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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| **COOK PLUMBING CORPORATION and TESDELL ELECTRIC, LTD.** | ) | |
| Plaintiffs-Appellants, | ) | |
| vs. | ) | Filed November 26, 1985 |
| **CENTRAL IOWA PRODUCTION CREDIT ASSOCIATION,** | ) | 5-483<br>85-400 |
| Defendant-Appellee, | ) | |
| **RONALD E. BATES and PLEASANT OAK CORPORATION,** | ) | |
| Defendants, | ) | |

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Appeal from the Iowa District Court for Polk County - Robert O. Frederick, Judge.

Plaintiffs appeal from judgment for defendant in an action seeking foreclosure of a mechanic's lien. **AFFIRMED.**

William B. Serangeli, of Smith, Schneider & Stiles, P.C., Des Moines, for plaintiffs-appellants.

A. Frederic Matthias, of Matthias, Tyler & Nuzum, Newton, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, and Sackett, JJ.

SACKETT, J.

Defendant Central Iowa Production Credit Association (hereafter "PCA") sought to dispose of certain real estate. The real estate was sold on an installment contract to Defendants Ronald Bates (hereafter "Bates") and Pleasant Oak Corporation. The contract was a standard real estate contract with the exception of provision 7 which provides as follows:

> 7. It is agreed by all parties hereto that Buyers, although purchasing on contract, will have the right to sell lots after they have been platted and that the Sellers will provide warranty deeds for each sale on the following conditions:
>
> (a) One-half of the net proceeds from the frontage lots shall be paid directly to the Sellers, the other one-half of the net sale must be reinvested in subject real estate in property development or this one-half shall be also applied against the principal balance owed.
>
> (b) In the event of a sale other than the frontage lots, the Sellers shall receive toward the principal balance owed the sum of $2,500.00 per developed acre or $1,750.00 per undeveloped acre. In interpreting this provision it is understood by all parties hereto that blocks of 10 acres or more constitute undeveloped acreage; 10 acres or less constitute developed acres and shall be paid at the rate of $2,500.00 per acre as sold.
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> (c) In the event that the Buyers desire to sell any lots any of the subject real estate on contract, then in that event the written approval of the Sellers must be first obtained.

Bates and Pleasant Oak commenced construction of a residential property on the premises. Plaintiffs Cook Plumbing Corp. and Tesdell Electric, Ltd. furnished labor and materials on the premises. Plaintiffs were never paid for their work and filed mechanic's liens. The liens were perfected against Bates and Pleasant Oak, the contract vendees.

Bates and Pleasant Oak were in default on their contract, and their interests and the interests of the plaintiffs were forfeited by the PCA. The issue before us is whether the trial court properly forfeited plaintiffs' interests. Our scope of review in this equity action is de novo. Iowa R. App. P. 4.

A vendee of a real estate contract has an interest so that a mechanic's lien can attach. Northwestern Nat'l Bank of Sioux City v. Metro Center, Inc., 303 N.W.2d 395 (Iowa 1981). However, mere knowledge of or consent to the making of improvements by the vendee does not subject the interest of the vendor to a mechanic's lien. Denniston & Patridge Co. v. Romp., 244 Iowa 204, 208, 56 N.W.2d 601, 603 (1953). If the vendor has by express or implied agreement with his vendee contracted for the improvement of his real estate by the vendee, the vendor should be held to have subjected his interest in the realty to the claim of a mechanic's lien for the reasonable value of the material and labor furnished. Id. at 208, 56 N.W.2d at 604. This is particularly true where the improvement is such as to materially increase the amount of sale price. See Knudson v. Bland, 253 Iowa 614, 618, 113 N.W.2d 242, 244 (1962).

Plaintiffs argue that PCA's contract with Bates and Pleasant Oak was such that the trial court should have subjected the PCA interest in the real estate to plaintiff's mechanic's lien claim. Plaintiffs point to the 50 per cent reinvestment clause (clause 7(a)) in the installment contract and rely on Knudson v Bland in support of their position. The facts in Knudson show the vendor and vendee agreed the real estate was to be subdivided, the vendee was to assume the cost of paving, water, and sewer, and the vendor did, to a minor extent, become involved in contracting for improvements. The court in Knudson held the agreement put the purchaser in the status of an agent for the owner and subjected the vendor's interest in the realty to a mechanic's lien for paving contracted for by the purchaser.

The burden is on a mechanic's lien claimant to prove either an express or implied contract with or on behalf of the vendor, or else to prove such a state of facts as will give rise to an implied contract with the vendor in order

to claim a lien against the vendors realty. Ringland-Johnson-Crowley Co. v. First Central Service Corp., 255 N.W.2d 149, 151 (Iowa 1977).

There is no contention made that the residential property was being constructed in accordance with the agreement that 50 percent of lot sale amounts were to be reinvested in the property. Consequently, the issue of the foreclosure of a lien had Bales and Pleasant Oak been developing the property after the sale of a lot in accordance with their agreement to reinvest one-half of the sale proceeds is clearly not before us.

In Ringland-Johnson-Crowley Co. v. First Central Service Corp., the Iowa court rejected a claim against an owner holding that the establishment of an express or implied agreement whereby lessor was contractually bound to improve lessor's property was a prerequisite to plaintiff's successful assertion of its claim for relief. Id. at 153. The plaintiffs in this case have failed to show that Bates and Pleasant Oak were contractually bound to put the residential property on the land.

We find that plaintiffs have failed to prove either an express or implied contract between the PCA and Bates and Pleasant Oaks to construct the residential property so as to subject PCA's interest to plaintiffs' mechanic's lien. We therefore affirm the trial court.

AFFIRMED.[1]

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[1] We refer appellee's counsel to Iowa Rule of Appellate Procedure 16(a) which provides that the cover of appellee's brief should be red.