

JUDICIAL DEVELOPMENTS IN BUSINESS AND CONTRACT LAW

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INTRODUCTION

Indiana's appellate courts provided several interesting decisions concerning close corporations, franchise law, partnership law, and contract law during the survey period. The following is a review of some of the most significant decisions affecting these areas of law.

I. CLOSE CORPORATIONS—DIRECT ACTION BY MINORITY SHAREHOLDER

On December 29, 1995, the Supreme Court of Indiana reversed a trial court decision holding that a direct action may not be maintained by a minority shareholder against a closely-held corporation and another shareholder, and adopted a new rule recognizing an exception to the general rule that shareholders must proceed by way of a derivative action.¹

A. *Factual Background*

Robert Barth (Robert), a minority shareholder of Barth Electric Co. brought suit individually against both the corporation and its president and majority shareholder, Michael G. Barth, Jr. (Michael) (collectively referred to as Defendants), alleging a breach of fiduciary duty.² Robert alleged that Michael had taken certain actions which had the effect of "substantially reducing the value of Plaintiff's shares of common stock" in the corporation.³ Robert specifically alleged that Michael had:

- 1) terminated Robert's employment with the corporation;
- 2) paid excessive salaries to himself and to members of his immediate family;
- 3) used corporate employees to perform services on his and his son's homes without compensating the corporation;
- 4) appropriated corporate funds for personal investments;
- 5) dramatically lowered dividend payments;

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1. Barth v. Barth, 659 N.E.2d 559 (Ind. 1995).

2. At the time litigation commenced, Michael Barth owned 51% of the shares of the corporation, and Robert Barth owned 29.8%. See *id.* at 560. A third individual, Barbara J. Neita, not a party to the lawsuit, owned the remaining shares. See Barth v. Barth, 651 N.E.2d 291, 292 (Ind. Ct. App. 1995), *vacated*, 659 N.E.2d 559 (Ind. 1995).

3. See Barth, 659 N.E.2d at 560.

- 6) refused Robert access to corporate records; and
- 7) barred Robert from the corporation's premises.⁴

Defendants moved to dismiss Robert's complaint for failure to state a claim upon which relief can be granted pursuant to Trial Rule 12(B)(6).⁵ Defendants argued that a shareholder's derivative action was required to redress Robert's claims and that an individual direct action could not be maintained.⁶ The trial court granted Defendants' motion to dismiss.⁷

B. *The Court of Appeals' Decision*

In reversing the trial court, the court of appeals acknowledged that the "well-established general rule" prohibits a shareholder from maintaining an action in the shareholder's own name, but found that, under the particular circumstances of this case, requiring a derivative action would "exalt form over substance."⁸ Robert could have satisfied the requirements for bringing a derivative action and none of the reasons underlying the general derivative action requirement were present. Thereafter, the Defendants sought transfer to the Indiana Supreme Court.

C. *The Supreme Court's Decision*

The Indiana Supreme Court sided with the court of appeals. In doing so, the supreme court reviewed Judge Ratliff's discussion of the general rule in *Moll v. South Central Solar Systems, Inc.*⁹

The rationale supporting this rule is based on sound public policy considerations. It is recognized that authorization of shareholder actions in such cases would constitute authorization of multitudinous litigation and disregard for the corporate entity. Sound policy considerations have been said to require that a single action be brought rather than to permit separate suits by each shareholder even when the corporation and the shareholder are the same.¹⁰

As further support for the general rule, the supreme court cited *W & W Equipment Co. v. Mink*,¹¹ in which Judge Baker provided the following additional justifications:

- [1] the protection of corporate creditors by putting the proceeds of the

4. *Barth*, 651 N.E.2d at 292. Claim (1) was not on appeal. Only claims (2) through (5) were considered by the Indiana Supreme Court.

5. *Barth*, 659 N.E.2d at 560.

6. *Id.* Derivative actions are governed by Trial Rule 23.1 and IND. CODE §§ 23-1-32-1 (1993). See *Barth*, 659 N.E.2d at 560 n.3.

7. *Barth*, 659 N.E.2d at 560.

8. *Barth*, 651 N.E.2d at 292-93.

9. 419 N.E.2d 154. See *Barth*, 659 N.E.2d at 561.

10. *Barth*, 659 N.E.2d at 561 (citations omitted) (quoting *Moll*, 419 N.E.2d at 161).

11. 568 N.E.2d 564 (Ind. Ct. App. 1991).

recovery back in the corporation;

[2] the protection of the interests of all the shareholders rather than allowing one shareholder to prejudice the interests of other shareholders; and

[3] the adequate compensation of the injured shareholder by increasing the value of the shares when recovery is put back into the corporation.¹²

In validating the general rule requiring a shareholder to bring a derivative rather than a direct action when seeking redress for injury to the corporation, the supreme court acknowledged two reasons why the general rule will not always apply in the case of a closely-held corporation.¹³ First, the shareholders of a closely-held corporation “stand in a fiduciary relationship to each other, and as such, must deal fairly, honestly, and openly with the corporation and with their fellow shareholders.”¹⁴ In describing this fiduciary relationship, the supreme court cited a leading decision by the Supreme Judicial Court of Massachusetts:

Because of the fundamental resemblance of the close corporation to the partnership, the trust and confidence which are essential to this scale and manner of enterprise, and the inherent danger to minority interests in the close corporation, we hold that stockholders in the close corporation owe one another substantially the same fiduciary duty in the operation of the enterprise that partners owe to one another. In our previous decisions, we have defined the standard of duty owed by partners to one another as the “utmost good faith and loyalty.” Stockholders in close corporations must discharge their management and stockholder responsibilities in conformity with this strict good faith standard. They may not act out of avarice, expediency or self-interest in derogation of their duty of loyalty to the other stockholders and to the corporation.¹⁵

The second reason that the general rule will not always apply is that shareholder litigation involving the closely-held corporation “will often not implicate the policies that mandate requiring derivative litigation when more widely-held corporations are involved.”¹⁶ In expanding upon this second reason, the supreme court cited the court of appeals’ decision in *W & W Equipment Co.*

12. *Id.* at 571 (citing *Caswell v. Jordan*, 362 S.E.2d 769 (Ga. Ct. App. 1987)). See *Barth*, 659 N.E.2d at 561.

13. “A closely-held corporation is one which typically has relatively few shareholders and whose shares are not generally traded in the securities market.” *Barth*, 659 N.E.2d at 561 n.5 (citing *W & W Equipment Co.*, 568 N.E.2d at 570).

14. *Id.* at 561 (citing *W & W Equip. Co.*, 568 N.E.2d at 570; *Krukemeier v. Krukemeier Mach. & Tool Co.*, 551 N.E.2d 885 (Ind. Ct. App. 1990); *Garbe v. Excel Mold, Inc.*, 397 N.E.2d 296 (Ind. App. 1979)).

15. *Id.* at 561 n.6 (citing *Donahue v. Rodd Electrotype Co.*, 328 N.E.2d 505, 515 (Mass. 1975)).

16. *Id.* at 561.

v. Mink.¹⁷ In *Mink*, one of two fifty percent shareholders of a corporation had filed suit when the other shareholder joined with non-shareholder directors to fire the plaintiff and arrange for the payment of corporate assets to the other shareholder. The court of appeals found that there was no useful purpose in requiring the plaintiff to proceed through a derivative action where the policies favoring such an action were not implicated; direct corporate recovery was not necessary to protect absent shareholders or creditors as none existed.¹⁸

After studying the rationale behind the general rule, the supreme court adopted its new rule from section 7.01(d) of the American Law Institute's *Principles of Corporate Governance*, which states:

In the case of a closely held corporation, the court in its discretion may treat an action raising derivative claims as a direct action, exempt it from those restrictions and defenses applicable only to derivative actions, and order an individual recovery, if it finds that to do so will not (i) unfairly expose the corporation or the defendants to a multiplicity of actions, (ii) materially prejudice the interests of creditors of the corporation, or (iii) interfere with a fair distribution of the recovery among all interested persons.¹⁹

The Indiana Supreme Court also determined that the discretion to decide whether a plaintiff must proceed by direct or by derivative action lies with the trial court.²⁰ In support of its determination, the court made the following observations, consistent with the comment to section 7.01(d) of the American Law Institute's *Principles of Corporate Governance*. First, allowing a direct action will exempt a plaintiff from the requirements of sections 23-1-32-1 to -5 of the Indiana Code, "including the provisions that permit a special committee of the board of directors to recommend dismissal of the lawsuit."²¹ Thus, in making its decision, the trial court should consider whether the corporation has a disinterested board that should be permitted to consider the impact upon the corporation caused by the litigation.²² Second, there may be some benefit to the corporation by permitting the plaintiff to proceed with a direct action in that the defendant would be allowed to file a counterclaim against the plaintiff, whereas counterclaims are generally prohibited in derivative litigation.²³ Finally, in a direct action, each side will normally be responsible for its own litigation expenses; therefore, even a successful plaintiff may not be able to look to the corporation for its attorney fees.²⁴

17. 568 N.E.2d 564. See *Barth*, 659 N.E.2d at 561.

18. *Mink*, 568 N.E.2d at 571.

19. See *Barth*, 659 N.E.2d at 562.

20. *Id.*

21. *Id.*; see IND. CODE § 23-1-32-4 (1993).

22. See *Barth*, 659 N.E.2d at 562-63 (citing CORPORATE GOVERNANCE PROJECT § 7.01 cmt. e) (1979)).

23. See *id.* at 563.

24. See *id.*

D. Conclusion

In *Barth*, the Indiana Supreme Court adopted section 7.01(d) of the American Law Institute's *Principles of Corporate Governance*, establishing an exception to the general rule that a shareholder must bring a derivative action to redress injury to the corporation when the litigation involves a closely-held corporation.²⁵

II. CONTRACTS—FRANCHISE LAW

On June 20, 1996, the Indiana Supreme Court construed the Indiana Franchise Act's²⁶ disclosure provisions as creating a private right of action only for acts that constitute fraud, deceit, or misrepresentation.²⁷ The court also emphasized the strong presumption of enforceability of contracts that are the result of freely bargained agreements between the parties and declared that a contract alleged to violate the Indiana Franchise Act²⁸ ("Disclosure Act") or the Indiana Deceptive Franchise Practices Act²⁹ (collectively the "Franchise Acts") must be closely analyzed to determine whether it is void.

A. Factual Background

In 1984, Ellenstein Enterprises, Inc. (Ellenstein) entered into a contract with the Continental Basketball Association (CBA) for the purchase of a professional basketball team "franchise" that would compete against other CBA franchises.³⁰ The agreement itself was entitled "Franchise Purchase Offer"³¹ and it provided that Ellenstein could use the CBA logo and marketing system and that Ellenstein would comply with the CBA by-laws, Operations Manual, and other CBA rules and regulations.³²

The dispute before the court concerned whether Ellenstein should be entitled to recover damages due to the CBA's alleged "fail[ure] to comply with the disclosure requirements imposed by the" Disclosure Act, among other claims.³³ Additionally, the CBA sought amounts due from Ellenstein under the agreement. The CBA pursued an interlocutory appeal after the trial court ruled "(i) that Ellenstein's purchase of a CBA franchise was subject to the Franchise Acts, thereby permitting Ellenstein's Disclosure . . . Claim[] to go forward; and (ii) that because the CBA had not complied with the Franchise Acts, the CBA could not enforce the franchise agreement against Ellenstein."³⁴ The Indiana Court of

25. *Id.* at 560.

26. IND. CODE §§ 23-2-2.5-1 to -51 (1993).

27. *Continental Basketball Ass'n v. Ellenstein Enters., Inc.*, 669 N.E.2d 134 (Ind. 1996).

28. IND. CODE §§ 23-2-2.5-1 to -51.

29. *Id.* §§ 23-2-2.7-1 to -7.

30. *Continental Basketball Ass'n*, 669 N.E.2d at 135-36.

31. *Id.* at 135.

32. *Id.* at 136.

33. *Id.* (alteration in original) (quoting Ellenstein from an unidentified pleading).

34. *Id.*

Appeals affirmed the trial court's rulings.³⁵

B. Definition Of Franchise

The Disclosure Act provides that a "franchise" is a "contract by which:

- (1) a franchisee is granted the right to engage in the business of dispensing goods or services, under a marketing plan or system prescribed in substantial part by a franchisor;
- (2) the operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and
- (3) the person granted the right to engage in this business is required to pay a franchise fee.³⁶

Because "Ellenstein bought the right to operate a team in the league, entitling it to an equal share of the revenue generated by the league,"³⁷ he agreed to abide by the various CBA rules and regulations,³⁸ he obtained the right to associate its team with the CBA,³⁹ and the team "would be substantially associated with CBA's service mark, trade name, and advertising,"⁴⁰ the court of appeals determined that the trial court had properly concluded that the agreement was subject to the Franchise Acts. Additionally, the supreme court noted that "the CBA entitled the contract a 'Franchise Purchase Offer.'"⁴¹ Accordingly, the supreme court held that the contract was in fact a franchise agreement subject to the Franchise Acts.⁴²

C. No Private Right Of Action For Violation Of Disclosure Act

In a recent case,⁴³ the Seventh Circuit predicted that the Indiana Supreme Court, if confronted with the question of whether the Disclosure Act provides a private right of action for violating the Act's disclosure provisions, would agree with prior rulings of the Indiana Court of Appeals, holding that the Disclosure Act "creates a private right of action only for acts which constitute fraud, deceit or misrepresentation."⁴⁴

The Seventh Circuit's prediction was correct and the supreme court held that "[a] private right of action 'arises for failure to comply with the [Disclosure Act]

35. *Continental Basketball Ass'n v. Ellenstein Enters., Inc.*, 640 N.E.2d 705, 712 (Ind. Ct. App. 1994), *adopted in part*, 669 N.E.2d 134 (Ind. 1996).

36. IND. CODE § 23-2-2.5-1(a) (1993).

37. *Continental Basketball Ass'n*, 640 N.E.2d at 708.

38. *Id.*

39. *Id.*

40. *Id.* at 708-09.

41. *Continental Basketball Ass'n v. Ellenstein Enters.*, 669 N.E.2d 134, 137 (Ind. 1996).

42. *Id.*

43. *Hardee's, Inc. v. Hardee's Food Sys., Inc.*, 31 F.3d 573, 577 (7th Cir. 1994).

44. *Continental Basketball Ass'n*, 669 N.E.2d at 137.

only upon allegations of facts which would support an inference of fraud, deceit, or misrepresentation.”⁴⁵ “[E]nforcement authority conferred on private parties is limited to combatting violations of the anti-fraud provision of the Disclosure Act, which paraphrases Rule 10b-5 under the Securities Exchange Act of 1934.”⁴⁶

D. Franchise Agreement Not Void For Violating Franchise Acts

Both the trial court and the Indiana Court of Appeals held that the franchise agreement was void and that the CBA could not recover amounts due from Ellenstein under the agreement because the CBA failed to comply with the registration and disclosure requirements of the Disclosure Act. The Indiana Supreme Court disagreed, citing its recent decision in *Fresh Cut, Inc. v. Fazli*,⁴⁷ where the court emphasized its strong presumption that “contracts that represent the freely bargained agreement of the parties” are enforceable.⁴⁸ However, the court acknowledged that “courts have refused to enforce private agreements on public policy grounds in three types of situations: (i) agreements that contravene statute; (ii) agreements that clearly tend to injure the public in some way; and (iii) agreements that are otherwise contrary to the declared public policy of Indiana.”⁴⁹ When an agreement falls into the third category, as did the agreement involved in *Fresh Cut*,⁵⁰ the proper method for determining enforceability is a balancing test. The factors to be considered when using such a balancing test are: “(i) the nature of the subject matter of the contract; (ii) the strength of the public policy underlying the statute; (iii) the likelihood that refusal to enforce the bargain or term will further that policy; (iv) how serious or deserved would be the forfeiture suffered by the party attempting to enforce the bargain; and (v) the parties’ relative bargaining power and freedom to contract.”⁵¹

In analyzing the facts of this case, the court emphasized that where a contract “actually contravenes a statute, the court’s responsibility is to declare the contract void rather than apply the balancing test.”⁵² “But crucial to that determination is deciding whether a contract actually contravenes [a] statute.”⁵³ In making such determination, the court stated that it “will not find that a contract contravenes a statute unless the language of the implicated statute is clear and unambiguous that the legislature intended that the courts not be available for either party to enforce

45. *Id.* (alteration in original) (quoting *Moll v. South Cent. Solar Sys.*, 419 N.E.2d 154, 162 (Ind. Ct. App. 1981)).

46. *Id.* (citing 17 C.F.R. § 240.10b-5 (1995)).

47. 650 N.E.2d 1126 (Ind. 1995).

48. *Continental Basketball Ass’n*, 669 N.E.2d at 139.

49. *Id.*

50. *Fresh Cut*, 650 N.E.2d at 1130.

51. *Continental Basketball Ass’n*, 669 N.E.2d at 140 n.9 (citing *Fresh Cut*, 650 N.E.2d at 1130).

52. *Id.* at 140.

53. *Id.*

a bargain made in violation thereof.”⁵⁴

In the instant case, the Franchise Acts fail to use the words “void” or “unenforceable” and, in fact, include remedial provisions. Thus, the court concluded that “the legislature did not intend that every contract made in violation of the Franchise Acts be void,” but instead, the balancing approach from *Fresh Cut* should be applied.⁵⁵ Having applied those factors to the case at bar, the court concluded that there is “no compelling argument to declare the contract void,” and that the agreement was not void as against public policy.⁵⁶

E. Conclusion

In *Continental Basketball Ass’n*, the court confirmed the Indiana Court of Appeals and Seventh Circuit prediction that the Indiana Franchise Act provides no private right of action for violation of its disclosure provisions except when circumstances indicate fraud, deceit or misrepresentation. Additionally, the court applied its recently enunciated balancing test to determine whether public policy requires that a contract in violation of the Franchise Acts be declared void as against public policy and concluded that, under the factual circumstances of *Continental Basketball Ass’n*, the contract was not void.

III. PARTNERSHIPS—ATTORNEY-CLIENT RELATIONSHIP

On August 6, 1996, the Indiana Supreme Court published two opinions concerning the extent of the attorney-client relationship when an attorney represents a partnership.⁵⁷ Although these decisions do not fit squarely within the parameters of this Article, they are decisions with which all attorneys who represent partnerships should be familiar.

In *Rice v. Strunk*,⁵⁸ the court held that an attorney who represents a general partnership subject to the Uniform Partnership Act⁵⁹ “has an attorney-client relationship with each of both the partnership and each individual partner. However, to the extent that the partners agree that the partnership will be managed in a form other than by all the partners acting in aggregate, the attorney-client relationship will run to the partnership as an entity acting through its duly authorized management.”⁶⁰

In a companion case decided the same day as *Rice v. Strunk*, the supreme court addressed the attorney-client relationship in the context of a limited partnership situation. In *Bell v. Clark*,⁶¹ the court stated that as a matter of limited partnership

54. *Id.*

55. *Id.*

56. *Id.* at 141.

57. *Rice v. Strunk*, 670 N.E.2d 1280 (Ind. 1996); *Bell v. Clark*, 670 N.E.2d 1290 (Ind. 1996).

58. 670 N.E.2d 1280 (Ind. 1996).

59. IND. CODE §§ 23-4-1-1 to -43 (1993 & Supp. 1996)

60. *Rice*, 670 N.E.2d at 1288-89.

61. 670 N.E.2d 1290 (Ind. 1996).

law, the general partner in a limited partnership is responsible for the management of the partnership.⁶² Thus, “[a]pplying the principles set forth in *Rice*,” the court concluded that, in a limited partnership situation, “an attorney-client relationship [exists] only between the attorney[] and the partnership and not between the attorney[] and any individual partner.”⁶³

In light of these decisions, attorneys should review any written partnership agreement prior to accepting employment as an attorney for a partnership so that the identity of the persons to whom the attorney-client relationship extends and the scope of the attorney’s duties can be determined.

IV. CONSTRUCTION CONTRACTS—MECHANIC’S LIENS

On January 31, 1996, in *Riddle v. Newton Crane Service, Inc.*,⁶⁴ the Indiana Court of Appeals reversed the decision of a trial court and applied a narrow construction to Indiana’s mechanic’s lien statute.⁶⁵

A. *Factual Background*

Harold Riddle entered into a contract with Citadel Contracting (Citadel) for the construction of a truck service center.⁶⁶ On July 9, 1993, Citadel entered into a subcontract with Blue Jay Erectors for the placement of concrete wall panels. Thereafter, Blue Jay subcontracted with Newton Crane Service (Newton) for Newton to provide crane service to lift the concrete wall panels into place for Blue Jay.⁶⁷ On October 1, 1993, Newton moved a crane onto the job site. Using the crane, Newton performed work on the job site from October 4, 1993 through October 8, 1993.⁶⁸ The crane was then removed from the job site on October 12, 1993. On October 28, 1993, Newton moved a second crane onto the job site in order to lift wall panels on that date.⁶⁹ The second crane was removed from the job site on November 6, 1993.⁷⁰

On January 3, 1994, Newton recorded its sworn statement and notice of intention to hold mechanic’s lien against Riddle’s real estate in the Marion County Recorder’s office.⁷¹ The lien asserted a claim for \$12,420.89 and described the work done on Riddle’s property as “crane service.”⁷² Newton later filed a Complaint to Foreclose Mechanic’s Lien, and in response, Riddle filed

62. *Id.* at 1293 (citing IND. CODE § 23-16-5-3 (1993)).

63. *Id.*

64. 661 N.E.2d 6 (Ind. Ct. App. 1996), *trans. denied*.

65. *Id.*

66. *Id.* at 8.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

counterclaims alleging slander of title and abuse of process.⁷³ Following a bench trial, judgment was entered in favor of Newton on both Newton's Complaint and on Riddle's counterclaims. The trial court made special findings of fact and conclusions of law pursuant to Riddle's motion under Trial Rule 52(A).⁷⁴

Neither party disputed the trial court's findings that Newton worked on Riddle's property from October 4, 1993 through October 8, 1993, and removed the first crane on October 12, 1993.⁷⁵ The parties also did not dispute the trial court's findings that Newton used the second crane only on October 28, 1993 and removed it from the job site on November 6, 1993.⁷⁶ Riddle, however, challenged the trial court's finding that the last date that Newton provided labor and equipment under its contract was November 6, 1993, and the trial court's conclusion that Newton had timely filed its sworn statement and notice of intention to hold mechanic's lien within sixty days of completing the work.⁷⁷ Accordingly, Riddle appealed the trial court's decision, and the dispositive issue presented to the court of appeals was: at what point is a contractor's work complete so as to trigger the sixty-day period for recording a notice of intent to hold a mechanic's lien?⁷⁸

B. The Decision

According to Indiana's mechanic's lien statute, a notice of intention to hold mechanic's lien must be filed by the claimant with the county Recorder within sixty days after performing labor or furnishing materials or machinery.⁷⁹ Newton recorded its sworn statement and notice of intention to hold mechanic's lien with the Marion County Recorder on January 3, 1994,⁸⁰ fifty-eight days after Newton removed the second crane from the job site, but sixty-seven days after Newton completed lifting wall panels.⁸¹

As indicated by the court of appeals, the Indiana statute governing filing of a notice of intention to hold mechanic's lien is in derogation of the common law and its provisions must be strictly construed.⁸² Accordingly, the filing of the notice of intention to hold mechanic's lien by a subcontractor is timely only if the lien is filed within sixty days of the date when the last work was done by the subcontractor.⁸³ Importantly, "[t]he 60-day period may not be extended through

73. *Id.*

74. *Id.* at 7-8.

75. *Id.* at 8.

76. *Id.*

77. *Id.*

78. *Id.* at 7-8.

79. IND. CODE. § 32-8-3-3(a) (1993).

80. *Riddle*, 661 N.E.2d at 8.

81. *Id.*

82. *Id.* (citing *Wavetek Ind., Inc. v. K. H. Gatewood Steel Co.*, 458 N.E.2d 265 (Ind. Ct. App. 1984)).

83. *Id.* at 8-9 (citing *McCorry v. G. Cowser Const., Inc.*, 636 N.E.2d 1273, (Ind. Ct. App.),

the performance of an act incidental to the contract.”⁸⁴ Thus, the resolution of this case depends on whether removal of the second crane from the job site is considered work by Newton or considered incidental to the work performed by Newton.

Because there was no Indiana authority directly on point, the court of appeals considered similar decisions by the Michigan Court of Appeals in *Superior Steel Systems, Inc. v. Nature's Nuggets, Inc.*⁸⁵ and *Blackwell v. Bornstein*.⁸⁶ In *Blackwell*, a subcontractor returned to a job site at which he had previously worked to pick up his tools. He later claimed that the act of picking up his tools was the last work done at the site causing the period for filing a mechanic's lien to commence.⁸⁷ The Michigan Court of Appeals determined that collecting the tools was “sufficiently related to the labor and materials supplied by the subcontractor because it was an integral part of the work the subcontractor had done.”⁸⁸

However, in *Superior Steel*, the Michigan Court of Appeals reached a different conclusion. In *Superior Steel*, a subcontractor returned to a job site to pick up a concrete compactor almost one year after completing his work on the site.⁸⁹ The Michigan Court of Appeals preserved its holding in *Blackwell*, but ruled that the removal of equipment from a job site nearly one year after completing the work “was not an integral part of the work involved.”⁹⁰ The court further stated that to hold otherwise “would lead to absurd results, such as a contractor leaving a tool box or other minor piece of equipment for years after ceasing work and being able to file a timely construction lien.”⁹¹

In contrast to Michigan's liberal construction, Indiana's mechanic's lien statutes are to be narrowly construed because lien rights are in derogation of the common law.⁹² Using a narrow construction, the Indiana Court of Appeals held that Newton's notice of intention to hold mechanic's lien was not timely filed.⁹³ According to Indiana's mechanic's lien statute, “a subcontractor commences work at a job site not when it moves its equipment to the location, but when it actually begins performing the task for which it was hired.”⁹⁴ Therefore, the court of appeals held that “a subcontractor completes its work, and the 60-day period for filing a notice of intention to hold mechanic's lien commences, when the

adopted, 644 N.E.2d 550 (Ind. 1994)).

84. *Id.* at 9 (citing *Gooch v. Hiatt*, 337 N.E.2d 585, 588 (Ind. App. 1975)).

85. 435 N.W.2d 492 (Mich. App. 1989).

86. 299 N.W.2d 397 (Mich. App. 1980)

87. *Riddle*, 661 N.E.2d at 9 (citing *Blackwell*, 299 N.W.2d at 399).

88. *Id.*

89. *Id.* (citing *Superior Steel*, 435 N.E.2d at 494).

90. *Id.*

91. *Id.* (quoting *Superior Steel*, 435 N.E.2d at 494).

92. *Id.* (citing *Premier Invs. v. Suites of Am.*, 644 N.E.2d 124, 127 (Ind. 1994)).

93. *Id.*

94. *Id.* (citing *Ramsey v. Peoples Trust & Sav. Bank*, 264 N.E.2d 111 (Ind. App. 1970)).

subcontractor finishes the task for which it was hired.”⁹⁵

Applying the court’s holding to the facts in *Riddle*, the sixty-day filing period commenced when Newton completed lifting the concrete wall into place on October 28, 1993.⁹⁶ Because Newton did not file its notice of intention to hold mechanic’s lien until January 3, 1994, sixty-seven days after completing its work, Newton’s mechanic’s lien was not timely filed.⁹⁷ As such, Newton was precluded, as a matter of law, from foreclosing on its mechanic’s lien.

C. Conclusion

Indiana subcontractors were previously somewhat unclear about the tasks that qualify as work for purposes of commencing the sixty-day period for filing mechanic’s liens. In *Riddle*, the court of appeals construed Indiana’s mechanic’s lien statute narrowly and made clear the court’s view that the sixty-day period begins on the date the subcontractor finishes the task for which it was hired.

95. *Id.* at 9-10.

96. *Id.* at 10.

97. *Id.*