FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

Filed May 31, 1978

GERALD W. CHERRYHOLMES
d/b/a CHERRYHOLMES CONSTRUCTION,

Appellant,

v.

RICHARD ARCHER and ED J. SHERIDEN,
Individually, and d/b/a COMPONENT FARM
BUILDINGS, MYRA L. CRAWFORD and
MAURICE CRAWFORD,

Appellees.

472
2-60536

Appeal from Washington District Court - L. R. Carson, Judge.

Action to foreclose mechanic's lien. Affirmed as modified.

Robert Bates, of Livingston, Day, Kehoe, Meeker & Bates, of Washington, for appellant.

Willard M. Freed, of Freed, Reisetter, Megan & Rohovit, of Iowa City, and James E. Lloyd, of Washington, for appellees.

Heard by Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff Cherryholmes, a subcontractor for the construction of a livestock building on the farm of defendants, Crawford, appeals from trial court's dismissal of his action to foreclose a mechanic's lien. He further appeals from judgment entered against him on the counterclaim of Archer and Sheriden, the general contractors who had been joined as additional parties defendant in the lien foreclosure action. Our review is de novo pursuant to rule 4, Rules of Appellate Procedure. See also § 572.26, The Code; Kaltoft v. Nielsen, 252 Iowa 249, 106 N.W.2d 597 (1961).

I. Plaintiff's claim. Plaintiff's claim for mechanic's lien asserts that he is owed $14,886.74 for labor and materials on the livestock building in addition to payments already received from Archer and Sheriden. Defendants contend that plaintiff initially submitted a written bid to perform the portion of the project subcontracted to him for $29,892.19. In addition, they concede that pursuant to oral change orders for extra work plaintiff was to receive an additional $7500 on the job. Thus, defendants contend, the total agreed price was $37,392.19. Payments made against the disputed contract balance are $36,059.67, according to plaintiff and $39,550.32 according to defendants. The trial court found on the evidence presented that the facts were as claimed by defendants and that plaintiff had in fact been overpaid on the job in the amount of $2158.13.

On our de novo review of the evidence we conclude that both the evidence relating to the express agreement of the parties and the evidence relating to the reasonable value of materials and services provided by the plaintiff fails to establish that plaintiff is entitled to be paid more than $37,392.19, the amount admitted in defendants' answer. But we agree with plaintiff's contention that the amount of payments to be credited against this job is $36,059.67. Other payments received from defendants could properly be credited to other construction contracts between the same parties. Thus, plaintiff's lien is validly established by the evidence at $1332.52. Because of the determination which we make on the counterclaim of defendants Archer and Sheriden, in the following division of this opinion this sum is totally offset so that the trial court's judgment and decree dismissing the action to foreclose plaintiff's lien is correct.[1]

[1] A subcontractor can maintain a mechanic's lien against the property of the owner only to the extent of the obligations due him under his contract with the general contractor. Perkins Supply & Fuel Service v. Rosenberg, 226 Iowa 27, 282 N.W. 371 (1938). Under such circumstances the judgment of Archer and Sheriden, under division II of this opinion should, in equity, be set off against the plaintiff's claim against the owner. Cf. Ballinger v. Tarbell, 16 Iowa 491 (1864).

II. Claim of Defendants, Archer and Sheriden. Defendants, Archer and Sheriden, have counterclaimed against plaintiff alleging that they will be required to tear out and replace defective workmanship by plaintiff, subcontractor, in order to fulfill their contractual obligations to the owners (Crawfords). As a result they claim damages in the sum of $19,100.97. The trial court awarded Archer and Sheriden the full amount claimed on the counterclaim but specified that upon payment to them of the unpaid balance on their general contract (found to be $12,659.21), their judgment against the plaintiff should be reduced by that sum.

Plaintiff asserts that the form of this judgment is irregular and without explanation in the record. Defendants Archer and Sheriden ask this court to avoid the problem by simply finding the amount of damages due them under the evidence and ignoring any issue involving the contract balance retained by the owner. We treat the controversy in this manner.

Upon our de novo review of the evidence we find that Archer and Sheriden have established that the cost to them of correcting deficiencies in workmanship and materials attributable to plaintiff's performance as subcontractor, in order to fulfill their obligations under the general contract with the owners, is $6390.[2] Archer and Sheriden are entitled to judgment against plaintiff for this sum offset by $1332.52, the amount of plaintiff's mechanics lien as established in division I of this opinion.

The judgment dismissing plaintiff's petition to foreclose mechanic's lien is affirmed. The other provisions of the judgment are modified, as herein provided, and the matter is remanded for entry of judgment of $5057.48 against plaintiff and in favor of defendants, Archer and Sheriden. Said judgment shall bear interest at the legal rate from March 4, 1977. The judgment entered in this action shall make no disposition of the amount due defendants, Archer and Sheriden, from the Crawfords. Costs on appeal are assessed two-thirds to plaintiff; one-third to defendants Archer and Sheriden.

Affirmed in part, modified in part and remanded.

[2] This finding is based primarily upon the testimony of the witnesses, Schlabach and Johnson, which placed such cost at between $6390 and $12,688.90.