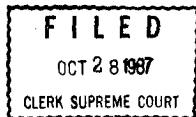


IN THE COURT OF APPEALS OF IOWA



CLARA C. BIRTWISTLE, ROBERT
LINDERMAN AND LINDA LINDERMAN,

Plaintiffs-Appellees,

vs.

NORDAAS AMERICAN HOMES CO.,

Defendant-Appellant,

JAMES SMITH and RALPH E. KOFOOT,
a/k/a PETE KOFOOT, d/b/a S & K
BUILDERS,

Defendants.

Filed October 28, 1987

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7-282
86-1508

Appeal from the Iowa District Court for Howard County (13523), James
L. Beeghly, Judge.

Defendant Nordaas American Homes Co. appeals the ruling of the trial
court finding them twenty-five percent at fault for fire damage to plaintiffs'
house. Plaintiffs cross-appeal. **AFFIRMED.**

Donald H. Gloe of Miller, Pearson, Goe, Burns, Betty & Cowie, Decorah,
for defendnat-appellant/cross-appeallee.

John T. McCoy of Lindeman & Yagla, Waterloo, for
plaintiffs-appellees/cross-appellants.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ. Snell, J., takes
no part.

HAYDEN, J.

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Defendant, Nordaas American Homes Co. (Nordaas), appeals the ruling of the trial court finding them twenty-five percent at fault for fire damage to the home of the plaintiffs, Clara Birtwistle and Robert and Linda Linderman. *The plaintiffs cross-appeal the ruling.*

On January 18, 1977, Clara Birtwistle entered into a written contract with Nordaas for the construction of a new house on her farmland. Throughout the discussions that culminated in this contract, Ms. Birtwistle was represented by her daughter and son-in-law, Linda and Robert Linderman. The contract called for Nordaas to provide construction *blueprints and building instructions*, and to be responsible for construction of the wood frame of the house. It is undisputed the plaintiffs were to independently contract the excavation, foundation, electrical, plumbing, heating, landscaping, chimney, fireplaces, and interior finish work.

On March 22, 1977, Nordaas subcontracted the carpentry work to S & K Builders, a joint venture between James Smith and Pete Kofoot. Thereafter, the plaintiffs entered into a separate contract with S & K Builders to do the *interior finish work* and to construct the chimney and two fireplaces.

The house was completed in late 1977 and the plaintiffs moved in. On December 31, 1980, a fire occurred in the home, causing extensive damage. While the house was undergoing repair, a second fire occurred in February 1981. Both fires were caused by faulty construction and installation of the first floor *fireplace*.

In January 1984, the plaintiffs brought the present suit, alleging negligence and breach of implied and express warranties, against Nordaas, James Smith, and Pete Kofoot. Prior to trial, the claim against Kofoot was discharged in bankruptcy proceedings, and the plaintiffs settled with Smith for \$2,500 after

Smith threatened to file for bankruptcy. Kofoot remained as a nominal party for the purpose of assessing comparative negligence.

The trial court concluded Nordaas had the duty to coordinate the efforts between the carpentry subcontractor and the fireplace contractor; the duty to be informed of the fireplace design selected by the plaintiffs, so adequate blueprints or construction plans showing the proper dimensions for the rough opening of the fireplace could be prepared; and the duty to properly frame the fireplace opening, either by providing proper supervision in construction of the opening or by providing adequate plans. The court found no breach of warranties.

The trial court found Nordaas had negligently breached the aforementioned duties and found this negligence constituted twenty-five percent of the total negligence. The court found the negligence of S & K Builders to constitute sixty-five percent of the whole, and plaintiffs' negligent selection of a contractor for construction of the fireplace constituted ten percent of the whole. The court concluded plaintiffs' settlement with James Smith, and dismissal against him, did not exonerate Nordaas from its own wrongful acts, though it exonerated Nordaas from any wrongful acts of S & K Builders as independent contractors for construction of the fireplace and chimney. However, the court concluded to the extent S & K Builders undertook responsibilities of Nordaas (under its contract with the plaintiffs) that were not included in the contract between Nordaas and S & K Builders, S & K Builders was acting as agent for Nordaas.

On appeal, Nordaas asserts its contract with the plaintiffs did not create a duty to coordinate efforts between itself and the fireplace contractor. Even if the contract created such a duty, Nordaas asserts it could delegate that duty to its subcontractor, S & K Builders. And since the action against Smith was dismissed, Nordaas cannot be found vicariously liable. Nordaas similarly asserts

the duty to frame the fireplace opening could be delegated. As a corollary to these assertions, Nordaas contends the trial court erred in finding S & K Builders was its agent under the circumstances discussed above. Nordaas also contends the amount of the plaintiffs' personal property damages was not properly proved. We address the assertions of Nordaas in the order presented, but reserve our discussion regarding damages until we have addressed the plaintiffs' contentions raised in their cross-appeal.

Nordaas asserts its standardized contract with the plaintiffs did not create a duty to coordinate efforts between itself and the fireplace contractor. In construing and applying a standardized contract, we seek to effectuate the reasonable expectations of the average member of the public who accepts the contract. See C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169, 172 (Iowa 1975). In this case, Nordaas was to provide construction blueprints and building instructions, and was to erect the wooden frame of the house, around which the rest of the house would be constructed. Nordaas was to be responsible for all measurements required for this purpose. In that regard, it was reasonable for the plaintiffs to expect these contractual provisions required Nordaas to coordinate its efforts, specifically its responsibility to provide a frame opening for the fireplace, with the efforts of the fireplace contractor.

Nordaas asserts the location of the fireplace was changed, and it was not notified directly, nullifies this duty. We disagree. It was reasonable to expect some change in the building plans would be made and the subcontractor of Nordaas, S & K Builders, was notified. Nordaas asserts it nevertheless may not be held vicariously liable for the negligence of S & K Builders in performing duties delegated by Nordaas. This is generally true. Farris v. General Growth Development Corp., 354 N.W.2d 251, 253 (Iowa App. 1984). However, Nordaas is responsible for acts of its subcontractor that affect results which it is under

a duty to achieve. Cf. Elliott Consol. School Dist. v. Busboom, 227 F. Supp. 858, 862 (D.C. Iowa 1964) (general contractor responsible to an owner for acts of his subcontractor). Nordaas had a duty to properly frame the fireplace opening and this duty was breached. That this breach occurred partially as a result of the negligence of Nordaas's subcontractor, S & K Builders, does not absolve Nordaas of liability.

Plaintiffs assert Nordaas owed them not only the duties discussed above, but also a duty to warn them of the dangers surrounding fireplace construction, a duty to take reasonable precautions regarding fireplace construction, and an implied warranty to provide a safe structure. In essence, the plaintiffs contend the actions of Nordaas should be deemed those of a general contractor, although it is conceded that, strictly speaking, Nordaas was not a general contractor under the contract. Plaintiffs urge us to find the contractual language exonerating Nordaas from the duties of a general contractor unconscionable.

One of the elements of an implied warranty of workmanlike quality is the house at issue be purchased from a builder-vendor, who had constructed it for the purpose of sale. Kirk v. Ridgway, 373 N.W.2d 491, 496 (Iowa 1985). The trial court concluded Nordaas was not a builder-vendor, and we agree. Although we found the analogy of general contractor-subcontractor relations valuable in the context of determining the validity of Nordaas's vicarious liability defense, we do not believe it can be stretched so as to find Nordaas was actually a general contractor. The responsibilities of Nordaas under its contract with plaintiffs were clearly limited. We have not hesitated to enforce those obligations, but we decline to expand them. Nor do we find this result unconscionable. As such, we conclude Nordaas was not liable for all of the damages incurred by the plaintiffs.

The amount of damages are primarily for the factfinder to determine; therefore, we examine the evidence in the light most favorable to the factfinder's determination. Beeck v. Aquaslide 'N' Dive Corp., 350 N.W.2d 149, 164 (Iowa 1984). We will uphold recovery if the record discloses a reasonable basis upon which the amount determined by the factfinder can be inferred or approximated. Westway Trading Corp. v. River Terminal Corp., 314 N.W.2d 398, 403 (Iowa 1982). An owner of personal property is qualified and competent to testify as to the value of property. Beneficial Finance Co. v. Reed, 212 N.W.2d 454, 459 (Iowa 1973).

In this case, the plaintiffs submitted a twenty-nine page itemized list of personal property damages to Nordaas's attorney approximately two years before trial. This list contained values assigned by the plaintiffs to those damaged items. Apparently at no time prior to trial did Nordaas challenge any of these values. Nor at trial did Nordaas present evidence refuting these values. We conclude there is substantial evidence in the record to support the award of personal property damages made by the trial court.

The final issue on appeal concerns the defective chimney constructed by S & K Builders. The plaintiffs asserted Nordaas should also be held liable for these damages under the implied warranty discussed above. Since we determined the implied warranty does not apply in this case, we conclude Nordaas is not liable for the defective chimney.

AFFIRMED.