FILED
SEP 24 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

1

ADAMS DOOR COMPANY, INC.	)	
Plaintiff-Appellant,	)	**Filed September 24, 1985**
vs	)	5-404 / 85-09
MARJORIE E. DRAMAN,	)	
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Guthrie County, Arthur E. Gamble, Judge

Plaintiff appeals from judgment for defendant in a mechanic's lien foreclosure action. **AFFIRMED.**

James A. Pugh of Morain, Burlingame, Pugh & Juhl, West Des Moines, for plaintiff-appellant.

Randy V. Hefner of Van Werden, Hulse & Hefner, Adel, for defendant-appellee.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

OXBERGER, C.J.

The plaintiff contractor appeals from a judgment for the defendant-landowner in a mechanic's lien foreclosure action. We affirm.

The defendant, Marjorie Draman, owns certain property in Adair which she has rented to her son, Dennis. The informal oral agreement between mother and son was that Dennis was to make improvements to the property in lieu of $200 per month rental payments and to pay insurance and taxes on the land. Dennis determined the type of improvements to be made, which included tearing down fences, putting a new furnace in the house on the land, and grading. Dennis decided to enter into a lease of a grain storage and hog confinement building to be placed on the property. The lessor, IFG Leasing, would retain title to the building. The plaintiff, Adams Door Company, provided steel insulated doors to the general contractor. The defendant tried to discourage her son from placing the building on the land, but agreed to allow it to be built if Dennis would pay for any increased taxes which might result. A concrete slab was laid, and the prefabricated building was erected. The plaintiff was never paid $5595 owed for its services, and the company filed a mechanic's lien.

The trial court found there was an agreement between the defendant and her son to place improvements on the land, and that Dennis was acting as her agent. However, the trial court went on to hold the defendant gained no personal benefit from the plaintiff's labor and materials and held for defendant in the lien foreclosure action.

The plaintiff claims this is a strained interpretation of the mechanic's lien statute which reads as follows:

> Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof, including those engaged in the construction or repair of any work of internal or external improvement, and those engaged in grading, sodding, installing nursery

> stock, landscaping, sidewalk building, fencing on any land or lot, by virtue of any contract with the owner, the owner's agent, trustee, contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated or upon the land or lot so graded, landscaped, fenced, or otherwise improved, altered, or repaired, to secure payment for material or labor furnished or labor performed.

The plaintiff cites several cases for its proposition that once an express contract was found between the lessor and the lessee, it is not necessary to show that the lessor gained benefit from the improvement. It is only when an implied contract is claimed to exist between lessor and lessee, plaintiff continues, that there must be proof the improvement was substantial, permanent, and beneficial to the lessor.

In reviewing the pertinent cases, including those cited by the plaintiff, we cannot agree with its claim. The key case cited by plaintiff is Cedar Rapids Sash and Door Co. v. Dubuque Realty Co., 195 Iowa 679, 680, 192 N.W. 801 (1923), where the court held:

> The burden was upon the plaintiff to prove either an express contract with or on behalf of defendant Groeltz, or else to prove such a state of facts as would give rise to an implied contract with him. Plaintiff does not claim to have had an express contract. It does claim that the facts warrant the finding of an implied contract. These alleged facts are: (1) That Groeltz knew that the plaintiff was furnishing the material; and (2) that he had agreed with his lessees to pay $1500 of the costs of the alterations.

(emphasis added). A full reading of the case does not reveal support for plaintiff's claim. Instead, as the above quote shows, the plaintiff must prove either an express contract between the lessor and the contractor; or prove there was an express or implied agreement between lessor and lessee and that the lessor benefited from the improvements. Cases discussing express or implied contracts between lessor and lessee in such situations also discuss the extent of the benefit to the lessor and permanence of the addition. Id.; Ringland-Johnson-Crowley

v. First Central Service Corporation, 255 N.W.2d 149, 152 (Iowa 1977); Stroh Corporation v. K & S Development Corporation, 247 N.W.2d 750, 752 (Iowa 1976); Denniston & Patridge Co. v. Romp, 244 Iowa 204, 208-09, 56 N.W.2d 601, 604-05 (1953).

In Stroh the court stated the basic rule that ordinarily, mere knowledge or consent to making improvements by the lessee does not subject lessor's interest to a mechanic's lien. Stroh, at 752. The court said:

> But if the lessor has by express or implied agreement with his lessee contracted for the improvement of his real estate by the latter, it is generally held he has subjected his interest in the realty to the claim of a mechanic's lien for the reasonable value of labor and material furnished. This is particularly true where the lease is so drafted that building erected or improvements made become the property of lessor after a comparatively short term, or where the improvement creates an additional value included in computing the sums to be paid as rental. [citing authorities]. In this situation, the lessee is considered to be the agent of the lessor within the meaning of § 572.2, The Code.

Id Plaintiff here does not claim an express contract existed between the defendant-landowner and Adams Door. Instead, it claims an express contract between defendant and her son. Plaintiff must prove there was a benefit to defendant.

In Stroh the court found the lease contemplated a permanent car-wash gasoline facility be built, and the construction considerably increased the value of the property. Id. The court found the lien should attach. Id. The same conclusion was reached in Denniston where the lease required construction of permanent buildings on the land, the court noting the buildings became the property of the landowner at the end of the lease and, "At the end of that time the lease ended with no provision for removal of the improvements." Denniston, at 211, 56 N.W.2d at 605.

If the building here was a fixture, it becomes a part of the realty. Ford v Venard, 340 N.W.2d 270, 271-72 (Iowa 1983). If this building is a fixture, the benefit to the land owner is obvious. A hog confinement building has been found to be a fixture despite the fact it was built on skids and could be moved about the property. Cornell College v. Crain, 211 Iowa 1343, 1346, 235 N.W. 731, 732 (1931). The key factor was the intent of the person making the annexation to make a permanent accession to the freehold. Id., at 1345, 235 N.W. at 732. The mortgagor there owned the building but hoped to remove it if his mortgage was foreclosed. Id., at 1346, 235 N.W. at 732. The obvious intention of the mortgagor was that the building be permanent, unless foreclosure occurred. Id.

The opposite situation is involved here. The building was never intended to affix permanently to the land. In the instant case the building was at all times referred to and considered as personal property. The title of the building was kept with IFG Leasing and paragraph 16 of the equipment lease provided as follows:

> Title to the equipment shall remain at all times in the name of the lessor. . . . lessee agrees to obtain a mortgagee's or landlord's waiver, as appropriate, or a consent to right to enter from the vendor or his assignee under the contract authorizing lessor to enter the premises and remove the equipment. The equipment is, and shall at all times be and remain, personal property notwithstanding that the equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to real property or any building thereon.

The plaintiff does not present evidence disputing defendant's claims they do not own the building and that it is considered personal property. The building may be removed without damage to the property, leaving only the concrete slab. This confirms the ease with which the building will revert to IFG. The building will not become the property of the defendant after a comparatively short term, nor is there evidence of a material increase in the amount of rent.

For these reasons we find the trial court ruling should be upheld.

AFFIRMED