FILED
JAN 30 1981
IOWA SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WESLEY BARTON CONSTRUCTION, INC., an Iowa corporation,

Plaintiff-Appellee,

vs.

DANNY J. GODDARD, JUDITH K. GODDARD, HENRY COUNTY SAVINGS BANK,

Defendant-Appellant.

Filed January 30, 1981

0-359
2-64555

Appeal from Henry District Court - David B. Hendrickson, Judge.

Defendant appeals from personal judgment in suit to foreclose mechanic's lien. AFFIRMED.

Thomas S. Reavely of Reavely & Dowell Law Firm, Mt. Pleasant, for defendant-appellant.

Gary Wiegel, Mt. Pleasant, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Defendant Judith Goddard appeals from a personal judgment in a suit to foreclose a mechanic's lien arising from construction of a new house. We affirm.

On December 1, 1975, Danny and Judith Goddard entered into a contract with plaintiff Wesley Barton Construction Company for the construction of a house. Wesley Barton, plaintiff's representative, emphasized to the Goddards that he would not build their house for a specific price. As a consequence, the parties entered a time and materials contract, and no specific price was set for the project. Barton, however, did estimate that the contract price would be roughly in the vicinity of $90,000. The Goddards furnished Barton with an incomplete set of blueprints for construction of the house. Plaintiff commenced performance. Approximately in June of 1976 Barton commented to Danny Goddard that a contract price of $100,000 to $110,000 would be more realistic than the last estimate given. Even Barton's second estimate proved too low. During construction, plaintiff billed the Goddards periodically, who responded with payments totaling $90,463.17. After February, 1977, the Goddards ceased making payments on the billings, and in April plaintiff filed a mechanic's lien. In plaintiff's action to foreclose the mechanic's lien the trial court found the Goddards to owe plaintiff $69,661.40 plus interest on the construction contract.

Because this is a case in equity, see section 572.26, The Code 1979, our review is de novo. We give weight to but are not bound by the trial court's findings of fact. Iowa R. App. P. 14(f)(7).

I. Judith bases her first contention on section 572.26, The Code 1979, which provides in part:

> An action to enforce a mechanic's lien shall be by equitable proceedings, and no other cause of action shall be joined therewith.

Plaintiff brought an action to foreclose a mechanic's lien. According to Judith, since an action to procure a personal judgment is a different cause of action from an action to enforce a mechanic's lien, the personal judgment awarded by the trial court against Judith is invalid.

We disagree that an action to procure a personal judgment is a different cause of action from an action to enforce a mechanic's lien, because the former is not a cause of action at all. A cause of action is a group of facts that give rise to one or more forms

of relief. F. James & G. Hazard, Civil Procedure § 2.9 (2d ed. 1977). It is a particular instance falling within a class of instances that the substantive law recognizes as entitling the injured party to relief, if he can prove the facts alleged. Id. An action for a personal judgment, however, is not a cause of action, but rather an action whose intended result is the imposition of a type of liability on the defendant. See Black's Law Dictionary 980 (revised 4th ed. 1968). A personal judgment is one imposing on the defendant a personal liability to pay it, and which may therefore be satisfied out of any of his property which is within the reach of process, as distinguished from one which may be satisfied only out of a particular fund or the proceeds of particular property. Id. Since plaintiff's prayer for a personal judgment in its petition was not a cause of action joined with its action to foreclose a mechanic's lien, section 572.26 did not prevent the trial court from rendering a personal judgment against the Goddards.

Many jurisdictions hold that in an action to foreclose a mechanic's lien, in addition to a judgment foreclosing the lien, a court may render a personal judgment against the lienor. 53 Am. Jur. 2d Mechanic's Lien § 417 (1970). The Iowa Supreme Court has identified itself with this line of decisions by upholding a district court's decision to render a personal judgment against a defendant in an action to foreclose a mechanic's lien. See Consolidated Construction Co. v. Begunck, 233 Iowa 463, 472, 9 N.W.2d 390, 395 (1943). In light of the above precedents and reasoning, we decline to vacate the personal judgment against Judith Goddard simply because it was sought in an action to foreclose a mechanic's lien.

II. Judith contends that the trial court erred in entering a personal judgment against her. In support of her contention Judith points out that there must be a contractual relation established between the owner of the property on which a lien is claimed and the lienor to support a personal judgment against the owner in an action for the foreclosure of the lien. 53 Am. Jur. 2d Mechanics Lien § 417 (1970). Judith argues that because there was no contractual relation between her and plaintiff that could support a personal judgment against her, we should vacate the personal judgment.

Judith's assertion that she bore no contractual relation with plaintiff is unsupported. Judith signed a written agreement with plaintiff for construction of the house. She participated in discussions leading up to the agreement. She signed a promissory note and security agreement for over $110,000 with Henry County Savings Bank for funds to be paid for the house's construction. Judith helped furnish partial

blueprints for the house's construction, helped select materials to be used in the home, viewed the construction's progress from time to time, and never complained to plaintiff about the house's construction. It is clear that plaintiff has sustained its burden of showing by the preponderance of the evidence that Judith was contractually liable to plaintiff for the cost of the house. See Iowa R. App. P. 14(f)(6).

Judith points out that Danny unilaterally instructed Barton to make several changes from the original plans in the construction of the house that substantially increased the house's cost. Judith did not learn of the changes until they were already completed. She contends that she is not contractually liable for these changes because they were made without her knowledge. Hence, according to Judith, she should not be liable under a personal judgment for the cost of the house to the extent that the judgment reflects the changes unilaterally authorized by Danny.

The record discloses that Judith abdicated the role of supervising the construction of the house. The blueprints submitted to Barton for the house's construction were incomplete. There is no evidence that Judith ever discussed with Barton progress on the house while it was under construction, whereas she was aware that Danny had several such discussions with Barton. While Judith did help select materials for the house, she did so without regard to price. When she visited the house and discovered changes made from the original plans, she raised no complaints. In construing any contract it is a court's duty to ascertain and give effect to the intention of the parties. Bjork v. Dairyland Insurance Co., 174 N.W.2d 379, 383 (Iowa 1970). The intention to assume an obligation is to be determined not alone from words used, but also from situation, acts, and conduct of the parties, and from the attending circumstances, and by the inferences which mankind would ordinarily and reasonably draw therefrom. In re Estate of McKeon, 227 Iowa 1050, 1056, 289 N.W. 915, 918 (1940). The record as a whole indicates Judith's intention to delegate to Danny her authority to control the details of the construction of their house. She therefore will not now be heard to complain about Danny's decisions. Judith's contractual liability for the construction changes made without her knowledge is predicated on the conjunction of her contractual liability for the house's construction and her tacit delegation of authority to Danny to oversee the details of construction.

Even assuming that Judith has convinced us that she is not liable for the cost of the construction changes, she has not convinced us to vacate the personal judgment

rendered against her. Plaintiff has shown itself to be owed $69,661.40 for its building the house. Judith has produced no evidence whatever as to what portion of the $69,661.40 is attributable to the changes authorized by Danny. She has thus given us no basis for reducing or vacating the personal judgment against her. See also Conley v. Warne, 236 N.W.2d 682, 687 (Iowa 1975) (plaintiff required to establish claim of damages with some reasonable certainty). Once plaintiff had sustained its burden of showing Danny and Judith liable to it for $69,661.40, the burden of proof shifted to Judith to show to what extent she was not liable for that amount. See Iowa R. Civ. P. 14(f)(5). Since Judith failed to sustain her burden, we can neither reduce nor vacate the personal judgment against her.

AFFIRMED.