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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

G.L. LARSON COMPANY,

Plaintiff-Appellant,

vs.

ROHLIN CONSTRUCTION COMPANY, INC.,

Defendant-Appellee,

CITY OF PAULLINA, IOWA, and PAULLINA COMMUNITY SCHOOL DISTRICT,

Defendants.

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88-206

Appeal from the Iowa District Court for O'Brien County (Eq. 17209), Joseph J. Straub, Judge.

The contractor appeals in this suit to determine the respective rights of the parties for the costs of corrective work. **AFFIRMED.**

Robert W. Green, of Green, Faith & Hendrickson, Sioux City, for the plaintiff-appellant.

Harold W. White, of Fitzgibbon Brothers, Estherville, for the defendant-appellee Rohlin.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J. **140**

A subcontractor performed paving work which did not meet contract specifications, thereby requiring the general contractor to hire a third party to do corrective work. The general contractor brought this suit to determine the respective rights of the parties. The district court held the general contractor rather than the subcontractor should bear the cost of the corrective work. The general contractor appeals and contends the district court erred by concluding the subcontractor's failure to meet specifications was the general contractor's fault. Our review of this action in equity is de novo. Iowa R. App. P. 4. While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7) We affirm.

G.L. Larson Company (Larson) was the general contractor for the construction of a sports complex for the City of Paullina and the Paullina Community School District. Larson hired subcontractor Rohlin Construction Company (Rohlin) to lay and pave the asphalt surface on the tennis courts. The work was to be completed within ninety days after June 30, 1985. In early fall of 1985 representatives of both parties met to inspect the base which had been put in place by another subcontractor. Rohlin told Larson the base was not properly compacted. The parties agreed to

defer the asphalt work until the spring of 1986. Subsequently Larson tried to cure the base problem by removing some of the base and laying some sand. Rohlin objected to the sand. Someone other than Rohlin made an attempt to remove the sand.

The general specifications for the base called for ninety percent compaction. The evidence indicates the base met contract specifications as to compaction. However, the record suggests and Rohlin contends the base makeup did not meet specifications that it be a six inch granular base. The granular base was to be free from sand. The record indicates this was not the case.

On June 23 Rohlin's crew began to lay the asphalt. Their asphalt machine became stuck. Rohlin's foreman told Larson's foreman the base was too soft and they could not continue laying the asphalt. Larson's foreman did not testify at trial. Rohlin's foreman said he would not continue work without authority. After making a phone call, Larson's foreman gave Rohlin's foreman authority to continue. Rohlin then laid two layers of asphalt.

The evidence shows there must be a firm base in order to properly lay asphalt. Rohlin's employees agreed when the job was completed it did not look very good because of the ruts or seams which ran lengthwise after the asphalt hardened. Larson contends Rohlin used the wrong type of equipment. However, Rohlin had used this equipment on prior tennis courts.

There were conferences between Larson, Rohlin, the architect, and representatives of the city and the school district. Attached to a letter from Larson's engineer to Rohlin's vice president was a site observation dated July 22, 1986. This quote appears within the site observation: "Tennis court work is on hold at this time until all parties involved have resolved a definite course of action agreed to in writing." The record contains no reference to any subsequent agreement. Due to other work commitments, Rohlin could not get to the tennis court project right away. Larson hired Barkley Asphalt Company (Barkley) to install a top coat of asphalt. Rohlin was aware Barkley had been hired to complete the project, but there was never any agreement in writing as to a course of action or regarding payment to Barkley.

Rohlin later submitted a bill to Larson for $15,423 (the total contract price of Rohlin's asphalt work). Larson sought to subtract $8,758, the amount Larson had paid Barkley to do corrective work. Larson tendered $6,664 to Rohlin ($15,422 minus $8,758). Rohlin refused this tender.

Larson then filed the present action seeking a determination of the parties' rights under Iowa Code chapter 573. The district court concluded Rohlin was entitled to its entire subcontract charge of $15,422. The district court concluded that as between Larson and Rohlin,

Larson should bear the expense of the corrective work done by Barkley. The district court based this conclusion on a finding that when it became apparent there would be problems with the Rohlin asphalt due to a soft ground base, Larson nonetheless expressed a desire to Rohlin the work be continued. There is no dispute the asphalt laid by Rohlin did not meet specifications.

There is also no dispute as to the necessity of repairs which were performed by Barkley or as to the amount charged by Barkley. We agree with the trial court the reason the asphalt did not meet specifications was Larson's failure to provide a granular sub-base within specifications.

In order to recover in full, it is Rohlin's burden to show a "full, complete, and substantial performance" of the subcontract. Sheer Const., Inc. v. W. Hodgman and Sons, Inc., 326 N.W.2d 328, 332 (Iowa 1982) (citing Roland A. Wilson & Associates v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976)). In all contracts, however, "there is an implied term that the person for whom the work is contracted to be done will not obstruct, hinder or delay the contractor, but, on the contrary, will in all ways facilitate the performance of the work to be done by him." Id. (quoting Kaltoft v. Nielson, 252 Iowa 249, 258, 106 N.W.2d 597, 602 (1960)). The record reveals to us the reason for Rohlin's failure to meet specifications is due to the failure of Larson to meet the sub-base

specifications. Rohlin waited for authority to continue work once it was discovered the base was too soft. The record also reveals there was a need for a third and corrective layer of asphalt but there was also a dispute as to who would pay for the work of Barkley.

We agree with the trial court in that when Larson told Barkley to go ahead with the third course, knowing a dispute with Rohlin had not been resolved and after having made the representation referred to above in the site evaluation, that Larson did so at its own risk. Larson should bear the cost of corrective work. Rohlin should be paid $15,423.

We affirm the trial court in all respects.

AFFIRMED.