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Michigan Court of Appeals rules that the one-year statute of limitation for an action brought to enforce a construction lien, MCL 570.117, does not apply to a surety bond action.

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Summary:

Michigan Court of Appeals rules that the one-year statute of limitation for an action on a construction lien, MCL 570.117 does not apply to a surety bond action. Instead, the six-year statute of limitation for breach of contract, MCL 600.5807(8) applies to an action on a surety bond.

In a published opinion released in April, a panel of the Michigan Court of Appeals held the one-year period of limitations that governs actions seeking to enforce a construction lien does not also apply to surety bond actions brought pursuant to the Construction

Lien Act ("CLA"). *ER Zeiler Excavating, Inc. v Valenti, Trobec & Chandler, Inc.* ___ Mich App ___; ___ NW2d ___ (2006). The court ruled that six-year statute of limitation for breach of contract, MCL 600.5807(8), governs an action brought to enforce a surety bond.

The Court noted that the facts presented in this case of first impression were complex. Plaintiff E.R. Zeiler Excavating, Inc. ("Zeiler"), a subcontractor, provided excavating and underground services in the construction of a subdivision for Defendant DOMA Properties Limited Partnership ("DOMA"). DOMA, the property owner and developer of the subdivision project, retained Robertson Builders, Inc. ("Robertson"), as the general contractor on this project. Robertson, in turn, retained the services

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of Zeiler; according to Zeiler, its work on the subdivision was terminated by either Robertson or DOMA. Zeiler claimed it did not receive full payment for its services rendered. Shortly thereafter, Robertson filed a surety bond discharging the construction lien.

Although factually complex, the Court noted its legal analysis was straightforward. The Court held that, in contrast to a claim regarding a construction lien, the CLA contains no express or implied provision for a one-year statute of limitation for the enforcement of a surety bond. Specifically, the Court observed that MCL 570.117 expressly provides for a one-year statute of limitation in an action regarding a construction lien action. But the Court also observed that MCL 570.116 was silent regarding a statute

of limitation for an action on surety bond. And the Court concluded that there was no basis for extending the construction lien statute of limitation to an action on a surety bond. Moreover, because a construction lien is an encumbrance on property title, there is an increased need for prompt resolution of construction lien disputes. In contrast, a surety bond does not interfere with the alienability of real property and merely provides security for a contractor.

In sum, the one-year statute of limitation, MCL 570.117 does not apply to a surety bond action; instead, a surety bond action is subject to the six-year statute of limitation, MCL 600.5807(8).