IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

MIDWEST INDUSTRIES, INC.,
Plaintiff-Appellee,
vs
GOMACO,
Defendant-Appellant

Filed February 25, 1987

6-488 112
86-359

Appeal from the Iowa District Court for Ida County (No. 12107) - Richard J. Vipond, Judge

Defendant appeals from trial court's order **AFFIRMED.**

Lorna A Gilbert, of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for the defendant-appellant.

Colin J McCullough, Sac City, for the plaintiff-appellee.

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

SACKETT, J.

Defendant appeals from a trial court order requiring it to remove that portion of an improvement constructed on plaintiff's land. Plaintiff Midwest Industries, Inc., is headed by Byron Godbersen and defendant GOMACO is headed by Harold Godbersen. Harold and Byron are brothers. Both corporations are located in and own land in Ida Grove, Iowa.

The dispute before this court involves about 750 square feet of land in Ida Grove. The tract is owned by Midwest but adjoins land owned by GOMACO. In September, 1982, GOMACO was awarded a contract to restore antique trolley cars. GOMACO determined the contract necessitated its building a storage building with a spur to the main railroad track running through town. GOMACO made construction plans and obtained permission from the railroad for the spur. The planned construction would encroach on the 750 square feet tract owned by Midwest. At the end of September, 1983, Harold talked to Byron about the matter. Their exact conversation is in dispute. Harold contends Byron agreed to the construction. Byron contends he merely expressed a willingness to trade land so Harold would have title to the strip in dispute.

In January, 1984, GOMACO began construction. The construction was completed in February, 1984. The construction resulted in an encroachment on Midwest's land. In December, 1984, plaintiff filed a petition in equity claiming GOMACO was trespassing on the land in question and requested removal of the encroachment. Defendant answered the petition, denied plaintiff's allegations and set forth the following affirmative defenses (1) plaintiff had an adequate remedy at law, (2) plaintiff is estopped from claiming removal, and (3) plaintiff is barred by laches. The matter was tried to the court who granted the injunction

and determined GOMACO should remove the encroachment from Midwest's property

GOMACO appeals contending:

1. Injunctive relief is not available because plaintiff has an adequate remedy at law and balancing the hardships in the case makes injunctive relief inappropriate.
2. Midwest is estopped from obtaining removal.
3. Midwest is barred by laches.

Our review is de novo. Iowa R. App. P. 4. When considering the credibility of witnesses we give weight to the fact findings made by the trial court but are not bound by them. Iowa R. App. P. 14(f)(7).

I.

GOMACO contends injunctive relief is improper because an adequate remedy at law is available. Injunctive relief is an extraordinary measure and should be ordered only where clearly required. Denison v. Clabough, 306 N.W.2d 748, 755 (Iowa 1981); Kreiner v. Turkey Valley Comm. School, 212 N.W.2d 526, 536 (Iowa 1973). The equitable power to enjoin is not a routine remedy and is designed primarily to avoid irreparable damage and to afford relief when there is no adequate remedy at law. Denison, 306 N.W.2d at 755.

We agree with the trial court the encroachment was constructed with knowledge of the encroachment and without permission and determine an injunction is a proper remedy. See Ind. School District of Ionia v. DeWilde, 243 Iowa 685, 694, 53 N.W.2d 256, 261-62 (1952).

II.

GOMACO next contends Midwest is estopped from obtaining removal of the structure. In Denison the court said:

> The essential elements of the affirmative defense of equitable estoppel are: (1) a false representation or concealment of material facts; (2) a lack of knowledge

> of the true facts on the part of the actor; (3) the intention that it be acted upon; and (4) reliance thereon by the party to whom made to his prejudice and injury. (Cite omitted.) The party asserting the defense of equitable estopped has the burden of establishing all of these essential elements by clear, convincing, and satisfactory evidence. (Cite omitted.) (emphasis added).

Denison, 306 N.W.2d at 734. (emphasis added).

A party claiming estoppel must establish its claim by clear, convincing and satisfactory evidence. Johnson v. Johnson, 301 N.W.2d 750, 754 (Iowa 1981). GOMACO at all times knew it was building on Midwest's land and we determine, as did the trial court, it did so knowing it had no agreement to use the land. The court has refused to find estoppel barred a city's enforcement of a zoning ordinance where the property owner was aware of the section being violated and knew or should have known the consequences of his act. Denison, 306 N.W.2d at 755. GOMACO knew it did not own the property and knew or should have known the consequences of building on another's property.

We find GOMACO has failed to prove the essential elements of estoppel by clear, convincing, and satisfactory proof. See Moser v. Thorp Sales Corp., 256 N.W.2d 900, 908 (Iowa 1977); DeWall v. Prentice, 224 N.W.2d 428, 430-31 (Iowa 1974).

III.

GOMACO claims we should apply the doctrine of laches because it relied on Midwest's position to its detriment and Midwest observed the improvements being made but remained silent. Laches and equitable estoppel are affirmative defenses. See Moser, 256 N.W.2d at 908; Manson State Bank v. Diamond, 227 N.W.2d 195, 200 (Iowa 1975); Chadek v. Alberhasdy, 253 Iowa 32, 39, 111 N.W.2d 297, 301 (1961). The party asserting the defense has the burden to establish all essential elements thereof by clear, convincing and satisfactory proof. Moser

256 N.W.2d at 908. See DeWall, 224 N.W.2d at 430-31. The doctrine of laches will be applied only where it would be inequitable to permit recovery or is clearly demanded in the interests of justice. Moser, 256 N.W.2d at 908. Laches is an equitable doctrine premised on unreasonable delay in asserting a right, which causes disadvantage or prejudice to another. First Federal Savings & Loan Association v. Blass, 316 N.W.2d 411, 414 (Iowa 1982); Davenport Osteopathic Hospital Association v. Hospital Service, Inc., 261 Iowa 247, 261, 154 N.W.2d 153, 162 (1967). The party asserting the defense has the burden to establish all of the essential elements thereof by clear, convincing, and satisfactory evidence. First Federal Savings & Loan Association, 316 N.W.2d at 414. Prejudice is an essential element of laches. First Federal Savings & Loan Assn, 316 N.W.2d at 415.

We find GOMACO has failed to prove all the elements of laches by clear, convincing, and satisfactory evidence. We affirm the trial court.

AFFIRMED.