IN THE COURT OF APPEALS OF IOWA

No. 7-276 / 96-0685

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BRICE ELECTRIC, INC.,

Plaintiff,

vs.

CHIEKO OCHIAI and SHUKICHI OCHIAI d/b/a THE MIKADO LTD n/k/a TOKYO, INC.; AMERICAN STATE BANK, AMES, IOWA n/k/a FIRST AMERICAN BANK; HOMESTEADER CORPORATION; and MECHANICAL COMFORT, INC.,

Defendants.

FILED
JUL 30 1997
CLERK SUPREME COURT

HOMESTEADER CORPORATION,

Cross-Claimant-Appellant,

vs.

CHIEKO OCHIAI and SHUKICHI OCHIAI d/b/a THE MIKADO LTD. n/k/a TOKYO, INC.; AMERICAN STATE BANK, AMES, IOWA n/k/a FIRST AMERICAN BANK; MECHANICAL COMFORT, INC.; and STENBERG CONCRETE CONSTRUCTION, INC.,

Defendants to Cross-Claim-Appellees.

Appeal from the Iowa District Court for Story County, Carl D. Baker, Judge.

Homesteader Corporation appeals from a district court order refusing to foreclose on its mechanic's lien. **AFFIRMED.**

Todd M. Boothroyd and Barry J. Nadler of Newbrough, Johnston, Brewer, Maddux & Nadler, Ames, for appellant.

David J. Kaniuk of Clark & Hastings, Ames, for appellees.

Considered by Sackett, P.J., Huitink, J., and Hayden, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

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PER CURIAM.

Homesteader Corporation appeals following the trial court's refusal to foreclose its mechanic's lien for work done on a restaurant building owned by Chieko and Shukichi Ochiai.[1]

Chieko and Shukichi Ochiai made an agreement with Anne Richards to procure renovation of a building located on real estate they owned in Ames, Iowa. The building would be a restaurant called The Mikado. Neither the Ochiais nor Richards had experience in commercial construction. The Ochiais contracted with Homesteader Corporation through its president Louis Guay to do part of the renovation. Guay estimated the work Homesteader would do would cost $47,688. Homesteader did work on the roof trusses and beams of the existing structure. There were a number of change orders during the project. Homesteader did the changes ordered charging for time and materials.

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[1] This case, resulting from the work of many persons on the Ochiais' property, began on January 25, 1995, when Brice Electric, Inc., filed a petition to foreclose its mechanic's lien against the Ochiais. American State Bank, Homesteader Corporation, and Mechanical Comfort, Inc. were named as defendants to establish the priority of the respective liens. Homesteader then filed an answer and a cross-claim seeking to foreclose its mechanic's lien and establish lien priorities. The Ochiais filed an answer to the cross-claim and later was allowed to amend their answer to the cross-claim to assert a counterclaim against Homesteader for breach of warranty. The Brice Electric foreclosure petition was subsequently severed from the Homesteader petition, and the Brice Electric case was tried and resolved.

Homesteader periodically submitted bills to the Ochiais or Richards and received payment. In February 1994, the Ochiais terminated the architect. Guay continued to work on the building.

On June 30, 1994, Guay submitted an invoice which the Ochiais refused to pay because they claimed Guay was making too many mistakes. The invoice was in the amount of $14,628, including $2675 for work described as "finish roof, plus much additional broken siding, twisted beams, painting, and straightening," and a $5000 addendum for "further charges not previously billed," including assessments for work stoppages and tools loaned to "unqualified personnel." Attempts to settle the dispute failed and Homesteader filed a mechanic's lien in the amount of $14,628 and filed a petition to enforce it.

The district court, following a trial, dismissed the petition to foreclose the lien.

Homesteader on appeal contends the district court (1) incorrectly relied on testimony of experts who did not know what work on the project was done by Homesteader; (2) incorrectly found Homesteader lacked good faith in seeking additional payment in its final billing; and (3) incorrectly admitted testimony concerning prior compromise discussions between the parties.

This is an action to enforce a mechanic's lien. We review de novo. Iowa Code § 572.26 (1995); *Giese Constr. Inc. v. Randa*, 524 N.W.2d 427, 430 (Iowa App. 1994).

Homesteader contends there was no evidence to support the trial court's finding their work did not meet industry standards. They contend the expert the trial court relied on did not know what work Homesteader performed on the building.

Homesteader further contends the trial court incorrectly found they lacked good faith in concluding they were not entitled to additional money.

The burden of proof is upon Homesteader, the mechanic's lien claimant. *Ringland-Johnson-Crowley Co. v. First Cent. Serv. Corp.*, 255 N.W.2d 149, 151 (Iowa 1977). To be entitled to a mechanic's lien, there must be an express contract or such a state of facts as will give rise to an implied contract. *Id.* If there is no express agreement as to the amount of compensation to be paid, the law implies a promise to pay a reasonable compensation. *Olberding Constr. Co. v. Ruden*, 243 N.W.2d 872, 875 (Iowa 1976).

Homesteader's next contention is that the trial court improperly admitted testimony of Larry Whitham concerning offers of compromise. At trial, Whitham was allowed to testify, over Homesteader's objection, that he met with Homesteader on the Ochiais' behalf to discuss Homesteader's bill and Homesteader made an offer to accept less than the full amount of the bill.

On our de novo review, we do not consider this testimony of an offer of compromise in our review of the evidence. Offers to compromise are generally not admissible. *See Miller v. Component Homes, Inc.*, 356 N.W.2d 213, 215 (Iowa 1984)

The court concluded due to the lack of good faith and the testimony as to Guay's poor workmanship, Homesteader was not entitled to any sums above those already paid. On our review, we find no reason to disagree with the trial court's finding on these issues. We affirm.

AFFIRMED.