**IN THE COURT OF APPEALS OF IOWA**

No. 7-629 / 97-248

000277

**SCOTT MORROW and CAROL MORROW d/b/a MORROW CONSTRUCTION CO.,**
Plaintiffs-Appellants,
**vs.**
**JOHN K. MEREDITH, JOYCE MEREDITH, and CIRCLE B. CASHWAY OF NEWTON, INC.,**
Defendants-Appellees.
**JASPER COUNTY, IOWA, MID-IOWA SAVINGS BANK, and DOUGLAS MORRIS,**
Defendants.

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**CIRCLE B. CASHWAY OF NEWTON, INC.,**
Plaintiff/Cross-Appellant,
**vs.**
**JOHN K. MEREDITH, JOYCE MEREDITH, CAROL MORROW d/b/a MORROW CONSTRUCTION CO., and DOUGLAS C. MORRIS,**
Defendants/Cross-Appellees.

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Appeal from the Iowa District Court for Jasper County, Gary G. Kimes, Judge.

Scott and Carol Morrow, owners of Morrow Construction Company, appeal, and Circle B. Cashway cross-appeals, a district court ruling dismissing their petition to foreclose on their mechanic's liens placed on property owned by Kevin and Joyce Meredith. **AFFIRMED.**

Fred Stiefel of Park, Martens & Stiefel, Victor, for appellants.

Bradley McCall of Brierly Law Office, Newton, for appellees Meredith.

G. Stephen Walters of Jordan, Oliver & Walters, P.C., Winterset, for appellee Circle B. Cashway.

Heard by Cady, C.J., and Sackett, and Streit, JJ.

**CADY, C.J.**

Morrow Construction Company (Morrow) appeals and Circle B Cashway (Circle B) cross-appeals the district court ruling dismissing their petitions to foreclose mechanic's liens on property owned by Kevin and Joyce Meredith. We affirm.

Kevin and Joyce Meredith entered into a contract with Douglas Morris, a general contractor, to build a home for $92,950. The financing arrangement provided the lender would have the sole authority to disburse funds on the construction loan to Morris.

The Merediths made a $15,000 down payment to Morris before he began work, including $10,400 for the lot and the remaining $4,600 for construction. The Merediths made additional payments, authorized by the lender, to Morris in the amounts of $2,181 and $3,500. The Merediths, therefore, contributed a total of $20,681 toward the project, including the value of the lot.

Morris hired Morrow, a subcontractor, to perform concrete work on the home. Morrow completed the work, including pouring the basement and garage floor, at a cost of $14,945. Morris never paid Morrow. Financing charges began to accrue and at the time of trial totaled $5,128. Morris also hired Circle B to supply lumber for the project. Circle B provided lumber valued at $5,997. Morris never paid Circle B.

Morris stopped work on the property prior to completing the framing and roofing. The Merediths subsequently discovered cracks in portions of the basement

walls and demanded Morris remedy the problem. Morris declined to do additional work on the project.

Morrow filed a mechanic's lien in the amount of $15,392.50. It, however, failed to give the Merediths notice pursuant to Iowa Code section 572.14(2). Circle B also filed a mechanic's lien. It was in the amount of $5,887.50. Circle B provided the notice required in Iowa Code section 572.14(2).

The district court determined neither Morrow nor Circle B could foreclose the mechanic's liens. The trial court determined that Morrow's failure to comply with the notice requirements in Iowa Code section 572.14(2) precluded enforcement of its lien. With regard to both parties, the court also found no further amounts existed to compose a balance due which could constitute a res subject to attachment by subcontractors because the cost to complete the project exceeded the amount still owed by the Merediths under the terms of the original contract.

Morrow filed an appeal and Circle B cross-appealed, challenging the district court ruling dismissing their petitions to foreclose the mechanic's liens. In particular, Morrow claims the term "balance due" used in Iowa Code section 572.14(2) allows subcontractors to enforce mechanic's liens even though the effect will be to require homeowners to pay more to complete the house than the original cost. Also, Morrow contends it is not required to give notice pursuant to Iowa Code section 572.14(2) when the owner has demanded the subcontractor file a lawsuit to foreclose the mechanic's lien. Circle B maintains the district court erred in failing to enforce its

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mechanic's lien when abandonment of construction was caused by a breach of contract by the homeowner.

## I. Standard of Review

An action to enforce a mechanic's lien is in equity. *See Griess & Ginder Drywall, Inc. v. Moran,* 561 N.W.2d 815, 816 (Iowa 1997); Iowa Code § 572.26 (1995). Our review, therefore, is de novo. *Bidwell v. Midwest Solariums, Inc.*, 543 N.W.2d 293, 295 (Iowa App. 1995). We give weight to the findings of the district court, but are not bound by them. *See Carson v. Roediger*, 513 N.W.2d 713, 715 (Iowa 1994).

## II. Mechanic's Liens

The Meredith's home was an "owner-occupied dwelling." *See* Iowa Code § 572.1(4). Accordingly, under our statutory mechanic's lien scheme, an unpaid subcontractor who has filed timely notice is limited to recovering the amount the owner is obligated to pay the general contractor. *Carson,* 513 N.W.2d at 716.

In this case, the evidence reveals the cost to complete the home would have exceeded the amount owed to Morris under the principal contract. This fact is important because the subcontractors' liens are valid only to the extent the contract price has not been paid after deduction of the owner's completion costs. *Id.* Thus, since the Merediths have no obligation to Morris, the subcontractors cannot recover on their mechanics liens.

We reject the requests by Morrow and Circle B to modify or overrule *Carson* by permitting a subcontractor to recover if there is evidence the owner has not actually paid the general contractor for the work or materials supplied by the subcontractor. We also reject their argument that it was the Merediths who breached the contract by failing to pay Morris pursuant to the payment schedule. It is clear the parties agreed to follow the payment schedule established by the bank, not to the preliminary proposal of Morris. The Merediths did not breach the agreement. Finally, we observe the lack of notice by Morrow would, in any event, preclude it from enforcing its lien. *Henning v. Security Bank,* 504 N.W.2d 398, 401-02 (Iowa 1997).

We have considered all the claims raised. We affirm the decision of the district court.

**AFFIRMED.**