also on or about November 12, 2021, FHRE executed both a Promissory Note in favor of CCCU in the amount of \$4,000,000 (the "2021 Note")⁹ as well as a corresponding 2021 Mortgage ("2021 Mortgage") in the same amount to secure the Note.¹⁰ The 2021 Mortgage expressly states, in bold type, that **"THIS MORTGAGE SECURES FUTURE ADVANCES AND IS A FUTURE ADVANCE MORTGAGE."** It further provides that it secures the \$4,000,000 Promissory Note dated on even date and "all extensions, renewals, modifications, substitutions, future advances or replacements (collectively, the "Note")," and the Construction Loan Agreement dated the same

⁴ On June 30, 2025, the Court granted CCCU's unopposed Motion for Summary Disposition, granting CCCU a money judgment against Defendants FHRE, Farmington Hills Comfort Care LLC, Hamza Sikander, Naveed Mahfooz, Mohamed Ali and Mohamed S. Ali Revocable Living Trust in the amount of \$8,492,370.66, plus costs and interest.

⁵ In light of the sale of the Property, the foreclosure relief sought by the Lien Claimants is now moot.

⁶ CCCU & FHRE's MSD Exhibit A.

⁷ CCCU & FHRE's MSD Exhibit A, §§ 1.1 and 1.2.

⁸ CCCU & FHRE's MSD Exhibit A, §1.5.

⁹ CCCU & FHRE's MSD Exhibit A.

¹⁰ CCCU & FHRE's MSD Exhibit C.

day.¹¹

Subsequently, FHRE retained Third-Party Defendant Global to serve as the general contractor for the construction project on the Property.¹² In or around July 2022, Global subcontracted with Bostwick Excavating, Inc. ("Bostwick") to perform improvements on the Property.¹³ On July 20, 2022, Bostwick submitted a project estimate to Global in the amount of \$750,245.00.¹⁴ On or about July 26, 2022, Global and Bostwick entered into a subcontract for that same amount.¹⁵

By August 17, 2022, Bostwick had completed soil erosion work on the Project,¹⁶ marking the first actual physical improvement to the Property. Bostwick continued performing work on the Property through November of 2022.

On or about September 22, 2022, FHRE recorded a Notice of Commencement indicating that construction work had commenced on the Project.¹⁷ By October 22, 2022, Bostwick had invoiced Global for an additional \$240,410.00 for work performed on the Property.¹⁸

On November 18, 2022, FHRE executed a new Promissory Note in favor of CCCU in the principal amount of \$9,155,000.00 (the "2022 Note"),¹⁹ and a new Mortgage in the same amount ("2022 Construction Mortgage").²⁰ Unlike the 2021 Mortgage, the 2022 Mortgage states in bold type: **"THIS MORTGAGE IS A CONSTRUICION MORTGAGE."**

¹¹ CCCU & FHRE's MSD Exhibit C §I.

¹² CCCU & FHRE's MSD Brief, p 5.

¹³ CCCU & FHRE's MSD Brief, p 5.

¹⁴ Construction Claimant's Response Exhibit C.

¹⁵ Construction Claimant's Response Exhibit D.

¹⁶ Construction Claimant's Response Exhibit E: Invoices.

¹⁷ Construction Claimant's Response Exhibit F.

¹⁸ Construction Claimant's Response Exhibit E: Invoices.

¹⁹ CCCU & FHRE's MSD Exhibit E.

²⁰ CCCU & FHRE's MSD Exhibit F. At oral argument, it was represented that the proceeds of the 2022 loan were used, in part, to repay the remaining unpaid balance of the \$4,000,000,000 loan.

Like the 2021 mortgage, it also states in bold that it **“ALSO SECURES FUTURE ADVANCES AND IS A FUTURE ADVANCE MORTGAGE.”**

On November 18, 2022, individuals—named as Defendants herein—also executed personal guaranties in connection with the \$9,155,000.00 loan secured by the 2022 Note and 2022 Construction Mortgage.²¹ One of the guarantors is Hamza Sikander, who is alleged to be the principal of both FHRE and Global.²²

Although the 2022 Construction Mortgage was executed on November 18, 2022, it was not recorded until November 28, 2022—more than three months **after** the first physical improvement to the Property, which occurred on August 17, 2022.²³ The prior 2021 Mortgage was subsequently discharged on January 12, 2023.²⁴

It is undisputed that Global hired multiple subcontractors to furnish labor and materials for the Project, including Miller-Boldt, Inc. ("Miller-Boldt"), Michigan Air Products Co. ("MAP"),²⁵ JV Electric, Inc. ("JV Electric"),²⁶ Bostwick Excavating, Inc. ("Bostwick"), Broken Arrow Construction, LLC ("Broken Arrow"), J&J Construction Co. ("J&J"),²⁷ Solar Contract Carpet, Inc. ("Solar"), and National Time and Signal ("NTS").²⁸ These subcontractors were not fully paid for the labor and materials they provided to improve the Project. As a result, several construction liens were recorded against the Project.²⁹

²¹ CCCU & FHRE's MSD Exhibit I.

²² CCCU & FHRE's MSD Exhibit I. See Lien Claimants' Response Brief, p 4.

²³ CCCU & FHRE's MSD Exhibit F.

²⁴ CCCU & FHRE's MSD Exhibit G: Recorded Discharge.

²⁵ Miller-Boldt and MAP jointly filed a Motion for Summary Disposition, which is addressed and discussed in this Opinion.

²⁶ JV Electric also filed a Motion for Summary Disposition, which is addressed and discussed in this Opinion.

²⁷ J&J also filed a Motion for Summary Disposition, which is addressed and discussed in this Opinion.

²⁸ By order dated May 21, 2025, NTS was granted leave to Intervene in this matter. NTS subsequently filed a Motion for Summary Disposition against Global, which is scheduled to be heard on November 5, 2025.

²⁹ The applicable claims of lien recorded against the Property include the following amounts:

(1) JV Electric - \$403,161.73;

(2) Bostwick -\$115,710.52;

PROCEDURAL HISTORY

On August 22, 2024, CCCU filed its First Amended Complaint ("FAC"), alleging that the Borrowers and Guarantors were in material default of their obligations under the Note, Second Mortgage, guaranties, and related documents. CCCU claimed that as of August 19, 2024, FHRE, Farmington Hills Comfort Care LLC, and the Guarantors (collectively, "Defendants") owed CCCU \$7,283,049.45,³⁰ exclusive of additional costs and expenses recoverable under the Note and Construction Loan Agreement.³¹ Accordingly, CCCU brought claims against the Borrowers and Guarantors for breach of contract, breach of the guaranty, appointment of a receiver, and foreclosure.

Pursuant to the requirements of the Michigan Construction Lien Act ("CLA"), CCCU was also required to name, as additional defendants, those legal entities that had recorded construction liens against the Property. Accordingly, Defendants fall into two categories:

- (1) Borrowers and the Guarantors; and
- (2) Global's subcontractors, including Bostwick, JV Electric Inc ("JV Electric"), Miller-Boldt Inc, Michigan Air Products Co, J&J Construction ("J&J"), Mid-American Carpet Inc d/b/a Solar Contract Carpet Inc., Broken Arrow Construction LLC; and National Time and Signal ("NTS") (collectively, "Lien Claimants").

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- (3) Miller-Boldt - \$713,376.00, which includes amounts owed to MAP;
 - (4) J&J Construction-\$75,870.73;
 - (5) Solar Contract Carpet-\$1,352.50;
 - (6) Broken Arrow -\$140,577.75; and
 - (7) NTS - \$105,207.00. See Construction Claimant's Response Exhibit N.

³⁰ On June 30, 2025, the Court granted CCCU's unopposed Motion for Summary Disposition, granting CCCU a money judgment against Defendants FHRE, Farmington Hills Comfort Care LLC, Hamza Sikander, Naveed Mahfooz, Mohamed Ali and Mohamed S. Ali Revocable Living Trust in the amount of \$8,492,370.66, plus costs and interest.

³¹ FAC ¶¶ 24 and 48.

Following the filing of CCCU's FAC, the Lien Claimants filed Answers in which they asserted that their construction liens hold priority over CCCU's Mortgage.³² Relying on MCL 570.1119(3), they argued that priority is governed by the "first actual physical improvement" to the Property, which was performed by Bostwick in August 2022—**prior** to the recording of CCCU's of the Construction Mortgage on November 28, 2022.

Thereafter, four Motions for Summary Disposition were filed pursuant to MCR 2.116(C)(10). These motions are addressed below.

STANDARD OF REVIEW

A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720 (2001). The court, in reviewing a motion under MCR 2.116(C)(10), "considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion." *Quinto v Cross and Peters Co*, 451 Mich 358, 362 (1996) (citation omitted). The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as required by MCR 2.116(G)(3). MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362. If

³² Additionally, the Lien Claimants-- Bostwick, JV Electric, Miller-Boldt and J&J, and NTS-- each filed cross-claims and third-party claims against FHRE and Global. Specifically, these lien claimants alleged, in part, a breach of contract claim against Global and foreclosure of their respective construction liens.

the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4); see also *Meyer v City of Center Line*, 242 Mich App 560, 575 (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)). The motion may be granted “if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law.” *Id.*

ANALYSIS

1. Joint Motion filed by Plaintiff Community Choice Credit Union (“CCCU”) and Defendant Farmington Hills Real Estate LLC’s (“FHRE”).

Notably, Plaintiff CCCU, the lender, and the primary Defendant FHRE, the borrower—although adverse parties in this litigation-- jointly move the Court for an affirmative ruling that CCCU's Construction Mortgage holds priority over the construction liens asserted by the Lien Claimants. CCCU and FHRE base their argument on the equitable subrogation and replacement doctrine articulated in *CitiMortgage, Inc v Mortg Elec Registration Sys, Inc*, 295 Mich App (2011), and further clarified in *Wells Fargo Bank, NA v SBC IV RED, LLC*, 318 Mich App 72 (2016). They argue that the equities favor granting CCCU's 2022 Construction Mortgage priority, relying on the original 2021 Mortgage, the Loan Agreement's reference to a potential future loan increase, the potential financial exposure assumed by the guarantors, and the Lien Claimants' ability to pursue claims against Global.

In response,³³ the Lien Claimants contend that CCCU and FHRE seek to assert

³³ Two Responses have been filed in opposition to the Motion for Summary Disposition: one by the group identified as the “Construction Lien Claimants,” and a separate Response by Lien Claimant National Time

lien priority based on a mortgage—the 2021 Mortgage—that CCCU has already discharged. They further contend that the legal authorities cited are distinguishable and inapplicable, as those cases involve residential mortgage refinancing between competing mortgage lenders, rather than construction lien priorities or construction loans.

The Lien Claimants maintain that CCCU and FHRE are attempting to circumvent the statutory priority framework established under Michigan’s Construction Lien Act (“CLA”) by improperly invoking equitable subrogation to elevate a newly recorded construction mortgage above liens that had already arisen. They further assert that equitable subrogation is inappropriate in this context because CCCU and FHRE’s position would effectively deprive contractors and suppliers—who provided labor and materials to improve the property—of any meaningful recovery. In contrast, CCCU’s loan was fully guaranteed by individuals who are named Defendants and who knowingly assumed the risk that the project could fail. In fact, one of the guarantors, Hamza Sikander, is alleged to be the principal of both FHRE and Global.³⁴

The Court agrees with the Lien Claimants.

Michigan’s Construction Lien Act (“CLA”) is a remedial statute that shall “be liberally construed to secure the beneficial results, intents and purposes” of the Act. MCL 570.1302. As the Court of Appeals has stated, “[i]t has long been recognized that construction lien laws serve two purposes: to protect the right of lien claimants to payment for wages or materials and to protect owners from paying twice for such services.” *M D Marinich, Inc v Mich Nat’l Bank*, 193 Mich App 447, 453 (1992) (citation omitted). An action

& Signal Corporation. For purposes of clarity and consistency, both will be collectively referred to herein as the “Lien Claimants.”

³⁴ CCCU & FHRE’s MSD Exhibit I. Lien Claimants’ Response Brief, p 4.

to enforce a construction lien through foreclosure is equitable in nature. MCL 570.1118(1).

MCL 570.1119 sets forth the priorities granted to construction liens and provides, in part, as follows:

(3) A construction lien arising under this act has priority over all other interests, liens, or encumbrances that may attach to the building, structure, or improvement, or on the real property on which the building, structure, or improvement is erected, if the other interests, liens, or encumbrances are recorded **after** the construction lien arises.

(4) A mortgage, lien, encumbrance, or other interest recorded **before** the construction lien arises has priority over a construction lien arising under this act. The priority of the mortgage exists as to all obligations secured by the mortgage except for indebtedness arising out of advances made after the construction lien arises. An advance made pursuant to the mortgage, but after the construction lien arises, has priority over a construction lien if, for that advance, the mortgagee has received a contractor's sworn statement as provided in section 110, has made disbursements pursuant to the contractor's sworn statement, and has received waivers of lien from the contractor and all subcontractors, laborers, and suppliers who have provided notices of furnishing. The construction lien of a lien claimant not set forth on the sworn statement on which an advance was made is subordinate to the lien of the mortgage, including the advance, unless before the advance the lien claimant provided the designee with a notice of furnishing if required by section 109 or recorded a claim of lien. An advance made after a notice of furnishing has been provided or has been excused as provided in sections 108, 108a, and 109 or after a claim of lien has been recorded is subordinate to the construction lien of the lien claimant unless before the advance the mortgagee received from the lien claimant either a full unconditional waiver of lien or a partial unconditional waiver of lien for the full amount due the lien claimant as of the date through which the lien is waived as shown on the lien waiver and the date through which the lien is waived as shown on the partial unconditional waiver is within 30 days before the advance. . .

(6) For purposes of determining priorities under this section, a construction lien arises as follows:

(a) Except as provided in subdivision (b), at the time of the first actual physical improvement.

(b) As to a lien claimed by a person after the person has recorded a notice under section 107a or 107b, at the time a notice is

recorded, subject to any applicable limitation under section 107a(4) or 107b(4). MCL 570.1119 (Emphasis added).

Here, it is undisputed that the work performed by Bostwick on August 17, 2022, constituted the first actual physical improvement to the Property. It is also undisputed that CCCU's Construction Mortgage was not recorded until November 28, 2022. Under the plain language of MCL 570.1119(3) and (6), the Lien Claimants' construction liens have statutory priority over CCCU's subsequently recorded Construction Mortgage.

In what appears to be an effort to circumvent this statutory priority scheme established by the Michigan Construction Lien Act (CLA), CCCU and FHRE jointly ask this Court to apply the doctrine of Equitable Subrogation and Replacement. Specifically, they argue that the Construction Mortgage recorded on November 28, 2022, should be afforded priority because it allegedly replaces—and is equitably subrogated to—the 2021 Mortgage, which was previously recorded and has since been discharged.

Their reliance on *CitiMortgage, Inc. v Mortgage Electronic Registration Systems, Inc.*, 295 Mich App 72 (2011), as clarified in *Wells Fargo Bank, NA v. SBC IV RED, LLC*, 318 Mich App 72 (2016) is misplaced.³⁵ Neither case involved statutory lien protections afforded to subcontractors or material suppliers under Michigan's construction lien scheme. Rather, both cases addressed priority disputes between competing mortgage interests on residential property—specifically between a refinance mortgage lender and a home equity lender.

Further, CCCU and FHRE have offered no binding Michigan authority extending

³⁵ CCCU and FHRE also rely on an Arizona case of *Cont'l Lighting & Contracting Inc v Premier Grading Utilities, LLC*, 227 Ariz 382 (2011), which is not binding on this Court. "Cases from other jurisdictions are not binding precedent, but we may consider them to the extent this Court finds their legal reasoning persuasive." *New Covert Generating Co, LLC v Covert Twp*, 334 Mich App 24, 97 n8 (2020), quoting *Auto-Owners Ins. Co. v Seils*, 310 Mich App 132, 147 n. 5 (2015).

the limited doctrine of equitable subrogation to override the clear statutory lien priority rules established by the CLA. To apply equitable subrogation here—where contractors and suppliers improved the Property in good faith, and now risk receiving no compensation—would directly undermine the remedial purpose of the CLA, which is “to protect the right of lien claimants to payment for wages or materials and to protect owners from paying twice for such services.” *M D Marinich, Inc v Mich Nat'l Bank*, 193 Mich App 447, 453 (1992) (citation omitted).

Even assuming, arguendo, that *CitiMortgage* applied, that case expressly adopted a limited form of equitable subrogation under § 7.3 of the Restatement, stating that, “[c]onsistent with § 7.3 of the Restatement in the limited form in which we adopt it, a *refinanced* mortgage maintains the priority of the original mortgage as long as any junior lien holder is not prejudiced as a consequence.” *CitiMortgage*, 295 Mich App at 80 (emphasis added).

Moreover, the Court emphasized that “any application of equitable subrogation is subject to a careful examination of the equities of all parties and potential prejudice to the intervening lienholder.” *CitiMortgage, Inc. v. Mortgage Electronic Registration Systems, Inc.*, 295 Mich App at 77.

Here, the facts do not support application of the doctrine. The 2022 Construction Mortgage is not a refinanced residential mortgage. Rather, it is a new Construction Mortgage,³⁶ securing a new Promissory Note in the increased amount of \$9,155,000.00 with a higher interest rate. While the 2021 Mortgage references “FUTURE ADVANCES AND IS A FUTURE ADVANCE MORTGAGE,” it contains no indication that such advances

³⁶ CCCU & FHRE’s MSD Exhibit F.

would later be converted to a construction loan more than double the original loan amount. Instead, it was the unrecorded *Loan Agreement*—not the recorded 2021 Mortgage—that contemplated any future increase in the loan amount to \$9,155,000.00 or conversion to construction financing.³⁷ And, notably, the 2022 Mortgage—which expressly identifies itself as a “Construction Mortgage”—includes language that is entirely absent from the 2021 Mortgage, which had been recorded only after the Lien Claimants' rights had already arisen. Thus, the two mortgages reflect separate and distinct loan transactions: the first to finance the purchase of the Property; and the second to fund its construction. CCCU and FHRE cannot now bootstrap the priority of the second loan to the first via equitable doctrines that Michigan courts have never applied in this statutory context.³⁸

CCCU and FHRE further argue that the equities favor them because CCCU's construction loan was personally guaranteed by Defendants. This argument is unpersuasive. It was the Lien Claimants—not the guarantors—who furnished the labor and materials that directly enhanced the value of the Property. These contributions were made without full compensation and in reliance on the statutory protections provided by the CLA. Granting CCCU priority would reward private lender risk-taking at the expense of contractors and suppliers, undermining the very protections the CLA was designed to ensure.

Finally, CCCU and FHRE argue that granting CCCU priority through equitable subrogation would not prejudice the Lien Claimants, as the Lien Claimants still retain the ability to pursue judgments against Global. However, it is alleged that Global, like FHRE,

³⁷ CCCU & FHRE's MSD Exhibit A, §1.5.

³⁸ At oral argument, it was represented that the proceeds of the 2022 loan were used, in part, to repay the remaining unpaid balance of the \$4,000,000,000 loan issued under the 2021.

is controlled by Hamza Sikander-- one of the Guarantors—against whom a monetary judgment has already been entered, along with FHRE and others. While legal recourse against Global may technically exist, there is uncertainty regarding the likelihood of recovery.

Furthermore, the Lien Claimants' construction liens collectively total \$1,555,256.23.³⁹ If the Project was sold for \$2.35 million, there would be proceeds available to satisfy a portion of CCCU's mortgage even without granting it priority. In contrast, granting CCCU priority over Lien Claimants would leave Lien Claimants unpaid for the labor and material they provided. Thus, the equities strongly favor the Lien Claimants.

For these reasons, and those as set forth in Lien Claimants' Responses, the Court finds that CCCU's Construction Mortgage, recorded on November 28, 2022, is subordinate to the Lien Claimants' construction liens, which arose no later than August 17, 2022, pursuant to MCL 570.1119(3) and (6). Therefore, CCCU's Motion for Summary Disposition is DENIED. Additionally, NTS' Motion for Summary Disposition under MCR 2.116(l)(2) regarding the validity of its construction lien, is GRANTED as there is no dispute raised on that issue.

2. Motion filed by Defendants Lien Claimants Miller-Boldt Inc ("Miller-Boldt") and Michigan Air Products Company's ("MAP") against Global Development and Construction Solutions LLC ("Global") and FHRE⁴⁰

As previously noted, CCCU filed its First Amended Complaint, naming several of Global's subcontractors--including Miller-Boldt Inc ("Miller-Boldt") and Michigan Air

³⁹ Construction Claimant's Response Exhibit N.

⁴⁰ At oral argument, Miller-Boldt and MAP conceded that they are not seeking a double recovery. Rather, the amount recovered by Miller-Boldt will include the amount allegedly owed to MAP.

Products Co (“MAP”)—as Defendants. In response, Miller-Boldt and MAP filed a joint cross-claim against FHRE and a third-party complaint against Global. Miller-Boldt alleges claims of breach of contract against Global, unjust enrichment against FHRE, and seeks foreclosure of its construction lien. MAP similarly alleges claims of unjust enrichment/quantum meruit against FHRE, along with foreclosure of its construction lien. Miller-Boldt and MAP now move for Summary Disposition pursuant to MCR 2.116(C)(10), requesting the following relief:

Miller-Boldt seeks:

- A determination that its two construction liens in the amounts of 410,258 and \$303,118 are valid and have priority over CCCU’s mortgage;
- A judgment against Global in the amount of \$727,018.65 for Global’s breach of contract;
- A judgment against FHRE in the amount of \$725,816 for FHRE’s unjust enrichment;⁴¹ and
- A judgment of foreclosure on its construction lien.

MAP seeks:

- A determination that its construction lien in the amount of \$74,094 is valid and has priority over CCCU’s mortgage;
- A judgment against FHRE and Global in the amount of \$74,094.00 for unjust enrichment.

Defendants FHRE and Global oppose the Motion on several grounds:

i. Construction Lien Priority⁴²

Defendants FHRE and Global first argue that CCCU’s mortgage has priority over the recorded construction liens. However, this Court has previously determined that CCCU’s 2022 Construction Mortgage—recorded after the first actual physical

⁴¹ The principal amount of \$725,816.99 allegedly owed to Miller-Boldt includes \$74,094 owed to MAP.

⁴² CCCU and FHRE do not dispute the validity of these liens.

improvement to the Property—is subordinate to the Lien Claimants’ construction liens. Accordingly, this issue is moot, and the Court confirms that the construction liens take priority over CCCU’s 2022 Construction Mortgage pursuant to MCL 570.1119(3) and (6).⁴³

ii. Breach of Contract Damages Against Global

Global concedes liability on Miller-Boldt’s breach of contract claim but disputes the amount of damages. In light of the Receiver’s Report⁴⁴ and Miller-Boldt’s own sworn statements⁴⁵-- signed by Paul Cornett, its Service Manager—which appears to conflict with both the affidavit submitted by Miller-Boldt, also signed by Mr. Cornett, and the affidavit submitted MAP,⁴⁶ a genuine issue of material fact remains regarding the amount of damages. Accordingly, summary disposition is appropriate as to liability only, but not as to damages.

iii. Unjust Enrichment⁴⁷

To prevail on a claim for unjust enrichment, a “plaintiff must establish (1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant.” *Deschane v Klug*, 344 Mich App 744, 753 (2022) (citation omitted). In this case, material questions of fact remain regarding (1) whether FHRE received a benefit, and (2) whether it would be unjust for FHRE to retain that benefit without payment. Therefore, summary disposition on the unjust enrichment claims is not appropriate at this stage.

⁴³ FGRE and Global do not dispute the validity or timeliness of Miller-Boldt and MAP’s construction liens.

⁴⁴ FHRE and Global Response Exhibit 5.

⁴⁵ Miller-Boldt’s MSD Exhibit 1: Affidavit of Paul Cornett, Service Manager of Miller-Boldt.

⁴⁶ Miller-Boldt’s MSD Exhibit 2: Affidavit of Stephen Mollison, Controller for MAP.

⁴⁷ While Miller-Boldt’s Motion argues in its Motion that Global has been unjustly enriched, Miller-Boldt’s third-party and cross complaint did not allege an unjust enrichment claim against Global.

Accordingly, based on the foregoing, Miller-Boldt and MAP's Motion is **GRANTED**

IN PART and DENIED IN PART:

- GRANTED as to the validity and priority of their construction lien over CCCU's mortgage;
- GRANTED as Global's liability for Miller-Boldt's breach of contract claim, with the amount of damages to be determined; and
- DENIED as to MAP's unjust enrichment claim against FHRE, as material questions of fact remain.

3. *Motion filed by Defendant Lien Claimant J&J Construction Company's ("J&J") motion against Global and FHRE*

As previously noted, CCCU filed its First Amended Complaint, naming several of Global's subcontractors—including J&J—as Defendants. In response, J&J filed a cross-claim against FHRE and a third-party complaint against Global, alleging claims of breach of contract against Global, unjust enrichment against both Global and FHRE, quantum meruit against Global, and seeking foreclosure of its construction lien.

J&J now moves for Summary Disposition pursuant to MCR 2.116(C)(10), seeking the following relief:

- A determination that its construction lien in the amount of \$75,870.73 is valid and has priority over CCCU's mortgage;
- A judgment against Global in the amount of \$75,870.73 for breach of contract;
- A judgment against FHRE in the same amount for unjust enrichment; and
- A judgment of foreclosure on its construction lien.

FHRE and Global oppose the Motion on several grounds:

i. Construction Lien Priority

Defendants FHRE and Global first argue that CCCU's 2022 mortgage has priority over J&J's recorded construction lien. However, this Court has previously determined that CCCU's 2022 mortgage—recorded after the first actual physical improvement to the

Property—is subordinate to the Lien Claimants’ construction liens. Accordingly, this issue is moot. The Court, therefore, confirms that J&J’s lien—if valid—has priority over CCCU’s 2022 mortgage pursuant to MCL 570.1119(3) and (6).

ii. Validity of J&J’s Construction Lien

Defendants next challenge the validity of J&J’s construction lien under MCL 570.1111(1), which requires that a construction lien be recorded within 90 days of the last date labor or materials were furnished. J&J recorded its lien on July 1, 2024,⁴⁸ listing September 18, 2023, as the last date of work—making the lien facially untimely. However, J&J has submitted the Affidavit of its President, Ulysses Sanchez,⁴⁹ who explains that:

- A first lien, in the amount of \$56,037.00 was recorded for work through September 18, 2023, and later discharged.
- The second lien, recorded July 1, 2024, was intended to reflect labor and materials provided through April 8, 2024.
- The reference to September 18, 2023, in the second lien, was inadvertently carried over from the first.⁵⁰

While J&J asserts that April 8, 2024, was its actual last day of work—making the lien timely—its own notarized lien statement and contradictory affidavit raise a genuine issue of material fact. As such, the Court cannot determine the lien’s validity as a matter of law at this stage.

iii. Breach of Contract Claim Against Global

Global concedes liability on J&J’s breach of contract claim but disputes the amount of damages. In light of the Receiver’s Report,⁵¹ there remains a material issue of fact as

⁴⁸ FHRE and Global Response Exhibit F.

⁴⁹ J&J’s MSD Exhibit E: Affidavit.

⁵⁰ J&J’s MSD Exhibit E ¶¶ 3 and 4: Affidavit.

⁵¹ FHRE and Global Response Exhibit F.

to damages. Accordingly, summary disposition is appropriate as to liability only, but not as to damages.

iv. Unjust Enrichment Against Global

As previously discussed, to establish a claim for unjust enrichment, “plaintiff must establish (1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant.” *Deschane v Klug*, 344 Mich App 744, 753 (2022) (citation omitted). However, “the law operates to imply a contract” only when an express contract covering the same subject matter does not exist in order to prevent an inequity. *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 328 (2002). Alternative pleading of an implied contract is only allowed when a party doubts the existence of a contract. *Campbell v Troy*, 42 Mich App 534, 537 (1972).

Here, an express subcontract exists between J&J and Global covering the same subject matter. In fact, Global concedes liability under that contract. Accordingly, the unjust enrichment claim against Global is barred and must be dismissed.

v. Unjust Enrichment Against FHRE

J&J also brings an unjust enrichment claim against FHRE, alleging that FHRE received the benefit of J&J’s labor and materials without payment. FHRE denies this and disputes whether any enrichment occurred. Because material questions of fact remain as to (1) whether FHRE received a benefit and (2) whether it would be inequitable for FHRE to retain that benefit without payment, summary disposition is not appropriate on this claim.

Accordingly, based on the above, J&J’s Motion is:

- GRANTED as to the priority of its construction lien over CCCU’s mortgage;
- DENIED as to the validity of its construction lien;

- GRANTED as to Global's liability for breach of contract, with damages to be determined;
- DENIED as to its unjust enrichment claim against FHRE, as material factual issues remain; and
- DENIED as to its unjust enrichment claim against Global, which is barred by the existence of an express contract.

4. Motion filed by Defendant Lien Claimant J.V. Electric Inc's ("JV") motion against Global and FHRE

As previously noted, CCCU filed its First Amended Complaint, naming several of Global's subcontractors—including J.V. Electric, Inc (J.V.)—as Defendants. In response, J.V. filed a cross-claim against FHRE and a third-party complaint against Global alleging claims of breach of contract against Global and seeking foreclosure of the construction lien. J.V. now brings this Motion for Summary Disposition pursuant to MCR 2.116(C)(10), seeking the following relief:

- A determination that its construction lien in the amount of \$403,161.73 is valid and has priority over CCCU's mortgage;
- A judgment against Global in the amount of \$403,161.73 for breach of contract; and
- Judgment of Construction Lien Foreclosure.

In their Response, Defendants FHRE and Global reassert the argument that CCCU's 2022 mortgage holds priority over the recorded construction liens. However, this Court has previously determined that CCCU's 2022 Construction Mortgage—recorded after the first actual physical improvement to the Property—is subordinate to the Lien Claimants' construction liens. Accordingly, the lien priority issue is moot. The Court, therefore, confirms that J&J's lien has statutory priority over CCCU's 2022 mortgage pursuant to MCL 570.1119(3) and (6).

With respect to the remaining issues, at the hearing on the Motion, Defendants conceded both the validity of J.V.'s construction lien and Global's liability on J.V.'s breach

of contract claim. Accordingly, summary disposition is appropriate as to both the validity of J.V.'s construction lien and Global's liability under the subcontract.

Despite these concessions, both parties agreed at the hearing that the amount of damages owed by Global to J.V. remains in dispute, particularly in light of the Receiver's Report.⁵² This presents a genuine issue of material fact that cannot be resolved at the summary disposition stage.

Accordingly, based on the above, J.V.'s Motion is:

- GRANTED as to the priority of J.V.'s construction lien over CCCU's mortgage;
- GRANTED as to the validity of J.V.'s construction lien;
- GRANTED as to Global's liability for breach of contract;
- DENIED as to the amount of damages, which remains a genuine issue of material fact.

CONCLUSION

For the reasons set forth above it is HEREBY ORDERED that:

- Plaintiff CCCU and Defendant FHRE's Joint Motion for Summary Disposition is DENIED.
- Defendants Lien Claimants Miller-Boldt and MAP's Motion for Summary Disposition against Global and FHRE is GRANTED IN PART and DENIED IN PART:
 - GRANTED as to the validity and priority of their construction lien over CCCU's mortgage;
 - GRANTED as Global's liability for Miller-Boldt's breach of contract claim, with the amount of damages to be determined; and
 - DENIED as to MAP's unjust enrichment claim against FHRE, as material questions of fact remain.
- Defendant Lien Claimant J&J's Motion against Global and FHRE is GRANTED IN PART AND DENIED IN PART:
 - GRANTED as to the priority of its construction lien over CCCU's mortgage;
 - DENIED as to the validity of its construction lien;

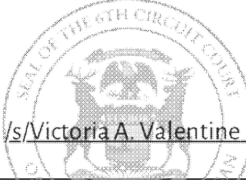
⁵² FHRE and Global Response, MSD exhibit 5.

- GRANTED as to Global's liability for breach of contract, with damages to be determined;
 - DENIED as to its unjust enrichment claim against FHRE, as material factual issues remain; and
 - DENIED as to its unjust enrichment claim against Global, which is barred by the existence of an express contract.
- Defendant Lien Claimant J.V.'s Motion against Global and FHRE IS GRANTED IN PART AND DENIED IN PART:
 - GRANTED as to the priority of J.V.'s construction lien over CCCU's mortgage;
 - GRANTED as to the validity of J.V.'s construction lien;
 - GRANTED as to Global's liability for breach of contract;
 - DENIED as to the amount of damages, which remains a genuine issue of material fact.

IT IS SO ORDERED.

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE THE CASE.

Dated: 10/9/25


/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE