

**IN THE COURT OF APPEALS OF IOWA**

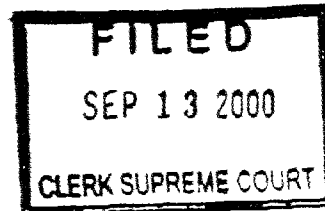
No. 0-458 / 99-0690  
Filed September 13, 2000

**PATTEN ROOFING OF IOWA, INC.,**  
Appellee,

vs.

**REUBEN P. HEGGESTAD and BETTY JANE HEGGESTAD,** Husband and  
Wife,  
Appellants,

**BANK MIDWEST, Minnesota Iowa, N.A.,**  
Defendant.



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Appeal from the Iowa District Court for Dickinson County, Frank B.  
Nelson, Judge.

Defendants appeal a decree foreclosing the plaintiff's mechanic's lien.

**AFFIRMED.**

Edward Bjornstad of Bjornstad Law Office, Spirit Lake, for appellants.

Dustan J. Cross, New Ulm, Minnesota, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

**VOGEL, P.J.**

Reuben and Betty Jane Heggstad appeal a decree foreclosing a mechanic's lien held by Patten Roofing of Iowa, Inc. (Patten). We find the trial court did not abuse its discretion in denying Heggstad's motion for a continuance and the record contains sufficient evidence to find Heggstad orally requested extra work be performed in addition to the written contract.

**Background facts.** Reuben Heggstad requested an estimate from Patten for services to repair and replace a portion of the roof on the Heggstad home. The proposal quoted a price of \$7,353.00 to complete the requested work. However, when Patten removed the existing roof, he discovered much of the underlying framework was rotten and needed to be replaced. This was discussed with and agreed to by Reuben. He also requested Patten complete several additional odd jobs around the house, including fixing a hole on the porch, repairing the interior ceiling after the roofing work was completed, installing three skylights, and hauling away an old appliance. The final bill, which included the initial contracted roofing work for \$7,353.00, also included the additional materials and labor provided by Patten for a total of \$14,223.05. Reuben paid \$10,000.00 toward the bill and refused to pay the remainder, alleging he did not authorize the additional services in writing, as was required by the original written contract. Patten filed a mechanic's lien against the property and sought to foreclose the lien in order to receive the outstanding balance for his materials and labor. The trial court ordered the lien foreclosed. The Heggstads appeal claiming the trial court abused its discretion in overruling the

motion to continue and there was not sufficient evidence to foreclose the mechanic's lien.

**Scope of review.** The decision to grant or deny a continuance of trial rests within the discretion of the trial court. *Ragan v. Petersen*, 569 N.W.2d 390, 392-93 (Iowa App. 1997). We will reverse only when that discretion is abused. *Id.*

The trial court is given guidelines to help exercise its discretion when presented with a motion for continuance, which we in turn use to measure the reasonableness of the trial court's decision. These guidelines provide "a continuance may be allowed for any cause not growing out of the fault or negligence of the applicant, which satisfies the court that substantial justice will be more nearly obtained." Iowa R. Civ. P. 183(a). Thus, when a motion for continuance is promptly filed, "alleging a cause not stemming from the movant's own fault or negligence, the court must determine whether substantial justice will be more nearly obtained by granting the request."

*Ragan*, 569 N.W.2d at 393 (citations omitted).

**Motion to continue.** The Heggstads allege the trial court abused its discretion by overruling the motion to continue, which was filed approximately six weeks prior to the trial date. Heggstad's motion urged the trial court to grant a continuance because of their counsel's belief that another case set for trial on the same day would likely force a continuance of this case. The Heggstads also pointed out that they are elderly and would need "sufficient time to return to the State of Iowa" from their winter home in Arizona. Patten filed a resistance to the motion to continue. The Heggstads did not seek a ruling on the motion and the trial court did not rule until March 22, 1999, the day before the scheduled trial date. The motion was summarily overruled. Also on this date, Heggstad filed a

**second motion to continue with an attached doctor's note, alleging Betty was not able to travel until April 15, 1999, due to a scheduled doctor's appointment to evaluate her rheumatoid arthritis.**

On appeal, Patten sets forth numerous reasons to support the decision of the trial court to deny the continuance. Iowa Rule of Civil Procedure 182(a) requires the party filing a motion for continuance to do so "without delay after the grounds therefore become known to the party or the party's counsel." The Heggstads filed the first motion to continue about six weeks prior to trial without asserting Betty's medical appointment as a reason for the continuance. On the eve of the trial, the Heggstads filed another motion to continue, at that time claiming Betty was unable to travel due to a scheduled medical appointment. Iowa Rule of Civil Procedure 183(b) establishes the requirements for a continuance based on the absence of a witness. That rule requires an affidavit must be filed with the motion and must meet the following criteria:

**(1) the name and residence of the absent witness, or, if unknown, that affiant has used diligence to ascertain them; (2) what efforts, constituting due diligence, have been made to obtain such witness or the witness' testimony, and facts showing reasonable grounds to believe the testimony will be procured by a certain, specified date; (3) what particular facts, distinct from legal conclusions, affiant believes the witness will prove, affiant believes the facts to be true, and affiant knows of no other witness by whom the facts can be fully proved. "**

**Iowa R. Civ. P. 183(b).**

The Heggstads failed to inform the court of the facts Betty was going to testify to and why her absence was detrimental to their defense. Most, if not all, of the job-related communications took place between Reuben and Patten so it is

unclear what relevant testimony Betty would have brought to light. In addition, Reuben's only explanation of why he would not be present to testify was that he was elderly and out-of-state, which was consistent with his status at the time the initial trial date was agreed upon. The motion alleged Betty's inability to travel but did not assert a reason Reuben was unable to travel or be available for the trial. While we recognize the difficulties presented to witnesses traveling from out of state, the Heggstads did not take steps to secure a ruling on their first motion for continuance nor did they comply with Rule 183(b) to support their inability to be present for the scheduled trial date. In addition, because of the late hour of filing the second motion, we cannot find the trial court abused its discretion in denying the continuance.

**Insufficient evidence.** The Heggstads next argue there was insufficient evidence to hold them liable for Patten's additional labor and materials, resulting in the foreclosure of Patten's mechanic lien. The original written contract required any request for additional services be in writing, which the Heggstads failed to do. The Heggstads dispute the existence of a separate oral agreement and objected to the invoices Patten offered into evidence for lack of foundation. The Heggstads further assert that because the contract called for all changes to be in writing, any oral agreements were unenforceable. This is contrary to our case law, which states an oral agreement for additional services and materials entered into following a written contract is enforceable. See *S. Hanson Lumber Co. v. De Moss*, 253 Iowa 204, 208, 111 N.W.2d 681, 684 (1961) (citing *Ittis v. Gentilly*, 234 Iowa 689, 694, 13 N.W.2d 699, 701 (1944)). There is substantial

evidence of the existence of the oral contract to affirm the trial court's findings. The testimony of both Sam Patten and his foreman indicated Reuben orally agreed to and requested the additional services, which were then provided by Patten. The invoices adequately set forth the cost of the work, which was performed and were properly admitted into evidence. We agree the Heggestads should not be able to receive materials and services free of charge when the extras were performed at Reuben's request and with his agreement.

We find the record contains sufficient evidence of Heggestad's request for the additional work performed by Patten to affirm the foreclosure of the mechanics lien. Accordingly, we affirm.

**AFFIRMED.**