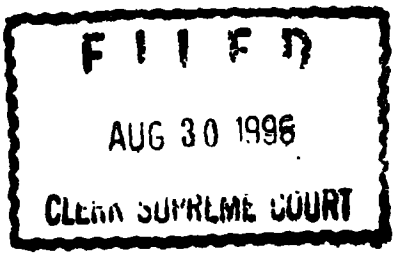
IN THE COURT OF APPEALS OF IOWA

No. 6-131 / 95-106



MIDWEST L & I, INC.,

Plaintiff-Appellee,

vs.

CHEDDAR'S CASUAL CAFE and PHAEDRA RESTAURANT CORP. d/b/a CHEDDAR'S CASUAL CAFE,

Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Cheddar's Casual Cafe challenges the order granting Midwest's petition for money due on a landscaping contract. **AFFIRMED.**

Larry L. Miller, Des Moines, for appellants.

Frederick B. Anderson of Wiggins, Anderson & Conger, P.C., West Des Moines, for appellee.

Considered by Sackett, C.J., Habhab, and Huitink, JJ.

PER CURIAM

This is an appeal by defendant claiming the district court should not have found for plaintiff in its action for money due on a landscaping contract. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In the fall of 1990, Midwest L & I, Inc., entered into a contract with Phaedra Restaurant Corporation to landscape the area around Cheddar's Casual Cafe in Clive. Midwest completed most of the work in November 1990 except for a few items which were to be completed in the spring. Cheddar's paid the full amount due on the contract, $28,636.

In the spring of 1991, Cheddar's requested certain changes and additions. Midwest completed its original obligations and made the requested changes. It requested the payment of $6,106 for the work performed which was not part of the original contract. Cheddar's refused to pay this bill. Finance charges were added which brought the amount of the bill to $8,324.

Midwest filed an action seeking payment for its work. Cheddar's claimed the work had not been performed in a satisfactory manner. The district court found for Midwest and entered judgment against Cheddar's for $8,324. Defendant's post-trial motions were denied. Cheddar's has appealed.

I. Cheddar's claims the district court erred by denying its motion to continue. About five days prior to trial, Cheddar's requested a continuance based on its claim no representative of the company would be able to be present at the trial. We note

the trial date had been set for about five months, and this should have allowed defendants to arrange to have a company representative present at the trial. We find no abuse of discretion in the district court's refusal to grant a continuance.

II. Cheddar's claims the district court erred by finding Midwest completed its performance under the contract. It states the work had not been completed in a good and workmanlike manner, and thus, could not be considered completed. It also claims the additional work was actually work which should have been completed under the original contract.

The defendant has the burden of showing any defects or incompletions in the work of the contractor. *Moore Builder & Contractor, Inc. v. Hoffman*, 409 N.W.2d 191, 194 (Iowa App. 1987). Cheddar's presented no evidence showing specifically what it considered defective or incomplete. We note it made no formal complaints to Midwest. We affirm the district court's conclusion that Cheddar's failed to meet its burden of showing defects or incompletions.

III. Cheddar's contends there was insufficient evidence to support the inclusion of finance charges in the award of damages. Iowa Code section 535.11(1) provides that a creditor may charge a finance charge on unpaid balances if it gives notice. Cheddar's states it did not receive notice a finance charge would be imposed.

The bills sent to Cheddar's each month for the unpaid balance included the finance charge for that month. We find Cheddar's had notice a finance charge was

being imposed. We affirm the judgment against Cheddar's for $8,324, which included the finance charge.

We affirm the district court on each issue raised in this appeal. Costs of this appeal are assessed to defendant.

AFFIRMED.