

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

W.W. ADCOCK, INC., :
CIVIL ACTION :
Plaintiff, :
 :
v. :
 :
FORT WAYNE POOLS, INC., :
Defendant. :
NO. 95-3565 :

MEMORANDUM & ORDER

J.M. KELLY, J.

AUGUST , 1997

Presently before the Court is the Motion for Reconsideration of the Court's Order of June 27, 1997, in which cross-motions for summary judgment were denied and choice of law issues were decided. Defendant Fort Wayne Pools, Inc. ("Fort Wayne") seeks to have the Court reconsider the portion of its Memorandum of Law in which Fort Wayne's asserted defense under Indiana's Fabricator's Lien Statute, Ind. Code § 32-8-37-1, et seq., was rejected.

Fort Wayne argues that Ind. Code § 32-8-37-3,¹ entitled "Notice to Enforce Lien," applies only when a lienholder wishes to sell a mold and has no applicability here where Fort Wayne never

¹ Section 3 reads:
Before enforcing such a lien, notice in writing shall be given to the customer, whether delivered personally or by certified mail to the last known address of the customer. This notice shall state that a lien is claimed for damages set forth or attached for the amount due for fabrication work. . . . This notice shall include a demand for payment.

desired to sell the molds in question. Rather, Fort Wayne urges, its right to retain molds in its possession is only governed by Ind. Code § 32-8-37-2.² A fabricator who has complied with the requirements of § 32-8-37-3 may, after 60 days, sell the mold if it is still in the fabricator's possession and the fabricator complies with several notice provisions. Ind. Code §§ 32-8-37-4, 32-8-37-5.

In interpreting an Indiana statute, the Court must first follow the plain meaning of the statute if it is facially clear and unambiguous. Whitacre v. Indiana, 619 N.E.2d 605, 606 (Ind. Ct. App. 1993). An ambiguous statute is interpreted to effectuate the intent of the legislature and in so doing, the statute must be read as a whole and the Court must attempt to give effect to all provisions. Id. The Court must "presume that the legislature intended each word used in the statute, to be necessary to express its intention, and we must regard such presumption until it forces us to an unreasonable construction of the statute." Mid America Homes, Inc. v. Horn, 272 Ind. 171, 176, 396 N.E.2d 879, 882 (1979).

Applying these rules of statutory construction to the fabricator's lien statute, the Court is first struck by the ambiguity of the undefined term "enforce." Fort Wayne urges that enforcement is only intended to serve as a predicate to the

² Section 2 reads:
A fabricator has a lien, dependent upon possession, on any . . . mold . . . in his possession belonging to the customer, for the amount due him from the customer for fabrication work performed with the . . . mold. . . .
A fabricator may retain possession of the . . . mold . . . until the amount due is paid.

fabricator's sale of a customer's molds. Plaintiff, W.W. Adcock, Inc. ("Adcock"), urges that "enforce" within the context of the Fabricator's Lien Statute is intended to address any attempt by the fabricator to assert the protection provided by the lien. In viewing the statute as a whole, it appears that the Indiana Legislature intended to address three distinct concepts, 1) perfection of the lien through possession, § 32-8-37-2, 2) letting the customer know that the lien was being asserted through enforcement, § 32-8-37-3 and 3) sale of the mold of the still recalcitrant customer, §§ 32-8-37-4 and 32-8-37-5. To apply Fort Wayne's proposed interpretation, "sale" and "enforce" would be merged into one concept, making enforcement of the lien superfluous. Such an interpretation of the statute would give no meaning to the separate terms chosen by the Indiana Legislature and would not comport with Indiana's rules of statutory interpretation.

Statutory liens for jewelry repair, stereo repair, dry cleaning, innkeepers and storage, cited by Fort Wayne, do little to support Fort Wayne's position here because in all of those instances, the customer provides an item to a lienholder, expecting a service to be provided, to be paid for upon return of the item. In some cases, there must be notice to the customer at the time the item is given to the lienholder. Ind. Code § 32-8-23-5 (laundry, cleaning, clothing repairs). Here, the fabricator retains the mold indefinitely and absent an event requiring the fabricator to enforce the lien, the lien is never mentioned between the parties.

Rather, the Indiana Legislature recognized the reality of

two commercial entities creating a long term relationship where a customer provides a mold to a fabricator and the fabricator uses the mold to create products for the customer. The fabricator has a lien of various amounts at different times, depending upon the amount of work done for the customer and the customer's payment schedule. The lien, perfected through possession, protects the fabricator against other parties with an interest in the mold and remains in the background of the bailment of the mold. See Nicholson's Mobile Home Sales, Inc. v. Schramm, 330 N.E.2d 785 (Ind. Ct. App. 1975) (possession under Mobile Home Park Owners Lien was superior to an unperfected purchase money security interest).

If at some time the relationship between the fabricator and the customer changes, such as here where the customer requested possession of the mold or where a customer does not pay the fabricator for work completed, then the business relationship between the parties drastically changes and the fabricator will desire to enforce its lien against the customer. To do so, the fabricator must comply with Ind. Code § 32-8-37-3, which Fort Wayne did not do. Sixty days after enforcing the lien, the fabricator may then proceed to sell the mold if the customer still owes the fabricator money, following giving the customer statutory notice of the sale.

Accordingly, enforcement under the Fabricator's Lien Statute is an assertion of an adverse possessory interest in a mold by a fabricator against a customer. Since Fort Wayne did not comply with the statutory predicates to enforcing a lien, the

Fabricator's Lien Statute is not available to Fort Wayne as a defense to Adcock's bailment claim.

Fort Wayne's briefs on this Motion for Reconsideration make it clear that the asserted lien upon Adcock's molds were for payments to be due in March, April and May of 1995. Adcock requested possession of the molds in December of 1994. Thus, at the time that Fort Wayne denied Adcock possession of the molds, no money was due to Fort Wayne and therefore, no lien existed. Accordingly, for this separate reason Fort Wayne cannot assert the Fabricator's Lien Statute as a defense. For both of these reasons, Fort Wayne's Motion for Reconsideration will be denied.

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ORDER

AND NOW, this 18th day of August, 1997, upon consideration of the Motion for Reconsideration of Defendant Fort Wayne Pools, Inc., the Response of Plaintiff W.W. Adcock, Inc., and

the Reply thereto of Fort Wayne Pools, Inc., it is ORDERED that the Motion for Reconsideration is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.