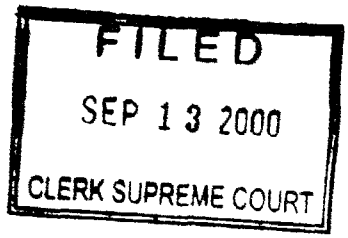
IN THE COURT OF APPEALS OF IOWA

No. 0-265 / 99-1277
Filed September 13, 2000



B & R CONCRETE CONSTRUCTION CO., INC.,
Plaintiff-Appellee,

vs.

TRAVIS JOHANNINGMEIER,
Defendant-Appellant.

Appeal from the Iowa District Court for Allamakee County, John Bauercamper, Judge.

Travis Johanningmeier appeals from a district court order foreclosing a mechanic's lien in favor of B & R Concrete Construction Co., Inc. **AFFIRMED.**

Robert J. Cowie, Jr. of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellant.

John D. Gnagy of Ehrhardt, Gnagy & McCorkindale, Elkader, for appellee.

Considered by Mahan, P.J., and Zimmer, J., and Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

PETERSON, S.J.

Defendant-appellant Travis Johanningmeier (T.J.) appeals from the foreclosure of a mechanic's lien in favor of plaintiff-appellee B & R Concrete Construction, Co. Inc. (B & R) He contends the trial court erred by granting B & R's petition for foreclosure of a mechanic's lien and the trial court erred by granting B & R an award of attorney's fees. We affirm.

Background and Proceedings. B & R is an Iowa corporation and is primarily engaged in the concrete construction business. Brian Wade is the president and in charge of conducting the business of the firm. T.J. operates a business known as T J's Fencing. This is a business of fabricating metal and fiberglass gates and fences.

In 1996, T.J. decided to erect a sixty by eighty foot building to be used in connection with his operation. He solicited bids separately for the excavation, building, and concrete work. There were no specific plans, specifications or blueprints for the concrete work. Wade met with T.J. and asked him what he wanted. Wade then prepared a bid to include what T.J. requested. Wade told T.J. he preferred to use rebar in the concrete instead of fiber mesh for reinforcement in the floor. T.J. rejected this suggestion and opted for less expensive fiber mesh.

Wade submitted a written bid in the amount of $13,580. The bid did not specify the load-baring capacity of the concrete but it was agreed between the parties this agreement called for 3500 pounds per square inch.

Curt Bucknell was selected to erect a prefabricated metal building on the cement foundation and slab which was to be completed by B & R. B & R poured the concrete footings in May of 1996, and poured and finished the floor in June of 1996. The concrete used by B & R was ordered from Prairie Redi-Mix of Prairie Du Chien, Wisconsin.

The agreement called for use of fiber mesh as reinforcing in the floor. This is furnished by the company delivering the cement. Because of a misunderstanding between B & R and Prairie Redi-Mix, no fiber mesh was installed in the floor. When Wade learned of that omission, he agreed to repour the floor to include the fiber mesh at no additional charge.

T. J. broke up and removed the concrete floor from the June installation. However, prior to repouring the floor, Wade wanted a partial payment. T. J. in turn wanted a deadline for the work so his building would be ready for use when he needed it. T. J. prepared a document which provided for a partial payment of $6000 and a completion date of August 7, 1996.

Before the floor could be repoured, T. J. made some changes. He increased the load-baring capacity of the cement from 3500 pounds per square inch to 4000 pounds per square inch and T. J. wanted a plastic vapor barrier installed under the concrete slab. Wade advised T. J. against installing the vapor barrier in this project because he felt it would attract moisture and damage the floor during the curing process. However, T. J. insisted the vapor barrier be installed and Wade agreed to do it.

The floor was repoured in August of 1996, prior to the deadline. Prairie Redi-Mix provided the cement. B & R sent T. J. a bill for $8,977.50. This was the original price of $13,580 less a credit for $6000 that T. J. had previously paid, plus some additional charges for extra material that B & R provided.

Shortly after the floor was poured, T. J. complained to Wade the floor had a hollow sound to it in several spots when struck by a metal object. He felt this indicated the floor was defective. Wade refused to inspect the floor as requested by T. J. and contended it was properly poured and finished.

T. J. also complained to Prairie Redi-Mix concerning the floor. The manager of technical services from Prairie Redi-Mix inspected the floor and took some core tests. The results of this testing do not appear in the record. However, subsequently T. J. decided to build another lean-to as an addition to the building. To settle the matter, Prairie Redi-Mix agreed to provide concrete equal in an amount to the concrete poured in the building in August of 1996 at no cost to T. J. The addition was constructed, and the concrete was provided by Prairie Redi-Mix.

The cement floor in the original building poured in August of 1996 has deteriorated. It is peeling and cracking and as a result it is not suitable for its intended purpose. However, T. J. has continued to use the building.

The contractor that erected the original building, Curt Bucknell testified in his opinion, the defect in the floor was a product problem and not a workmanship problem. This is the only evidence in the record concerning the cause of the problem with the floor.

Discussion. An action to enforce a mechanic's lien is in equity and our review is de novo. Iowa Code § 572.26(1995); *Fulzberger Excavating, Inc. v. Glass,* 351 N.W.2d 188, 191 (Iowa App. 1984). Weight will be given to the findings of fact and credibility determinations of the district court, especially in mechanic's lien cases. *Giese Constr. Co. v. Randa,* 524 N.W.2d 427, 430 (Iowa App. 1994).

In order to successfully enforce a mechanic's lien, substantial performance of the contract is required. *Moore's Builders & Contractors, Inc. v. Hoffman,* 509 N.W.2d 191, 193 (Iowa App. 1987). Substantial performance allows only the omissions or deviations from the contract that are inadvertent or unintentional and not the result of bad faith and do no impair the structure as a whole and are remedial without doing damages to other portions of the building and may be compensated for through deductions from the contract price. *Id.*

The problems with the floor in T.J..'s building was the result of the problem with the concrete that was secured from Prairie Redi-Mix. It was not as a result of the work performed by B & R. The actions of B & R in using defective concrete was inadvertent and unintentional and not the result of bad faith.

The structure with the defective floor has been used by T.J. for his business and it has not impaired the structure as a whole. The floor had been repoured once before, therefore, any defect in the second floor could be remedied without material damage to other portions of the building. The defect could be compensated by a deduction in the contract price by determining the

cost of replaced concrete and the cost to repour the floor. Accordingly, we conclude B & R substantially performed their contract.

In argument, T.J. contends B & R is responsible for the defective concrete because they ordered it from Prairie Redi-Mix. T.J. settled the claim against Prairie Redi-Mix for the faulty concrete. When a party settles a claim in full with one party, they are prohibited from pursuing a claim against other parties. *See Wadle v. Jones*, 312 N.W.2d 510, 514 (Iowa 1981).

T.J. contends the trial court erred by granting B & R attorney's fees. He bases this on his contention B & R was not entitled to a foreclosure decree. Inasmuch as we have affirmed the foreclosure of the mechanic's lien, we find the trial court did not err by awarding B & R attorney's fees.

B & R requests attorney's fees on appeal. T.J. has contested B & R's claim throughout the proceedings and accordingly we conclude they are entitled to appellant attorney's fees. *Clemens Graf Droste Zu Vischering v. Kading*, 368 N.W.2d 702, 716 (Iowa 1985). We conclude a reasonable appellate attorney fee would be in the sum of $500.

In conclusion, we find B & R substantially performed the contract, and the trial court did not err in awarding attorney's fees on the trial court level. We grant B & R appellant attorney's fees in the sum of $500.

AFFIRMED.