IN THE COURT OF APPEALS OF IOWA

No. 1999-452 (9-709) / 98-1830
Filed November 8, 2000

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CLERK SUPREME COURT

GEM SPRINKLER CO.,
Plaintiff-Appellee,

vs.

DEERFIELD CONSTRUCTION COMPANY, INC.,
Defendant-Appellant,

and

EXCEL FIRE SUPPRESSION SYSTEMS, INC., CASCO MECHANICAL SERVICES, INC., and HERITAGE MUTUAL INSURANCE COMPANY,
Defendants.

Appeal from the Iowa District Court for Des Moines County, John C. Miller, Judge.

The defendant, Deerfield Construction Company, appeals from the district court's entry of judgment in favor of the plaintiff, Gem Sprinkler Company, on the plaintiff's petition to foreclose a mechanic's lien. **AFFIRMED.**

Mitchell L. Taylor of Cray, Goddard, Miller & Taylor, Burlington, and Peter R. Weisz and Cathy R. Nash of Weisz & Associates, Atlanta, Georgia, for appellant.

Rodney A. Wittkamp, Burlington, for appellee.

Heard by Mahan, P.J., and Zimmer and Vaitheswaran, JJ. Miller, J., takes no part.

MAHAN, P.J.

Deerfield Construction Company (Deerfield) appeals from the district court's entry of judgment in favor of Gem Sprinkler Company (Gem), on Gem's petition to foreclose a mechanic's lien. Deerfield contends the district court erred in ruling Gem substantially complied with the mechanic's lien statute's requirement of a verified accounting. Deerfield maintains the amount foreclosed (1) does not comport with the invoices attached to the lien and any amendment was not approved by the court, (2) does not reflect payments tendered by it to Gem, and (3) reflects a variance from Gem's standard operating procedures for crediting payments. We affirm.

Deerfield served as the general contractor for the construction of Lowe's Home Improvement Center (Burlington Lowe's) on real estate owned by the Crisman Corporation (Crisman) in Burlington, Iowa. Deerfield subcontracted with Excel Fire Suppression Systems Inc. (Excel) for the installation of the building's fire protection sprinkler system. Excel contracted with Gem for the supplies used to install the sprinkler system. Gem did not contract with Deerfield.

Gem provided Excel with materials through eleven shipments from March 18, 1996 through June 12, 1996. Following each shipment, Gem sent Excel an invoice.

Invoice No.	Invoice Date	Amount
1. 39843	3-27	$29,152.90
2. 39844	3-27	$19,867.28

3. 39845	3-27	$11,788.66
4. 39851	3-27	$1,089.73
5. 39920	4-09	$1,302.76
6. 39943	4-09	$230.77
7. 40010	4-12	$3,581.04
8. 40050	4-17	$64.85
9. 40325	5-15	$1,923.17
10. 40425	5-22	$35.76
11. 40634	6-12	$157.02

The invoices totaled $69,193.94.

During the construction of the Burlington Lowe's, Gem provided Excel with materials for approximately fifteen projects. Excel also received materials from other suppliers. Gem was aware Excel performed work for contractors other than Deerfield.

Deerfield issued the following checks payable jointly to Excel and Gem: (1) number 035868 in the amount of $43,410.71 on April 28, 1996; (2) number 038712 in the amount of $43,410.71 on May 2, 1996; (3) number 039785 in the amount of $23,528.19 on May 30, 1996; and (4) number 040871 in the amount of $1,756.12 on July 1, 1996. Deerfield designated check number 038712 as payment for the Burlington Lowe's project, but did not provide any directions concerning the manner in which the check should be applied. Gem only received one payment from Deerfield for the Burlington Lowe's project, the payment of

$43,410.71 on May 2, 1996. The other three checks issued by Deerfield were designated for projects other than the Burlington Lowe's project.

Initially Gem failed to apply the entire proceeds of check number 038712 to the Burlington Lowe's project. Due to an accounting error, Gem only applied $34,353.81 to the project, and applied the remaining $9,056.90 to non-Deerfield projects.

Normally when Gem receives a check from a customer, it applies the check to the oldest outstanding invoice on record. In this case Gem did not follow this practice. Rather, Gem applied the proceeds from check number 038712 to the most recent invoices first. Gem initially applied the proceeds as payment in full for the following invoices: (1) $64.85 for number 40050; (2) $230.77 for number 39943; (3) $1,302.76 for number 39920; (4) $1,089.73 for number 39851; (5) $11,788.66 for number 39845; (6) $19,867.28 for number 39844. Gem applied the remaining $9.76 toward the $29,152.90 due for invoice number 39843.

After applying the $34,353.81, Gem noted outstanding balances on the following invoices: (1) $29,152.90 for number 39843; (2) $3,581.04 for number 40010; (3) $1,923.17 for number 40325; (4) $35.76 for number 40425; and (5) $157.02 for number 40634. Gem computed a total outstanding balance of $34,840.13.

On May 15, 1996, Gem executed a lien waiver, acknowledging it received $43,410.71 on the project. Gem signed the lien waiver, waiving liens to March 19, 1996. Deerfield did not secure a further lien waiver from Gem.

On September 9, 1996, Gem filed a mechanic's lien against the land on which the Burlington Lowe's was built for $36,362.60. Gem attached a verified statement of account, which included six invoices totaling $36,362.60.

Invoice No.	Date	Amount
1. 39843	3-18-96	$29,152.90
2. 40010	4-9-96	$3,581.04
3. 40325	5-7-96	$1,923.17
4. 40425	5-17-96	$35.76
5. 40574	5-17-96	$1,512.71
6. 40634	6-2-96	$157.02

On June 9, 1997, Deerfield posted a discharge bond in the amount of $72,725 pursuant to Iowa Code section 572.15. Heritage Mutual Insurance Company (Heritage), the surety, issued a bond as a substitute for the property and owner.

On June 30, 1997, Gem filed a petition to foreclose on the mechanic's lien. Gem later discovered a number of errors in its accounting, including: (1) invoice number 40574, which related to a non-Deerfield project; (2) misapplication of $9,056.90 to non-Deerfield projects; and (3) failure to apply the $9.76 to invoice number 39843. Gem applied the $9,056.90 in some combination to invoices 39843, 40010, 40425, 40325, and 40634. In addition, Gem removed invoice

40574 from the total and applied the $9.76 to invoice number 39843, leaving a total balance due of $25,783.23.

To reflect its accounting errors, Gem filed an amended petition, reducing its claim to $25,783.23. Gem did not amend the verified statement of account attached to the mechanic's lien.

On February 19, 1998, Deerfield filed a motion for summary judgment, which the district court overruled. The case proceeded to trial.

On August 20, 1998, the district court issued its ruling, finding Gem substantially complied with the requirements of Iowa Code section 572.8 to support the $25,783.23 demanded in the petition. The district court had Gem prepare an appropriate judgment in conformance with the ruling to submit for Deerfield's approval. The judgment awarded $25,783.23. Deerfield appeals.

I. Standard of Review. A proceeding for enforcement of a mechanic's lien is in equity, therefore our review is de novo. *Builders Kitchen & Supply Co. v. Pautvein*, 601 N.W.2d 72, 74 (Iowa 1999). We review the record anew to determine the parties' rights from the trial evidence. *Id.* While we give weight to the factual findings of the district court, they do not bind us. *Griess & Grinder Drywall, Inc. v. Moran*, 561 N.W.2d 815, 816 (Iowa 1997).

II. Statutory Framework. A person who supplies labor or materials for improvements to a building or land is entitled to a lien on the building and land. Iowa Code § 572.2 (1995). A mechanic's lien is statutory in nature. *A & W Elec. Contractors, Inc. v. Petry*, 576 N.W.2d 112, 114 (Iowa 1998). We liberally construe the statute to ensure justice, promote restitution, and prevent unjust enrichment. *Id.*

A subcontractor perfects a lien by filing it with the clerk for the district court "within ninety days from the date on which the last of the material was furnished or the last of the labor was performed." Iowa Code § 572.9. Along with the lien, the subcontractor must file a verified statement of account, which provides:

> 1. The time when such material was furnished or labor performed, and when completed.
>
> 2. The correct description of the property to be charged with the lien.
>
> 3. The name and last known mailing address of the owner, agent, or trustee of the property.

Id. § 572.8. The clerk of the district court then mails a copy of the lien to the owner of the property. *Id.*

III. Statement of Account. Deerfield contends the district court erred in finding Gem supported its lien with an accurate verified statement of account. The mechanic's lien statute allows for minor imperfections. *Moffit Bldg. Material Co. v. U.S. Lumber & Supply Co.*, 255 Iowa 765, 770, 124 N.W.2d 134, 137 (1963); *Bernstein v. Alcorn*, 194 Iowa 1109, 1111, 190 N.W.2d 975, 976 (1922). As long as the subcontractor reasonably and substantially complies with the statutory provisions, the lien will not be invalidated. *Moffit Bldg. Material Co.*, 255 Iowa at 770, 124 N.W.2d at 137; *Bernstein*, 194 Iowa at 1111, 190 N.W.2d at 976.

Relying on South Dakota and Missouri case law, Deerfield contends Gem failed to provide sufficient notice of the materials it supplied. *Commercial*

Openings, Inc. v. Mathews, 819 S.W.2d 347, 347 (Mo. 1991) (noting "failure to itemize individual pieces for furnished materials has never been regarded as fatal to the sufficiency of a subcontractor's lien statement," rather the lien statement need only "advise the owner or the public of the total amount due and the nature of the materials furnished"); *H & R Plumbing & Heating, Inc. v. FDIC*, 406 N.W.2d 151, 153 (S.D. 1987) (finding failure to list the materials used by the subcontractor rendered the lien invalid).

A review of the record reveals Gem attached the six invoices to the September 6, 1996 mechanic's lien. All of the invoices are itemized and list the materials used, with the exception of invoice number 40325, in the amount of $1,923.17. While Gem should have amended its verified statement of account to reflect its accounting errors of $10,579.37, we do not find their failure to do so fatal. Upon identifying the errors, Gem amended its petition to reflect the amount due of $25,783.23. We agree with the district court that Gem substantially complied with the requirements of section 572.8.

IV. Petition for Rehearing. In a petition for rehearing filed pursuant to Iowa Rule of Appellate Procedure 27A, Deerfield specifically argues: (1) the court did not address Gem's failure to present witnesses with personal knowledge at trial; (2) the court did not take into account Gem's flawed accounting practices, and affirmed the trial court based on hindsight accounting; (3) the court approved a judgment including unjustified sales tax charges and unproven deliveries; and (4) the court did not address whether Gem acted in bad faith when it did not correct its overstatement of the account for fourteen months.

Deerfield contends Mr. William Hylton, a credit manager with Gem, and the only witness called by Gem, had no personal knowledge of how or why standard operating procedures were not followed and did not ask anyone who might know. Deerfield repeats throughout its brief Hylton had no personal knowledge of the relevant facts. Deerfield objected to Hylton's testimony at trial as hearsay. However, Deerfield does not cite any authority to support its position. Gem alleges Deerfield waived this argument because it did not cite authority to support it and it did not argue the issue at oral argument. We agree. A party's failure in a brief to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 14(a)(3); *Hollingsworth v. Schminkey,* 553 N.W.2d 591, 596 (Iowa 1996). In addition, a litigant's random mention of an issue, without elaboration or support of authority is not sufficient to raise the issue for our review. *Soo Line R. Co. v. Iowa Dep't of Transp.,* 521 N.W.2d 685, 691 (Iowa 1994). A random discussion of difficulties, unless assigned as an issue, will not be considered. *Hubby v. State,* 331 N.W.2d 690, 694 (Iowa 1983). We conclude this issue has been waived.

As for the remaining issues raised by Deerfield in its petition for reconsideration, we find them without merit. The mechanic's lien statute should not be so construed as to defeat its obvious purpose and intention where there is a reasonable and substantial compliance with its provisions. *Bernstein v. Alcorn,* 194 Iowa 1109, 1113, 190 N.W. 975, 976-77 (1922). In the absence of any showing of bad faith it should not be held that the mere inclusion in the statement of one or more items for which no lien can be had operates to invalidate an otherwise enforceable lien. *Palmer v. McGinness*, 127 Iowa 118, 120, 102 N.W. 802, 803 (1905). The mistake or inaccuracy that will nullify the statement for a lien must, at least where no one is directly injured by it, be willful and intentional. *St. Croix Lumber Co. v. Davis*, 105 Iowa 27, 29, 74 N.W. 756, 756 (1898).

Deerfield contends Gem's accounting errors render its information untrustworthy. The district court had the opportunity to listen to the parties and the evidence. While we do not condone Gem's accounting practices, the record does not support a finding Gem's actions were willful, intentional, or taken in bad faith.

Deerfield did not provide directions concerning the manner in which Gem should apply the joint check. Gem received only one payment from Deerfield for the Burlington Lowe's project. Gem amended its petition to reflect the correct amount of its claim upon identifying accounting errors. Five of the six invoices attached to the mechanic's lien were related to the Burlington Lowe's project. We conclude Gem substantially complied with Iowa Code section 572.8. We affirm the district court.

AFFIRMED.