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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DEAN PLOWMAN d/b/a/ PLOWMAN TRENCHING,

Plaintiff-Appellee,

vs.

DR. RALPH DORNER,

Defendant-Appellant.

Filed September 25, 1984

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4-300
83-1551

Appeal from the Iowa District Court for Guthrie County—Harry Perkins, Jr., Judge.

Defendant appeals from judgment for plaintiff in an action to foreclose on a mechanic's lien. AFFIRMED.

R. E. Feilmeyer of Taylor, Taylor, Feilmeyer, Miller & Dinkla, Guthrie Center, for defendant-appellant.

Rex E. Piercy of Levis & Levis, Audubon, for plaintiff-appellee.

Considered by Oxberger, C.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

Defendant, Dr. Ralph Dorner, appeals from judgment for plaintiff in an action to foreclose on a mechanic's lien, asserting: (1) that the mechanic's lien at issue was an amendment of a prior lien and failed to comply with statutory requirements concerning approval of court and listing of the property owner; (2) that the evidence was insufficient to establish either existence or performance of a contract; (3) that the evidence was insufficient to either support the trial court's figure of $2,200 as the amount of plaintiff's damages or show that such a figure was a fair and reasonable charge for the work performed; and (4) that the evidence relating to defendant's counterclaim was sufficient to establish breach of express and/or implied warranties and that he was therefore entitled to damages measured by cost of repair. We affirm.

In 1976, plaintiff, Dean Plowman, was hired by Dorner's farm manager to construct a dam on Dorner's farm. The dam was to be part of an erosion control project, and therefore the Soil Conservation Service (S.C.S.) paid part of the construction costs. An S.C.S. employee periodically inspected the dam during construction. When the dam was completed, the S.C.S. representative certified that it met specifications.

Although a pond formed behind the dam, the dam leaked and the water never reached its intended level. Dorner or his farm manager informed the S.C.S. office of the leakage. The S.C.S. stated that some dams take a few years to seal, and that Dorner should be patient.

The dam had not sealed by 1980, so Plowman was engaged to do repair work on the dam, even though it served its purpose for soil conservation. There is no evidence that Plowman admitted responsibility for the leakage. Dorner contends, however, that Plowman agreed to do the repair work for free. Plowman argues that Dorner agreed to pay Plowman the "cost" of the work. The trial court found that Dorner agreed to pay Plowman.

Plowman repaired the north end of the dam and submitted a bill to Dorner. Because the dam still leaked,[1] Dorner refused to pay. Plowman then filed a mechanic's lien on July 16, 1981. Apparently that lien contained a scrivener's error, so Plowman filed a second mechanic's lien on October 13, 1981 to correct the error. The second lien did not contain Dorner's mailing address as required by statute. However, exhibit "A", attached to that lien, did contain Dorner's address.

Plowman brought an action to foreclose the second mechanic's lien and Dorner filed a counterclaim alleging that Plowman had breached express and implied warranties when originally constructing the dam. Dorner also argued that the mechanic's lien was invalid because of failure to comply with the statute.

A trial was held, and the trial court found for Plowman and against Dorner. Dorner has appealed.

Because an action to enforce a mechanic's lien is in equity, our review is de novo. Ringland-Johnson-Crowley Co. v. First Central Service Corp., 255 N.W.2d 149, 151 (Iowa 1977). Although we are not bound by the trial court's fact findings, we give weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

## I. The Mechanic's Lien

Dorner asserts the mechanic's lien is invalid for two reasons. First, Dorner claims the lien did not contain Dorner's mailing address as required by Iowa Code section 572.8 (1981); second, Dorner claims the filing of the mechanic's lien on October 13, 1981 constituted an amendment to the prior lien and that the amendment was done without leave of court as required by Iowa Code section 572.26 (1981). We reject the contention that the mechanic's lien is invalid.

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[1] Evidence at trial showed the leak was at the south end of the dam, not the north end where Plowman did repair work.

Undisputedly, the mechanic's lien filed on October 13, 1981 did not contain Dorner's mailing address. Thus, that lien did not comply with section 572.8 of the Iowa Code (1981), which states the procedure for perfecting a lien. The code, however, is silent regarding the effect of such noncompliance with the perfection requirements. Nor is there any case law directly on point. Nonetheless, the code and case law do provide us with some guidance.

Section 572.2, Iowa Code (1981), states in part:

> Every person who shall . . . perform any labor upon any . . . land for improvement . . . by virtue of a contract with the owner . . . shall have a lien upon such . . . improvement . . . (emphasis added).

The supreme court has also stated, "[T]he mechanic's lien arises upon furnishing of labor or material; not upon its filing. If lienable labor or material was furnished on the project . . . there was at least one mechanic's lien in existence, despite the fact that no lien statement had been filed." Northwestern National Bank v. Metro Center, Inc., 303 N.W.2d 395, 398 (Iowa 1981). We therefore conclude that an improper perfection does not by itself make the mechanic's lien invalid where there is substantial compliance, as in this case.

Because section 572.24 of the Iowa Code (1981) states an action on a mechanic's lien may begin "after said lien is perfected," we must consider whether Plowman's noncompliance with the perfection requirements bars Plowman's foreclosure action. We conclude that it does not. Our conclusion is guided by the statements of the Iowa Supreme Court. In Capitol City Drywall Corp. v. C. G. Smith Construction Co., the court stated that "the mechanic's lien statutes are to be liberally construed to promote their objects and assist the parties in obtaining justice." 270 N.W.2d 608, 611 (Iowa 1978) (citing Gollehon, Schemmer & Associates, Inc. v. Fairway-Bettendorf Associates, 268 N.W.2d 200, 201 (Iowa 1978)). The court has also stated that "[t]he mechanic's lien statute should not be so construed as to defeat its obvious purpose and intention, where there is a

reasonable and substantial compliance with its provisions . . . ." Moffit Building Material Co. v. U. S. Lumber and Supply Co., 255 Iowa 765, 770, 124 N.W.2d 134, 137 (1963) (quoting Bernstein v. Alcorn, 194 Iowa 1109, 1113, 190 N.W. 975, 976 (1922)). We believe that Plowman substantially complied with the provisions of section 572.8 because the exhibit attached to the mechanic's lien contained Dorner's mailing address.

We also conclude that the filing of the second mechanic's lien to correct the first lien filed has no effect on Plowman's right to maintain this action. We do not decide whether the second lien filed was an amendment within the meaning of section 572.26 of the Iowa Code (1981). Rather, we find that the lack of any prejudice to Dorner makes maintenance of this action equitable. We therefore affirm the trial court's decision to consider the merits of this case.

**II. Proof of the Contract and Performance**

A mechanic relies upon a contract express or implied and must show such a contract in order to entitle him to a lien. Society Linnea v. Wilbois, 253 Iowa 953, 959, 113 N.W.2d 603, 606 (1962). Dorner contends that Plowman did not prove either that a contract existed or that Plowman performed the contract if it did exist. Actually, neither party disputes that there was an agreement that Plowman do repair work on the dam. The dispute is about the precise terms of the agreement. Dorner contends Plowman agreed to stop the dam from leaking for no charge. Plowman argues that the agreement was to recore a portion of the dam, with Dorner being charged for Plowman's costs. These are factual issues that the trial court decided in favor of Plowman. We defer to the trial court's findings. Our reasoning for doing so was expressed long ago by the supreme court:

> [W]hile our review is de novo, we must give weight to the trial court's findings. The wisdom of that rule was never more applicable. As in most cases of its kind, this one involves almost entirely questions of fact and credibility, and the trial court with the witnesses before it was in a much better position to decide these questions than are we with only the exhibits and the cold record to aid us.

A & R Concrete and Construction Co. v. Braklow, 251 Iowa 1067, 1071, 103 N.W.2d 89, 91 (1960).

### III. Amount of the Lien.

After determining that the contract was to reimburse Plowman for his costs in repairing the dam, the trial court found that Plowman's costs were $2,200. Dorner argues that the evidence is insufficient to support that fact finding. His argument, however, is without merit.

The evidence shows Plowman billed Dorner over $3,000 for the repair work. The evidence also shows that bill included a markup for profit. Since the contract price did not include profit, the trial court correctly reduced the amount to a level that represented only Plowman's actual costs. We defer to the trial court's fact findings, especially since Dorner did not even attempt to point out any specific error in the amount awarded.

### IV. Dorner's Counterclaim

Dorner's counterclaim alleged that Plowman breached express and implied warranties when originally constructing the dam. After examining the record we agree with the trial court that Plowman made no express warranty that the dam would not leak. Because the dam was inspected and approved by the S.C.S., and because the dam serves its intended purpose of soil conservation, we also defer to the trial court's finding that Plowman did not breach implied warranties of good workmanship or fitness.

AFFIRMED.

Sackett, J., concurs; Oxberger, C.J., dissents.