

## IN THE COURT OF APPEALS OF IOWA

No. 1-193 / 90-1492

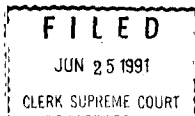
KNV ARCHITECTS - PLANNERS, INC.

Appellee,

vs

NILA HAUG,

Appellant.



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Appeal from the Iowa District Court for Johnson County,  
Lynne E. Brady, Judge.

Haug appeals judgment entered in favor of KNV in a suit  
arising from a contract for the architectural services.  
**AFFIRMED.**

Davis L. Foster of Barker, Cruise, Kennedy, Houghton  
and Foster, Iowa City, for appellant.

Stephen A. Swift of Donald L. Carr II Law Firm, Cedar  
Rapids, for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

**OXBERGER, C.J.**

Nila Haug wanted to convert a house located at 517 Washington in Iowa City, Iowa, into a bed and breakfast business by September, 1988. The residence was an older home and Haug believed she needed the assistance of architects not only to convert the property, but to obtain the necessary permits and plans for obtaining financing for the project.

Haug contacted KNV Architects - Planner, Inc. (KNV) in January 1988, and in February, agreed to pay KNV for a preliminary design costing \$1000. KNV performed its work and Haug paid the architects their fee. On April 26, 1988, the parties entered into a formal contract prepared by KNV for additional services.

The parties' agreement consisted of five phases: schematic design, design development, construction documents, bidding or negotiation, and construction. The first three phases required KNV to prepare separate sets of documents to be submitted for Haug's approval. The fourth phase required KNV to assist Haug in obtaining bids from contractors and preparing contracts. The last stage required KNV to act as Haug's representative during construction. The agreement provided for KNV to be paid a total of 8 1/2% of the total construction cost. The total compensation was to be paid in sums based on a percentage of each phase of the project.

The parties dispute the degree to which Haug approved the various plans KNV submitted and whether she specified a particular dollar amount she wanted to spend on the project. Haug testified at trial she was sure she told KNV the maximum she wanted to the project to cost was \$96,000 to \$100,000. The plans KNV ultimately submitted were for a renovation costing an estimated \$170,000. The property had an outstanding contract of \$30,000 which was included in the \$170,000 estimate. KNV's architects stopped their work before its completion in June 1988, because they could not get firm definitions of a project budget from Haug. These problems arose because Haug stated she would do some of the labor herself as well as procuring part of the supplies in an attempt to decrease the cost of the project.

Haug went to three banks in June 1988, in an attempt to obtain a loan to finance the entire project. She finally obtained a loan at the third bank for \$72,000 which included the \$30,000 to pay off the original contract. After making her first loan application she never contacted KNV for additional services. She blames her inability to obtaining financing on KNV because it did not complete the work on time or provide her with specification drawings. She refused to pay KNV. KNV maintains it complied with the agreement and therefore should be paid.

KNV filed a mechanic's lien on the property on May 22, 1988. KNV then instituted this action on June 30, 1989, requesting judgment against Haug for the sum of \$10,549

(8 1/2 % of \$170,000) and the establishment and enforcement of a mechanic's lien. Haug filed a counterclaim alleging KNV breached the contract by not providing suitable plans in a timely manner which resulted in damages to her.

After a hearing, the district court refused to enforce KNV's mechanic's lien due to insufficient proof that any of its work directly improved the property. However, the court found KNV was entitled to recover under the contract based on a construction cost of \$140,000 because the extra \$30,000 was to pay off an existing mortgage. Because KNV's work had only progressed to the third phase, the court set damages at a proportional amount as specified in the contract. It entered judgment for KNV in the amount of \$8,499 plus interest. Haug appeals..

Haug argues KNV breached the contract by providing only incomplete plans which failed to conform to the requirements of the contract. Further, Haug contends KNV breached the contract by not providing plans which conformed with the budgetary limitations she set. Haug asserts that because KNV breached the contract first, she is excused from her obligation to pay them under the contract. Further, Haug argues she suffered damages as a result of KNV's breach, therefore, KNV should be held liable for those damages.

Haug also contends the trial court erred by not preparing findings of fact supporting its ruling. Lastly,

Haug asserts the trial court erred by granting KNV relief under the contract when its pleadings only requested enforcement of a mechanic's lien.

KNV filed this case in equity and requested the establishment and enforcement of a mechanic's lien in its prayer for relief. A judge without a jury heard the case. Both parties assert the appropriate standard of review is de novo because the case was brought in equity and treated as a case in equity. A case is reviewed as tried in the trial court. Atlantic Veneer Corp. v. Sears, 232 N.W.2d 499, 502 (Iowa 1975). Therefore, because the case was tried in equity, our review is de novo. Iowa R. App. P.4. We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14 (f)(7).

The trial court concluded "the basic problem in this case was the fact that [Haug] wanted to have a first class operation for a minimal cost and that she really failed to communicate her tight budget to [KNV]. . . . [T]here is absolutely no proof in the record that any actions of [KNV] caused any damages to [Haug] or delayed her project in any way. . . . ." In reaching its decision the trial court found KNV was only entitled to recover on the first three phases of the contract, because that is all of its obligation it completed. The trial court also determined KNV's fee should be calculated on the basis of a \$140,000 project because approximately \$30,000 of the money Haug

originally intended to borrow to pay for the project was to pay off an existing mortgage, not for construction costs.

Upon our de novo review of the record, we agree with the trial court's conclusions. Haug presented KNV with definite ideas about what she wanted done to the house, but failed to give KNV as definite a budget. Additionally, the record shows KNV was unable to provide her with a specific cost for the project, because she failed to provide it with information about what work and supplies she intended to supply herself to decrease the cost. Lastly, the record shows Haug was unable to get the financing necessary to do the project because the banks she approached for loans were not comfortable making a loan for the type of business she was proposing. This discomfort arose from the fact the business concept was new to the area and the banks had no comparable business in the area to use as a basis for determining the business's potential success. Therefore, we affirm the trial court's ruling entering judgment in favor of KNV.

We next address Haug's contentions the trial court erred by not supporting its ruling with findings of fact and by granting KNV relief under the contract when KNV only requested a mechanic's lien. Upon our review of the trial court's findings of fact and ruling in this case, we find no merit in Haug's contention the trial court failed to support its ruling with findings of fact. The trial

court's findings of fact span more than eight pages and fully support its ruling.

We also find the trial court did not err in finding KNV entitled to recover under the contract. In KNV's petition filed June 30, 1989, KNV stated it had entered into an agreement with Haug to supply architectural services, in accordance with the agreement it supplied the requested services and Haug failed to pay the full contract price. KNV then requested "judgment against Defendant, Nila Haug, for the sum of \$10,549.00 together with interest at the rate of 5% from June 17, 1988, and for costs of this action, including an award of reasonable attorney fees, and further prays that the Mechanic's lien be established, foreclosed and enforced against said property . . . ." KNV further requested "such other and further relief, both legal and equitable as the Court may deem just and equitable . . . ."

In her answer, Haug alleged KNV did not perform according to the terms of the contract and counterclaimed for damages for KNV's failure to timely perform the contract.

We liberally construe prayers for general equitable relief, but the relief granted must be consistent with the pleadings and evidence such as will not surprise the opposing party. Jorge Construction Co. v. Weigel Excavating & Grading Co., 343 N.W.2d 439, 441-42 (Iowa

1984). Reading KNV's petition as a whole, the trial court did not go beyond the pleadings in entering judgment in favor of KNV on the contract. Further, Haug was not taken by surprise that any relief granted to KNV would arise from the contract she entered into with it for architectural services.

Haug also asserts that KNV's request for foreclosure could not be joined with a cause of action alleging a breach of contract. Haug sites Iowa Code section 572.26 (1989) as supporting her assertion. Section 572.26 provides "An action to enforce a mechanic's lien shall be by equitable proceedings, and no other cause of action shall be joined therewith. Any lien statement may be amended by leave of court in furtherance of justice, except as to the amount demanded."

Capitol City Drywall v. C.G. Smith Construction Co., 270 N.W.2d 608, 611 (Iowa 1978), discussed the statutory bar against joining other causes of actions with an action to foreclose a mechanic's lien:

[M]isjoinder is not jurisdictional. A defendant waives the right to complain of it when he does not attack it by timely motion. Even then the court may simply order the causes docketed separately. Rule 27(b), R.C.P.

We believe the right to complain of misjoinder is also lost in a mechanic's lien action when the defendant asserts a set-off or counterclaim. We have held that §572.26 does not prohibit a defendant from pleading these theories.

(citation omitted).

Haug failed to complain of the misjoinder prior to this appeal and she filed a counterclaim to KNV's petition, therefore, she has waived any right she might have had to complain about the joining of claims in this case.

**AFFIRMED.**