

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

**FILED**

February 15, 1996

Cecil Crowson, Jr.  
Appellate Court Clerk

CMT, INC.,	)	C/ A NO. 03A01-9511-CH-00383
	)	
Plaintiff-Appellant.	)	KNOX CHANCERY
	)	
v.	)	HON. FREDERICK D. McDONALD,
	)	CHANCELLOR
WEST END CHURCH OF CHRIST,	)	
et al.,	)	AFFIRMED
	)	AND
Defendants-Appellees.	)	REMANDED

ROBERT N. GODDARD, GODDARD & GAMBLE, Maryville, for Plaintiff-Appellant.

R. LOY WALDROP, JR., and DAVID N. GARST, LEWIS, KING, KRIEG, WALDROP & CATRON, P.C., Knoxville, for Defendants-Appellees, Acme Construction, Inc., and Cincinnati Insurance Company.

JOHN T. McARTHUR, Maryville, for *Amicus Curiae* Carolinas-Tennessee Building Material Association, Inc.

O P I N I O N

Franks. J.

The determinative issue in this appeal, is the interpretation of Tennessee Code Annotated Section 66-11-145.

West End Church of Christ contracted with Appellee Acme<sup>1</sup> for the construction of a church. Acme contracted with Pioneer Construction Company, who in turn subcontracted work to Appellant CMI, Inc. Appellant performed work in five phases between July 1992 and June 1994. It sent invoices to Pioneer requesting payment within a month of the completion of each phase. Despite Acme having paid Pioneer for the work, none of appellant's \$16,743.60 worth of invoices were paid by Pioneer. On August 3, 1994, after all work had been completed, a notice of nonpayment was sent to West End Church and Acme. Two weeks later, Appellant filed a notice of lien with the county.

The Trial Court dismissed the claims<sup>2</sup> on the basis of plaintiff's failure to comply with the notice requirement of T. C. A. § 66-11-145. It determined that the one notice given was insufficient because the statute required that notice of nonpayment be given to the owner and general contractor within sixty days of every month during which services or supplies were provided.

The issue, as agreed between the parties, is does T. C. A. § 66-11-145 require that a subcontractor seeking a lien for nonpayment send a notice of nonpayment within sixty days of the end of each month within which services or supplies were provided?

The language of the statute at issue reads in

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<sup>1</sup> Note that Acme and Cincinnati Insurance Co. have been substituted as the defendants in this case pursuant to T. C. A. § 66-11-142(a).

<sup>2</sup> The Court did award CMI, Inc. \$860. This award represented the amount owed for the last month's work, for which the notice requirements were met.

pertinent part:

Notice of nonpayment.- (a) Every subcontractor, laborer, or materialman contracted with or employed to work on buildings, fixtures, machinery, or improvements, or to furnish materials for the same... shall provide, within sixty (60) days of the last day of the month within which work, services, or materials were provided, a notice of nonpayment for such work, services or materials to the owner and contractor contracting with the owner if its account is, in fact, unpaid... the notice... shall contain... (3) a statement of the last date the claimant performed work and/or provided services or materials in connection with the improvements... (c) A subcontractor, laborer or materialman who fails to provide the notice of nonpayment shall have no right to claim a lien under this chapter....

T. C. A. § 66-11-145.

This language does not clearly state, as appellant suggests, that notice is required only on the "last day of the last month." Nor does it say, as appellee would urge, that the notice is required in the "last day of each month," resulting in the possibility that multiple notices might be sent. However, based on the remainder of the sentence ("the last day of the month within which work, services or materials were provided") the statute lends itself to the interpretation by the trial court that each month is isolated and requires a separate notice.

The legislative history supports the separate notice interpretation. This history shows that § 66-11-145 was a new provision, added to the lien requirements in 1990, to assure that owners and general contractors have sufficient notice to deal with unpaid subcontractors. Excerpts from the Committee debate highlight this motive:

[the bill] provides that materialmen and subcontractors must notify the owner and general contractor within certain time parameters of non-payment for work, services, or materials furnished

to the project...that can clarify the problem that could come about years after as far as liens go...this is a fair method by which notice is given so that if there is not payment, due course can be taken to ensure that payment comes...are making changes now to recognize that notification in large projects is one of the biggest problems that contractors face...and this enables a procedure so that everyone will know when someone is not paying their bill so you don't get into the lien messes we all hear about that cause the scares.

The transcript demonstrates that the primary concern of the legislators was giving the owner and general contractor notice of payment problems so that problems could be taken care of before the subcontractor's work was completed and the project could be encumbered with a lien.

Requiring that notice be made within sixty days of the last day of each month in which work was performed comports with the companion provision T. C. A. § 66-11-115<sup>3</sup>. This statute requires that notice of a lien be given to the owner within ninety days of the completion of work on a project. If T. C. A. § 66-11-145 was then read to require notice within sixty days of the completion of work, § 66-11-115 would be rendered duplicative and meaningless. If the interpretation of the trial court is followed, requiring sixty

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<sup>3</sup>T. C. A. § 66-11-115 reads:

Mechanic's lien - Notice to owner - (a) Every journeyman or other person contracted with or employed to work on the buildings, fixtures, machinery, or improvements, or to furnish materials for the same...shall have this lien for such work or material; provided, that the subcontractor, laborer or materialman satisfies all of the requirements set forth in § 66-11-145, if applicable.

(b) Within ninety (90) days after the demolition and/or building or improvement is completed, or the contract of such laborer, mechanic, furnisher, or other person shall expire, or such pe[r]son is discharged, such person shall notify, in writing, the owner of the property on which the building is being erected or the improvement is being made...that the lien is claimed.

(c) The lien shall continue for the period of ninety (90) days from the date of the notice...until the final termination of any suit for enforcement brought within that period.

days notice at the end of each month of work under § 145 and ninety days at the completion of work under § 115, the provisions have separate meanings and the legislative purpose of early notice to give time for correction is served.

Appellant argues that giving § 145 notice at the end of each month would trigger the § 115 provision that gives lienholders ninety days after sending notice to bring suit. Citing *McGuffin Lumber Company, Inc. v. Nevils*, 1990 WL 10576 (Tenn. App. 1990) (holding that the time for filing suit under § 115 begins to run upon notice to the owner that the contractor is claiming a lien). Appellant says that this result would necessitate multiple suits against the same party for the same series of nonpayments. However, § 115 is not implicated unless "the demolition and/or building or improvement is completed, or the contract of such laborer, mechanic, furnisher, or other person shall expire, or such pe[r]son is discharged." Notice under § 145, which was added by the legislature after *McGuffin* was decided, does not constitute the one-time § 115 notice which triggers the ninety day timeline for filing suits. Therefore, multiple suits would not be necessary.

In light of the language of the statute, legislative history, and requirements of other provisions within the code, the Trial Court's interpretation was correct. T.C.A. § 66-11-145 requires that a subcontractor seeking a lien send a notice of nonpayment within sixty days of the end of each month within which services or supplies were provided.

We affirm the judgment of the Trial Court, and remand at appellant's cost.

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Herschel P. Franks, J.

CONCUR:

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Don T. Murray, J.

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Charles D. Susano, Jr., J.