FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WHEELER-BRAUN LUMBER COMPANY, INC.,

Plaintiff-Appellant,

vs.

FAROOQ QURESHI AND LUBNA QURESHI,

Defendants-Appellees.

Filed August 30, 1983

3-194
2-69250

Appeal from Black Hawk District Court - William G. Klotzbach, Judge.

Plaintiff appeals from the trial court's decision that its mechanic's lien on defendant's residence was not timely filed. REVERSED AND REMANDED.

Charles F. Hinton of Hinton, Boller & Huisinga, Waterloo, Iowa, for plaintiff-appellant.

Charles T. Mattson of Gartelos, Wagner, Beeghly & Mattson, Waterloo, Iowa, for defendants-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel and Hayden, JJ.

HAYDEN, J.

Plaintiff, a subcontractor, appeals from the trial court's decision that its mechanic's lien on defendant's residence was not timely filed. We reverse and remand.

On or before May 9, 1978, the defendants, Dr. and Mrs. Farooq Qureshi, entered into a contract with Chapman and Chapman, Inc. (Chapman), a general contractor, for the construction of a home. Shortly thereafter Chapman contracted with plaintiff, a building supply company, for materials needed for the Qureshi residence.

Plaintiff began delivery in May 1978 and continued through February 27, 1979. There followed a period of about a month when no materials were delivered. Plaintiff resumed deliveries to the site on April 9. Twelve deliveries were made in April totaling about $790. It appears that construction was at a standstill during this time and the materials were subsequently removed rather than installed in the house.

A mechanic's lien was filed by plaintiff in the amount of $20,580.97 on May 16, 1979. Plaintiff had executed a mechanic's lien waiver in favor of the defendant for $11,808.62. However, the defendant was only credited with $5,897.28 on plaintiff's account because only the lesser amount was paid to plaintiff by Chapman. Another lien waiver appears in the record which was not credited by plaintiff to defendant. Plaintiff claims that this waiver was forged.

Our review of a suit in equity to foreclose a subcontractor's mechanic's lien is **de novo.** Pater Painter, Inc. v. William R. Higgens, Jr. Foundation, Inc., 295 N.W.2d 451, 453 (Iowa 1980).

The trial court concluded that the last substantial delivery to the site was on February 27. Since the court was of the opinion that the April deliveries were insignificant, the court applied the well-established rule that "a subcontractor may not extend the time for filing by performing some trivial amount of work,

remedying small defects, or making trifling changes." Pater Painter, Inc. v. William R. Higgins, Jr. Foundation, Inc., supra at 452. See also Casler Electric Co. v. Carlson, 249 Iowa 289, 295, 86 N.W.2d 682, 686 (1957); Skemp v. Olansky, 249 Iowa 1, 8-9, 85 N.W.2d 580, 584 (1957). Consequently, the court held that the plaintiff's lien was not filed within the period required by section 572.9, Code of Iowa (1981).

We are of the opinion that this case is distinguishable from the cases cited above and, therefore, disagree with the result reached by the trial court.

In Pater Painter, Inc., the subcontractor submitted a bill for $13,800 for "material and labor complete." Three months later it installed a $220 humidifier which was not mentioned in the contract specifications. The subcontractor had been charging interest on its final bill for more than two months prior to installing the humidifier. Based on these facts the supreme court concluded that the job was complete when the bill was presented. The later work was done to allow the subcontractor to file a lien which otherwise would have been untimely. Pater Painter, Inc. at 452-53.

Skemp v. Olansky, supra, provides another example of the type of situation to which the rule applies. In Skemp, the subcontractor hired to do the masonry on a house performed one hour of work more than ten months after having completed all other work on the house. Six days after doing the extra hour of work the subcontractor filed a mechanic's lien. In the ten month interval the principal contractor had ceased to be affiliated with the project and the premises had been sold. Skemp at 8-9, 85 N.W.2d at 584-85.

In the present case the April deliveries were made after a month's delay and were not substantial compared to the total amount of materials delivered. However, this case differs from those cited above in that the lien could have been timely filed at the time the allegedly insignificant work was performed. If the job was complete on February 27, the plaintiff could have filed its lien up until

April 27. It had no need to try to extend the deadline by making deliveries from April 9 to April 30. At the time the April deliveries were made it cannot have been plaintiff's purpose to perform a trivial amount of work so as to revive its ability to timely file its lien.

Furthermore, while the deliveries in April were not substantial as compared with the total amount of materials furnished over the prior ten months, they were not usually lower in amount than many of the prior deliveries. For example, the twelve deliveries between February 5 and February 23 total a lesser amount than do the twelve April deliveries.

Therefore, considering that the break in plaintiff's performance was relatively short, the amount of material delivered in April was not inordinately smaller than prior amounts, and the lien would have been timely when the subsequent work was performed, we believe that Pater Painter, Inc. is not controlling. Consequently, plaintiff's lien was timely filed.

Since the trial court decided that the lien was untimely and unenforceable, it did not consider the other issues raised by the parties relating to the validity and amount of the lien. We, therefore, remand this case to the trial court for further proceedings.

REVERSED AND REMANDED.