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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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M.Z. DAVIS,INC,.)
Plaintiff-Appellee,)
vs.)
WAL-MART PROPERTIES, INC., et.al.) 8-565 / 88-132
Defendants-Appellants.)

Appeal from the Iowa District Court for Henry County (No. CE1000-0286), Robert Bates, Judge.

Defendant appeals from trial court's order foreclosing a mechanic's lien. **REVERSED.**

Edwin F. Kelley, of Kelley & Morrissey, Fairfield, and Cynthia Weber Scherb, of Lathrop, Koontz & Norquist, Kansas City, Missouri, for defendants-appellants Wal-Mart Properties, Inc., Bucon Inc., St. Paul Fire & Marine Insurance Co.

Timothy D. Roberts, of Anderson & Roberts, Burlington, for plaintiff-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

We deal with the issue of foreclosure of a subcontractor's mechanic's lien. This suit involves a petition to establish and foreclose a mechanics lien by plaintiff-appellee M.Z. Davis, Inc. on property owned by defendant-appellant Wal-Mart Properties, Inc., in Mt. Pleasant, Iowa. The case was tried to the court and judgment in the amount of $37,283 plus interest was entered for Davis on one lien, and two other liens were ordered discharged and released. Davis was awarded attorney fees in the amount of $8,400 pursuant to Iowa Code section 572.32. Wal-Mart Properties, Inc., Bucon, Inc., St. Paul Fire & Marine Insurance Co., and Commercial National Bank, defendants-appellants herein appeal from the judgment for Davis in the amount of $37,283 and interest thereon and from the award of attorney fees.

This case evolved out of the construction of a central warehouse facility in Mt. Pleasant for Wal-Mart. Wal-Mart contracted with Bucon, Inc., a wholly-owned subsidiary of Butler Manufacturing Company for the construction work. Bucon, in turn, contracted a portion of its work to J.L. Parsons Corporation, which subcontracted with A.J. Wenzl. Finally, Wenzl entered into an oral agreement with Davis, under which Davis would supply certain cranes and crane operators needed for the construction.

The contract between Parsons and Wenzl was terminated by Parsons on October 5, 1984, due to default under the contract terms by Wenzl. Wenzl had withdrawn from the job site on September 22, 1984. Following the bankruptcies of Wenzl and Wenzl's bonding company, Davis filed a mechanic's lien on November 29, 1984, against Wal-Mart's property in the amount of $37,283.

Pursuant to the terms of its contract with Wal-Mart, Bucon was required and given authority to keep the Wal-Mart property free from all mechanic's liens arising out of the construction work. Parsons was also obligated under the terms of its contract with Bucon to keep the property free from all mechanic's liens arising out of the construction work. On December 13, 1984, Wal-Mart demanded Bucon defend and indemnify it against the Davis mechanic's lien. On February 12, 1985, Bucon demanded Parsons cause the lien to be removed from the premises. On February 18, 1985, Parsons made demand on Davis, pursuant to Iowa Code section 572.28, that Davis commence suit on the November 19, 1984, lien within thirty days. Davis did not commence suit within thirty days.

On May 28, 1985, Davis filed a second mechanic's lien statement asserting a claim for $350 for work allegedly performed April 16, 1985 on the Wal-Mart project. On June 10, 1985, Davis filed a third statement asserting it to be an "amendment" of the May 28, 1985 lien. The case was

tried to the court. The trial court determined notice given by Parsons was not effective because Parsons was not the agent of Wal-Mart; thus, the court held Davis was entitled to recover on the first lien. The court dismissed the amended lien.

Defendants appeal contending the trial court was not correct in its finding the notice given by Parsons was not effective because Parsons was not the agent of Wal-Mart. We agree. We reverse the order foreclosing the lien and taxing attorney fees.

Our review is de novo. Iowa Code section 572.28 provides:

> [u]pon the written demand of the owner, his agent, or contractor, served on the lienholder requiring him to commence action to enforce his lien, such action shall be commenced within thirty days thereafter, or the lien and all benefits derived therefrom shall be forfeited.

This section allows the owner to have the validity of the lien decided and the cloud lifted from his property promptly. Woodruff & Son v. Rhoton, 251 Iowa 550, 101 N.W.2d 720, 723 (1960).

Parsons was appointed by Bucon to perform construction work undertaken by Bucon for Wal-Mart. Under the terms of its contract with Wal-Mart, Bucon was primarily responsible for the conduct of any subcontractors, including Parsons.

Where an agent is authorized to appoint a subagent, or the appointment is ratified by the principal, the principal is bound by the acts of the subagent to the same extent as

if the acts had been performed by the agent. 3 Am. Jur. 2d Agency § 163 (1986). A subagent, in performing acts authorized by the appointing agent, affects the relations of the principal to third persons as fully as if the appointing agent had done the acts. Restatement (Second) of Agency § 5 comment d. Where the agent is authorized to appoint the subagent, a principal/agent relationship exists between the principal and the subagent. Guelick v. National State Bank, 56 Iowa 434, 9 N.W. 328, 329 (1881); see also 3 Am. Jur. 2d Agency § 7 (1986); Restatement (Second) of Agency § 5 comment b. Authority to appoint a subagent can be applied from the nature of the business in connection with which the agent was appointed. See Dickerson v. Young, 332 N.W.2d 93, 104-05 (Iowa 1983).

In A.E. Shorthill Co. v. Aetna Indemn. Co., 124 N.W. 613, 617 (Iowa 1910), the court found an owner who hires a contractor gives authority to procure needed labor and materials. The language of the contract between Wal-Mart and Bucon contemplated subagents would be employed by Bucon. Thus, Bucon had authority, both express and implied, to appoint Parsons as subagent and to delegate to Parsons the duties and authority Wal-Mart had given Bucon. Because of this authority, a principal/agent relationship arose between Wal-Mart and Parsons. When Parsons made written demand on Davis to file suit, Parsons was acting as agent for Wal-Mart; thus the demand was as effective as if

it had been made by Wal-Mart or by Bucon, and Davis lost its right to foreclose on the lien by its failure to file suit within thirty days.

We reverse the order foreclosing the lien. We reverse the order granting plaintiff attorney fees because plaintiff's action was not successful. See Iowa Code § 572.32.

REVERSED.