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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GARY STINEMAN,	)	
Plaintiff-Appellee, Cross-Appellant,	)	Filed February 24, 1981
	)	0-417
vs.		2-64906
	)	
DAVID L. THARP, ET AL	)	
Defendant-Appellants.	)	

Appeal from Louisa District Court - D. B. Hendrickson, Judge.

Defendants appeal and plaintiff cross-appeals trial court's decisions on granting credits for allegedly defective work by plaintiff in an action to foreclose a mechanic's lien. - AFFIRMED.

William Matthews, of Hicklin & Matthews, Wapello, for defendant-appellants

Robert A. Engberg, of Pryor, Riley, Jones & Aspelmeier, Burlington for plaintiff-appellee-cross-appellant.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant-homeowners, David and Bernice Tharp, appeal from the trial court's denial of credits for allegedly defective work done by plaintiff in an action to foreclose a mechanic's lien. Plaintiff cross-appeals trial court's award to defendant of a $420 credit for a defectively installed picture window. We affirm.

Plaintiff, Gary Stineman, entered into a time and materials agreement with defendant to build a new addition onto defendant's house. Plaintiff submitted to defendant an estimate of $16,194 for the job. When plaintiff had completed ninety per cent of the job, he submitted to defendants a bill of $14,688.82. At that time plaintiff estimated that it would cost defendant another $4,000 to complete the job. Defendants then refused to pay plaintiff, and plaintiff discontinued work and filed a mechanic's lien for $6,360. The lien is less than the amount billed because defendant directly paid the lumber yard for materials used by plaintiff in construction. In plaintiff's action the trial court foreclosed the lien and rendered judgment against defendants in the amount of $5,940 plus interest and costs. The judgment reflects a $420 credit awarded to defendants for a defectively installed picture window.

Our review of this equity case is de novo. Olberding Construction Co., Inc. v. Ruden, 243 N.W.2d 872, 875 (Iowa 1976); Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). This case involves quite largely fact questions that the trial court was in a better position than we to decide. This is particularly true since the trial court looked at the construction work. See Huffman v. Hill, 245 Iowa 935, 938, 65 N.W.2d 205, 206 (1954). If we give the trial court's findings the weight to which they are entitled, we think the decree should be affirmed. See id.

The evidence establishes the following deficiencies in the construction work:

1. The floor joists were not bridged.

2. The floor joists needed to be supported by metal hangers.

3. The cement basement walls required the application of cement grouting.

4. Gaps between wall siding and the closing strip, as well as between the roof edging strip and the fascia, needed caulking to form an airtight fit.

5. Additional support needed to be placed along the floor joist that supported a partition wall above it.

The cost of curing the deficiencies is $250. The trial court reasoned that these deficiencies were due to plaintiff's failure to complete his work rather than flawed workmanship. Since plaintiff was unable to complete the above work because of the premature termination of his services, the trial court properly denied defendants a $250 credit for these deficiencies.

Defendants contend the roof on the new addition is not level and that they therefore should receive a credit of $2,100. Defendant's contention is not supported by a preponderance of the evidence. Iowa R. App. P. 14(f)(5) and (6). Keith E. Wilson, a structural engineer, testified that his visual inspection of the roof revealed that it is not level. However, Wilson also testified that there is nothing structurally wrong with the roof. Richard Nelson, a carpenter, testified that when he saw the roof it did not appear to be out of level. Nelson's testimony indicates that putting a new addition on an older structure may produce an optical illusion that will lead an observer to believe the new roof is out of level when it is not. Neither defendants nor any of their witnesses tested the new roof by putting a level on the roof's ridge line. Plaintiff testified that he put a level on the ridge line that registered the roof as being level. The trial judge, who visually observed the new addition, stated:

> If indeed the ridge and the eave are not level, there is not evidence that it constitutes a structural defect but rather it may offend one's aesthetic senses.
>
> ....
>
> This Court concludes that if indeed a variance exists, it is so slight that it would be unobservable to a casual observer and the evidence reveals that it does not constitute a structual defect. The evidence further leads to the conclusion that perfection is difficult if not impossible to obtain when attaching a new addition to an older structure.

The evidence bears out the trial court's conclusions, and we therefore decline to tamper with its denial of credit to defendants for the alleged defect in the roof.

Defendants contend that they should be awarded a credit of $1,482.67 as the cost of replacing inadequate ceiling joists installed by plaintiff. Nelson, who has been a carpenter for thirty years and has much experience in building and remodeling houses, furnished uncontroverted testimony that the ceiling joists were properly installed and that they should function adequately. Wilson testifed that the ceiling joists were installed according to an uncommon practice, but did not state that they would not ade-

quately serve their intended function. Nor was there any evidence that the ceiling joists would not function adequately. The trial court, therefore, correctly found that defendants failed to sustain their burden of proving that the ceiling joists installed by plaintiff were unsuitable and in need of replacement.

Plaintiff contends that the trial court should not have awarded defendants a $420 credit for a picture window that was installed out of level. However, the evidence that the window was defectively installed is uncontroverted. In contrast to the other work of plaintiff which was merely incomplete, the picture window was defectively installed and requires redoing and not simply additional work. The $420 cost of fixing the window is justified by the need to remove and replace the siding surrounding the window in order to eliminate the defect.

AFFIRMED.