FILED
MAY 20 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BUTTLER AND SONS CONSTRUCTION,

Appellee,

v.

LESTER PETERSON, VIRGINIA PETERSON, and ALAN W. FRIES,

Appellants.

Filed May 20, 1977

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2-57483

Appeal from Guthrie District Court - M. C. Herrick, Judge.

Appeal from judgment for plaintiff-subcontractor against defendants-owners based upon oral guarantee of payment. Affirmed.

Taylor, Taylor and Feilmeyer, of Guthrie Center, for appellee.

Larson, Larson and Childs, of Harlan, for appellants.

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

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CARTER, J.

This is an appeal from a judgment for the plaintiff in an equitable action joining claims for foreclosure of a mechanic's lien with claims for personal judgment against the owners. The defendants-owners assert three issues on appeal: (1) that the trial court erred by permitting improper joinder of claims; (2) that the trial court lacked jurisdiction of the subject matter on the claim for personal judgment; and (3) that the evidence was insufficient to establish a valid guaranty by the defendants-owners of the obligation of the general contractor to the plaintiff-subcontractor. We affirm the trial court.

I. Relief was denied on the petition to foreclose the mechanic's lien. Money damages were awarded on division four of the petition alleging that the defendants-owners guaranteed the obligation of the general contractor to the plaintiff-subcontractor. While the joinder of the claims involved is contrary to the provisions of section 572.26, The Code, we do not believe this requires reversal. *See* Green Bay Lumber Co. v. Miller, 98 Iowa 468, 472 (1896). Earlier motions to strike and to separate had been overruled but division four of the petition, upon which the judgment was predicated, was added by amendment subsequent to the ruling on these motions. No claim of misjoinder as to division four was advanced in the trial court and so the error, if any, has not been preserved.

II. The defendants are not correct in asserting that the misjoinder claims go to the subject matter jurisdiction of the court. As stated in Consolidated Construction Co. v. Begunck, 233 Iowa 463, 472, 9 N.W.2d 390 (1943):

> "Forms of action may differ and separate dockets are kept, but these are merely for convenience and expediation in the administration of justice. If the party believes that the cause is wrongly docketed, his remedy is not an attack upon jurisdiction. . . but to transfer or move to the proper docket. . . ."

We find no merit in this assignment of error.

III. Our examination of the record discloses ample evidence that the plaintiff was concerned about the financial stability of the general contractor and accordingly sought and received assurance from the defendants-owners, prior to commencing work, that the owners would assure payment of his bill. Plaintiff's subsequent conferring of benefits to the owners in reliance upon this assurance is adequate consideration for enforcing the agreement of guaranty as found by the trial court.

AFFIRMED.