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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-402 / 89-04

**CONRAD AMERICAN, INC.,**

Appellee,

vs.

**POLLPETER BROTHERS, INC.,**

Appellant.

86

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Appeal from the Iowa District Court for Lee County, Gary Noneman, District Associate Judge.

Appellant appeals the district court granting of a mechanic's lien. **AFFIRMED.**

Kent Hutcheson, Fort Madison, for the defendant-appellant.

Rande A. McAllister and Robert K. Kauffman, Mt. Pleasant, for the plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

**OXBERGER, C.J.**

The defendants, Pollpeter Brothers, Inc., appeal from a district court ruling granting plaintiff, Conrad American, Inc., foreclosure on a mechanic's lien. In this equity action, our scope of review is de novo. Iowa R. App. P. 4. We affirm.

Conrad American is a manufacturer of grain bins. Dyer Agri Sales, Inc. (Dyer) is a dealer for Conrad bins.

In 1986 Dyer sold a Conrad grain bin to Pollpeter Brothers, Inc. (Pollpeter), a family farm corporation and ordered the necessary material and parts for the grain bin from Conrad American. Dyer also arranged for the necessary labor to construct the bin on Pollpeter's land. Pollpeter paid the entire purchase price to Dyer. However, Dyer failed to remit any part of the purchase payment to Conrad American. Dyer became insolvent shortly thereafter.

Conrad American then filed the present mechanic's lien action against the customer seeking to recover for materials it had supplied. The district court granted relief to Conrad American, and Pollpeter has appealed from the district court's judgment.

Pollpeter contends Conrad American was not entitled to a mechanic's lien because Pollpeter had made full payment to Dyer. Pollpeter characterizes Dyer as an agent of Conrad; it asserts that its payment to the agent should discharge its liability, and that Conrad American can now look only to Dyer for recovery.

The facts of this case do not support Pollpeter's claim that Dyer was an agent of Conrad American. Iowa Code Section 572.1(2) (1989) provides:

> "Subcontractor" shall include every person furnishing material or performing labor upon any building, erection, or other improvement, except those having contracts therefor directly with the owner, the owner's agent, or trustee.

The statute gives the right to a mechanics' lien to one who furnishes material for any building or improvement on another's property.

The Iowa Supreme Court rejected a similar contention in Des Moines Furnace & Stove Repair Co., v. Lemon, 56 N.W.2d 923, 925 (Iowa 1943). In Lemon the court held that a subcontractor was entitled to foreclose on its mechanic's lien against a property-owner after the contractor failed to pay the subcontractor, notwithstanding the property-owner's payment to the contractor, and that they had no knowledge that the subcontractor furnished any materials. The Lemon court concluded that the party furnishing the materials under a contract with, or employment by, the contractor was clearly a subcontractor under the meaning of the statute and stated:

> It furnished materials for the improvements upon defendants' properties by virtue of a contract with the defendants' (the owners') contractor. It is not a question here of whether an agency existed, but of statutory rights. To hold otherwise would destroy the plain meaning of the mechanic's lien law so far as it governs the rights of subcontractors.

Id. at 925.; see also Moffitt Building Material Co. v. U.S. Lumber and Supply Co., 255 Iowa 765, 769, 124 N.W.2d 134, 137 (1963).

In this case Pollpeter's president, Dennis Pollpeter, testified that Pollpeter entered into an agreement and signed a contract with Dyer to build a grain bin and that they had no contact with Conrad American. Dyer ordered the necessary materials for the grain bin from Conrad American. Conrad American only furnished the materials for the grain bin. Upon our review of the record we agree with the district court that Conrad American is a subcontractor to Dyer as defined in Iowa Code Section 572.1(2).

Pollpeter further contends that Conrad American should be denied rights as a subcontractor because they relied solely upon the credit of Dyer Agri Sales, Inc. He urges this reliance is evidenced by Dyer's open account with Conrad American to purchase needed materials and the personal guarantee executed by Dyer's president, Rick Dyer. We disagree.

"A lien right is not defeated because claimant relied on the credit of the principal contractor as well as upon the building." Moffitt, 255 Iowa at 769, 124 N.W.2d at 137. Furthermore, "[i]f the lien claim is filed within the time required, the owner may settle with the chief contractor only at his peril; and this without regard to whether he had knowledge of the existence of the subcontractor." Id.

The record reveals that Conrad American had considerable knowledge of Dyer's financial difficulties. During the time that Dyer was constructing Pollpeter's grain bin, Conrad American changed the nature of their relationship and placed Dyer on C.O.D. terms. Conrad American's mechanic's lien was filed timely and properly within the 60-day statutory limitation provided by Iowa Code Section 572.10. The district court stated:

> The Court specifically finds that Conrad American intended to rely both on the general credit of Dyer Agri Sales, Inc. and upon its legal rights for mechanic's liens in order to secure payment for the materials it supplied to Dyer Agri Sales for erection of bins on the property of the defendant and others.

Upon our review of the record we agree with the district court that Conrad American relied upon the credit of Dyer and its president, Rick Dyer, personally but also upon its rights under the Iowa Mechanic's Lien Statutes. We affirm the decision of the district court in all respects.

**AFFIRMED.**