IN THE COURT OF APPEALS OF IOWA

No. 1-398 / 10-1880
Filed September 21, 2011

TRUSTEES OF THE IOWA LABORERS DISTRICT COUNCIL HEALTH AND WELFARE TRUST, TRUSTEES OF THE LABORERS NATIONAL PENSION FUND; TRUSTEES OF THE LABORERS LOCAL 177 TRAINING AND EDUCATION FUND; LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST; and LABORERS LOCAL UNION 177 OF THE LABORERS INTERNATIONAL UNION OF NORTH AMERICA,
Plaintiffs-Appellees,

vs.

ANKENY COMMUNITY SCHOOL DISTRICT and UNIVERSAL MASONRY, INC.,
Defendants,

and

MERCHANTS BONDING COMPANY (Mutual) and HPC, L.L.C.,
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel, Judge.

A general contractor and its bonding company appeal the ruling of the district court in favor of the plaintiffs. **AFFIRMED.**

Douglas J. Reed, Des Moines, for appellees.

Robert W. Goodwin of Goodwin Law Office, P.C., Ames, for appellants.

Heard by Sackett, C.J., and Doyle and Tabor, JJ.

DOYLE, J.

A general contractor on a public works project and its bonding company appeal the ruling of the district court holding plaintiffs, various union trusts, brought forth a valid claim under Iowa Code chapter 573 (2007) against the project's retainage and the general contractor's bond for the subcontractor's nonpayment to the union trusts of benefits contributions that were required to be paid on behalf of employees who were employed by the subcontractor on the project. Upon our review, we affirm.

***I. Background Facts and Proceedings*.**

In early 2007, defendant HPC, L.L.C. and its owner Harold Pike learned bids would be accepted by the Ankeny Community School District for constructing a public elementary school (hereinafter "the project"). HPC decided to bid on the project, and it solicited bids from various subcontractors for certain portions of the project, including masonry, electrical, roofing, mechanical, and drywall. One of the subcontractors that submitted a bid to HPC for the masonry portion of the contract was Universal Masonry (UM), of which Asim Nadarevich was the president.

HPC submitted a bid for the project using UM's bid for the masonry portion of the project. HPC was the lowest bidder, and the Ankeny Community School District awarded HPC the project. On May 21, 2007, the Ankeny Community School District and HPC entered into a contract for $12,250,000 for construction of the school with substantial completion to be by August 8, 2008. The contract called for monthly payments to HPC for progress on the project, with five percent of the payment amount to be withheld by the school district as retainage on the

project (a total retainage of $612,500). The retainage was to be paid after HPC fully performed the contract and a final certificate of payment had been issued by the project's architect.

On the same day it signed the contract, HPC obtained a payment bond from defendant Merchants Bonding Company (MBC) for the total amount of the contract as surety. HPC was obligated to indemnify the bonding company for any claims paid out under the bond. The terms of the bond required a claimant who did not have a direct contract with HPC to submit written notice of the claim within ninety days after having last performed labor on the project.

After HPC was awarded the project, its representatives met with Nadarevich to discuss the potential subcontract with UM. Nadarevich stated UM could meet HPC's December 2007 deadline for completing the structural block walls for the project. HPC's representatives also asked Nadarevich if UM could obtain a performance bond. Nadarevich told them UM could not, but HPC's representatives were unconcerned because it was not unusual for subcontractors to not be able to obtain a bond, particularly on a high-dollar project. HPC's representatives asked for references, and they contacted an employee at Nadarevich's bank, who advised them Nadarevich paid his bills on time. HPC's representatives contacted a few of UM's suppliers, who stated UM paid their bills on time. HPC's representatives also contacted the architect on the Waukee School project where UM had been previously awarded the masonry subcontract and had performed work. The architect told HPC's representatives it had not had any problems with UM.

On May 29, 2007, HPC and UM entered into a subcontract for completion of the masonry work on the project for $1,929,000. The subcontract specifically provided UM was not required to furnish a performance or payment bond. The subcontract stated UM's completion date for the project was "per approved construction schedule." The subcontract stated HPC agreed to make monthly payment to UM of ninety-five percent of all labor and materials. However, the contract provided HPC reserved "the right to pay a smaller percentage of the amount billed for either labor or materials if, in [HPC's] judgment, the circumstances necessitate increased retainage."

HPC decided to set up a two-party check system to insure payment of UM's creditors. HPC's representatives asked Nadarevich for a list of UM's creditors, and Nadarevich provided the names of all of UM's suppliers. However, HPC's representatives did not ask if UM was a union employer, based upon a company policy to avoid potential discrimination claims.

UM was, in fact, a union employer, information which Nadarevich did not volunteer to HPC. UM was a signatory to collective bargaining agreements with the Laborers' Local Union 177 and the Bricklayers and Allied Craftworkers' Local Union No. 3 (BAC). UM's agreement with the unions provided, among other things, that UM would pay fringe benefits; requiring UM to pay certain amounts for each hour worked by employees to various union trust funds[1] for employees'

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[1] The plaintiffs are the various union trusts set up by the Laborers' Local Union 177 and national branches of the union for payment of certain fringe benefits and dues owed to laborers and bricklayers under the collective bargaining agreements. The plaintiffs and the Laborers' Local Union 177 will be referred to collectively as "LLU."

health and welfare, pension, training and education, and for union dues.[2] The agreement between UM and the LLU required UM to post a bond unless the LLU waived the bond. The BAC's agreement required contractors who had either been working with the BAC for less than five years or had failed to make proper contributions under the agreement for two successive months to post a bond.

UM had a history of not paying the fringe benefits and dues required under the agreements. In August 2007, the LLU obtained a consent judgment from UM for UM's failure to pay fringe benefits from November 2006 to May 2007 to the LLU. The judgment ordered UM to pay the LLU $70,265.65 in monthly installments of $5,855.47. Despite this history, neither the LLU nor the BAC required the UM to post a bond on the school project.

UM moved onto the project on August 10, 2007, and it began work shortly thereafter. However, HPC began to have concerns that UM did not have enough bricklayers and laborers on the job. John Williams met with Nadarevich in September due to HPC's continuing concerns that UM would not meet the December deadline. Despite HPC's concerns, UM continued to work on the project and to file monthly applications for payment from HPC. UM's payment applications included requests for payment directly to UM for stated labor expenses, which HPC paid to UM.

Although UM in turn paid its employees their weekly wages, UM did not pay the unions for the employees' fringe benefits and dues required under the collective bargaining agreements. Nevertheless, after HPC remitted payment to

[2] The BAC's health and welfare fund is overseen by the Iowa Laborers Health and Welfare Trust, which is the only portion of the BAC's claims involved in this suit.

UM, UM provided to HPC mechanic's lien waivers waiving and releasing "any and all [sic] my/our claim of rights to file and establish a mechanic's lien" against the school for labor and materials. The waiver also stated UM warranted it had "already paid or will use the monies [it] receive[d] from [the] progress payment to promptly pay in full all subcontractors and suppliers for all work, material, equipment or services provided" on the project.

On October 22, 2007, Harold Pike received a telephone call from Gary Crees, the business agent for the BAC. Crees advised Harold that UM was a union signatory to a collective bargaining agreement with the BAC and UM had not been paying the required dues and fringe benefits under the agreement. Crees told Harold UM owed the BAC $264,000 on another project. Harold told Crees to let him know if the BAC had any problems with UM on this project. HPC did not take any further action concerning Crees's call.

HPC continued to have concerns with the number of bricklayers UM had on the project. UM ultimately failed to meet HPC's December deadline for construction of the project's structural block walls. HPC then incurred expenses associated with preserving the worksite from the winter weather, including renting scaffolding and purchasing polyurethane to cover the structure, for which HPC later billed UM. UM continued to work on the project.

In May 2008, Crees again contacted HPC's representatives, advising that UM had not made payments for the BAC's fringe benefits and dues as set out in the collective bargaining agreement. On June 3, 2008, Crees met with Harold and Curtis Pike, John Williams, and Joni Bachman (HPC's accountant and business manager). Cress presented HPC's representative with a spreadsheet

asserting fringe benefits and dues payments owed by UM to the BAC for November 2007, portions owed for December 2007, and then January 2008 to March 2008, totaling $109,297.98. Harold asked Crees why he waited seven months to contact him about UM's failure to pay. Crees responded that the BAC had tried to work with UM for payment, but UM defaulted on the payment arrangements. Harold asked Crees to provide an itemized statement of how he arrived at the figures stated on the spreadsheet. Later that day, the BAC faxed to HPC monthly fringe benefit reports. The reports were very blurry and difficult to read, and they were not signed.

HPC terminated UM's contract in July 2008. UM's last day on the project was July 18, 2008. The last progress payment HPC made to UM was on May 28, 2008. HPC had paid to UM $1.1 million for labor, and $260,000 was left to pay to UM on the contract.

On September 2, 2008, UM's attorney Chip Lowe faxed a letter it had received from the LLU to HPC's attorney. The letter, addressed to Harold Pike Construction and dated August 27, 2008, stated UM was deficient in its payments to the LLU in the amount of $46,474.70. The LLU requested HPC release payment "to [UM] in this amount so that [its] obligations to our benefit funds can be met."

On September 4, 2008, HPC spoke via telephone with UM's attorney, Nadarevich, and the LLU about the LLU's claims. The LLU stated UM owed it $85,194.76, which included fringe benefits and dues payments as well as liquidated damages. The LLU advised that the previous amount stated, $46,474.70, was money owed to it by UM on another project.

The next day, the LLU faxed HPC a spreadsheet "identifying the sums due from [UM] for benefits and dues under [UM's] labor agreements and attributable to work performed by [UM] for [HPC]." Attached to the fax were monthly fringe benefit reports from November 2007 to May 2008 for UM's employees covered by the LLU's agreement. The reports stated the number of hours worked by employees and the monthly amounts due to the LLU for the fringe benefits and dues. The reports provided a place for an "authorized officer, partner or agent" to sign and date the report; however, none of the reports were signed. Additionally, although the reports stated the total hours each employee worked, none of the reports specifically reported where the work was performed.

On October 22, 2008, the LLU sent the school district its notice of claim under Iowa Code chapter 573, which governs labor and material on public improvements. The notice stated that during October 2007 through and including May 2008, employees of UM who were covered under collective bargaining agreements furnished labor for the project.[3] The notice stated UM had failed to pay the required fringe benefits and dues under the agreements. The notice further stated the claims were based on the reports submitted by UM. The notice stated the following amounts were owed the unions' various trusts and funds:

Iowa Laborers District Council Health and Welfare Trust	$	96,468.40
Laborers National Pension Fund	$	37,756.00
LLU Training and Education Fund	$	3,236.25
LECET	$	980.68
LLU of the Laborers International Union of North America	$	9,968.88
	$	147,919.72

[3] Although the notice stated the dues and benefits owed included October 2007, it was later clarified that the claimed months were November 2007 through May 2008.

The claimed amounts owed were not broken down any further on the notice. The notice asserted that HPC and its surety, MBC, were indebted to the claimants for those amounts.

On February 9, 2009, the LLU filed its "petition to adjudicate retention and payment bond" against the school district, MBC, HPC, and UM. The LLU further claimed HPC, as principal, and MBC, as surety, were obligated for the payment of all labor, materials, and equipment furnished for use in the performance of the overall contract. Additionally, the LLU asserted MBC was obligated to pay contributions, interest, liquidated damages, costs, and reasonable attorney fees to the LLU, as well as withheld assessments to the LLU in the event UM or HPC failed to make payment. The LLU requested the court "adjudicate the rights to all retained funds and/or to enforce liability under the [p]ayment [b]ond given . . . ."

Trial on the LLU's claims against HPC and MBC (hereinafter collectively "defendants") commenced on January 19, 2010.[4] Defendants argued Iowa Code section 573.10(1) violated due process because it deprives contractors of timely notice of claims, and it violates equal protection because it unfairly deprives labor suppliers timely notice, compared to the 573.15 notice requirements for material suppliers. Defendants also argued the LLU failed to file the procedural requirements for notice under section 573.7, in that their notice of claim was not "itemized" or "sworn." Defendant asserted the LLU's claims were not claims for "labor" under chapter 573, and equitable estoppel prevented the LLU from asserting their claims.

[4] By the time of trial, the school district had released the retained funds to HPC pursuant to Iowa Code section 573.16 and was dismissed from the case.

Nadarevich testified that during the claimed time period, November 2007 through May 2008, UM's employees only worked on the Ankeny school project. He testified that UM's employee payroll records stating the number of hours worked by each employee would therefore only reflect hours worked on the project, even though the records did not specifically state where the employees were working.

The deposition of James Gallery, the president of Benefits Management Group, the administrator of the LLU's benefits, was entered into evidence. Gallery testified that although the fringe benefits reports should be signed by the subcontractor, the unsigned reports were accepted and no effort was made to have the reports signed.

The LLU representative Leonard Leo testified as to the monies owed to the LLU from UM. Leo testified he believed the hours worked by the employees stated on the fringe benefit reports were for hours worked only on the Ankeny school project, but he admitted if that was not true, the amounts asserted owed to the claimants would be incorrect.

On cross-examination, Leo admitted the LLU generally knows about a contract a subcontractor receives shortly after the contract is awarded. He testified the LLU later worked out a two-party check arrangement with another general contractor, where UM was a subcontractor, for payment of fringe benefits and dues by UM. He testified that contacting a general contractor was a double-edged sword; because while the LLU wants to secure the employee benefits, it does not want to get a subcontractor thrown off a job, which will in turn not benefit its members.

Harold Pike testified he repeatedly asked for verification from the unions as to which project the employees were working on to no avail. He testified if the unions' representative would have submitted a claim as soon as they learned UM was not paying benefits as required, he would have set up a two-party check system with them to make sure they were getting paid. He asserted any payment he or MBC would be required to pay the claimants would be double liability for him, because he already paid UM. Additionally, he testified that although he still had money left to pay UM, HPC incurred expenses caused by UM's failure to meet the December 2007 deadline and ligation fees for the various suits.

On August 10, 2010, the district court entered its ruling and judgment. The court found the LLU's notice satisfied the itemized and sworn requirements of Iowa Code section 573.7. The court specifically "did not find credible the evidence offered by [defendants] concerning its assertions that the [LLU's] claim included claims for [UM] workers who were working at sites other than [the Ankeny school project]." Although it found HPC may have a claim against UM for expenses associated with UM's failure to complete work as agreed, the court was "not persuaded, however, that these charges should preempt and/or defeat the union claims brought pursuant to chapter 573." Additionally, the court found the pay required under the agreements to the union plans was a claim for "labor performed" within the meaning of section 573.7, and that

> the union benefits should be paid out of the retainage no matter who failed to make the required payments. This is particularly true where HPC, as the general contractor, knew that [UM] could not obtain bonding, and HPC agreed and did obtain the bonding to cover [UM].

As to defendants' estoppel claim, the court found the LLU did not intentionally represent or conceal information to support the estoppel claim. The court also found HPC's use of two-party checks for UM's material payments showed it had knowledge of UM's payment history.

Finally, the district court found defendants' due process and equal protection arguments lacked merit. The court found HPC was a sophisticated corporation handling a multimillion-dollar building project that was fully informed of its rights and obligations concerning obtaining a bond in the terms of the statute. Because HPC chose UM and agreed to bond UM, and to require two-party checks for materials but not for UM's union obligations, any detriment HPC suffered was due to its own management decisions. The court therefore found the LLU had brought forth a valid claim of $147,919.72[5] against the retainage and the bond for nonpayment of the benefits. The court granted the LLU's request for attorney fees.

Defendants now appeal.

II. Scope and Standards of Review.

Our review of this equity action is de novo. Iowa R. App. P. 6.907; *Iowa Supply Co. v. Grooms & Co. Constr., Inc.*, 428 N.W.2d 662, 664 (Iowa 1988). Likewise, we review constitutional claims de novo. *Huisman v. Miedema*, 644 N.W.2d 321, 324 (Iowa 2002).

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[5] The district court's original ruling awarded the LLU $47,919.72, but that amount was increased to $147,919.72 in the court's October 21, 2010 ruling on plaintiff's motion to amend or enlarge, noting the $47,919.72 figure was a scrivener's error.

III. Discussion.

On appeal, defendants assert the district court erred in failing to rule that (1) the LLU had not submitted itemized and sworn statements as required by Iowa Code section 573.7; (2) the LLU's claims were not claims for labor performed under section 575.7; (3) the LLU was estopped from asserting their claims; (4) chapter 573 violates procedural due process because it fails to provide adequate notice to defendants; and (5) section 573.15 violates equal protection by not requiring a labor claimant to provide the same notice as a materials claimant. We address their arguments in turn.

A. Iowa Code Section 573.7.

"Iowa law treats claims in public works contracts and claims in private construction projects differently." *Iowa Supply*, 428 N.W.2d at 665.

> To provide protection in public works projects for contractors, subcontractors and materialmen unable to utilize a mechanic's lien, chapter 573 requires that the general contractor execute and deliver a bond running to the public corporation sufficient to insure the fulfillment of the conditions of the contract. *See* Iowa Code §§ 573.2, .5 (1987). This bond can be the object of a subcontractor's or materialman's claim, *see* [*Id.* at 573.7], and serves as a substitute for the protection of a mechanic's lien.

Id. Iowa Code section 573.7 specifically provides:

> Any person, firm, or corporation who has, under a contract with the principal contractor or *with subcontractors, performed labor*, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer, board, or commission authorized by law to let contracts for such improvement, *an itemized, sworn, written statement of the claim for such labor* . . . .

(Emphasis added.) We are obliged to construe the statute liberally with a view to promoting its objects and assisting the parties in obtaining justice. *Dobbs v. Knudson, Inc.*, 292 N.W.2d 692, 694 (Iowa 1980).

1. "Itemized."

Defendants first argue the district court erred in not finding the LLU failed to file an itemized statement of their claim for labor. We disagree.

As the district court pointed out, there is no definition of "itemized" in chapter 573. Our review of the Iowa Code finds no definition of the word, though it is used numerous times.[6] Black's Law Dictionary defines "itemize" as "[t]o list in detail; to state by items." Black's Law Dictionary 837 (7th ed. 1999). Unlike some statutes that require an itemization, section 573.7 does not specify what should be included in the itemization set forth in the statement or how detailed the list should be. *See* Iowa Code §§ 8A.514; 455E.11.

Construing the statute liberally, we agree with the district court that the LLU's notice of claim sufficiently set forth an itemized statement claiming monies owed to it. Here, the LLU's notice of claim listed in detail five union trusts/funds to which it claimed fringe benefits and dues were owed and unpaid. The amount claimed due for each trust/fund was set forth, and those amounts were totaled.

[6] For instance, Iowa Code section 8A.514 specifically explains that for vouchers for payment of claims, "the department shall file an itemized voucher showing in detail the items of service, expense, item furnished, or contract for which payment is sought." Iowa Code section 455E.11, which concerns the groundwater protection fund, requires the Department of Natural Resources to

> submit to the general assembly . . . an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, and an itemization of any other expenditures made within the previous fiscal year.

We therefore find no error in the district court's finding the LLU file an itemized statement of their claim for labor.

2. "Sworn."

Defendants next argue the district court erred in not finding the LLU failed to file a sworn statement of their claim for labor. We disagree.

Iowa Code chapter 573 does not define a "sworn" statement. Our review of the Iowa Code also finds no definition of the word. Black's Law Dictionary defines "sworn statement" as "[a] statement given under oath; an affidavit." Black's Law Dictionary at 1417.

It is true the fringe benefit reports, upon which the LLU relied to determine the number of hours worked, were not signed by UM. However, we agree with the district court, in construing the statute liberally, the notice met the requirement of a sworn statement. The LLU's attorney signed the notice, and the notice was "[s]ubscribed and sworn" before an Iowa Notary Public. Such a jurat evidences the claim was sworn to by the person signing it. *See Stoddard v. Sloan*, 65 Iowa 680, 684-85, 22 N.W. 924, 926 (1885). *See also Dalbey Bros. Lumber Co. v. Crispin*, 234 Iowa 151, 155-58, 12 N.W.2d 277, 279-80 (1943); *State v. Walker*, 574 N.W.2d 280, 284-88 (Iowa 1998); *City of Cedar Rapids v. Atsinger*, 617 N.W.2d 272, 274-76 (2000). We therefore find no error.

3. "Labor Performed."

Defendants next argue the district court erred in finding the LLU's claims were claims for "labor performed" under sections 573.7 and our supreme court's holding in *Dobbs*, 292 N.W.2d at 694, is distinguishable. We disagree.

Dobbs involved chapter 573 claims between a general contractor; a subcontractor; and union trusts, to which payments were due under collective bargaining agreements between the subcontractor and the union for work performed by union covered employees. *Dobbs*, 292 N.W.2d at 693-94. In that case, the general contractor was deficient in its payments to the subcontractor, causing the subcontractor to be deficient in its payments to the union trusts. *Id.* The subcontractor initiated an action pursuant to section 573.16, against the general contractor, its surety, the union trusts, and other parties "to determine the rights of the claimants to the retainage held by the Department in accordance with section 573.12." *Id.* The union trusts cross-claimed against the general contractor and its surety for judgment on their claims. *Id.*

On a motion for summary judgment by the general contractor, the general contractor asserted that "the items for which claim is made by said trusts are not claims for 'labor or service' within the meaning of section 573.7, Code of Iowa." *Id.* The trial court sustained the motion on that ground, reasoning "the claims did not come within the section because they were for 'fringe benefits,'" and the union trusts appealed. *Id.*

The Iowa Supreme Court, disagreeing with the general contractor's "construction of the statute," reversed the district court's grant of summary judgment. *Id.* Noting it was "obliged to construe the statute liberally with a view to promoting its objects and assisting the parties in obtaining justice," the court expressly held "the payments to the trusts are for labor within the meaning of section 573.7." *Id.* at 694-95. The court explained:

> Section 573.7 requires that the claim be for "labor" or "service." Whether a claim is for labor or service is determined not by the nature of what the claimant receives but rather by the nature of what is done to be entitled to receive it. The issue, therefore, is not whether the payments to the trust funds are fringe benefits or wages but whether the employees of [the subcontractors] performed labor or service to become entitled to the payments on their behalf. *See Forsberg v. Loss [Constr.] Co.*, 218 Iowa 818, 825, 252 N.W. 258, 261 (1934) ("(U)nder the statute one who furnishes material or performs labor under contract with a subcontractor in the construction of a public improvement may file a claim.").
>
> The employees were laborers, carpenters and bricklayers who indisputably performed labor for [the subcontractors] on the project and thereby earned the right to have the payments made to the trusts pursuant to the collective bargaining agreements.

Id. at 694.

Although defendants are correct that *Dobbs* involved nonpayment by a general contractor, where here the issue is nonpayment by the subcontractor, we find the language of *Dobbs* squarely on point. Clearly UM's employees performed labor on the Ankeny school project. The employees thereby earned the right to have the payments made to the trusts pursuant to the collective bargaining agreements union trusts and funds. Consequently, we find the district court did not err in finding the LLU's claims were claims for "labor performed" under sections 573.7.

B. Estoppel.

Defendants next argue the district court erred in finding the LLU was not estopped from asserting their claims against them. Defendants assert the LLU concealed the fact it knew UM had a history of not paying the trusts/funds the benefits and dues required under the collective bargaining agreements.

The doctrine of equitable estoppel is a common law doctrine that prevents a party who has made certain representations from taking unfair advantage of another when the party making the representations changes its position to the prejudice of the party who relied on the representations. *ABC Disposal Sys., Inc. v. Dep't of Natural Res.*, 681 N.W.2d 596, 606 (Iowa 2004). The elements of equitable estoppel are (1) false representation or concealment of material facts, (2) lack of knowledge of the true facts on the part of the actor, (3) the intention that the false representation or concealment be acted upon, and (4) reliance on the false representation or concealment by the actor to his or her prejudice and injury. *City of Akron v. Akron-Westfield Cmty. Sch. Dist.*, 659 N.W.2d 223, 226 (Iowa 2003). "Equitable estoppel may not be established if any one of these elements is lacking." *Hendricks v. Great Plains Supply Co.*, 609 N.W.2d 486, 493 (Iowa 2000).

The district court rejected defendants' estoppel claim finding insufficient evidence that the LLU made any false representations or concealed material facts concerning UM's financial or payment history to support estoppel. We agree.

Here, HPC decided to hire UM although it knew it could not obtain a bond. There is no evidence HPC ever asked UM why it could not obtain a bond or that it performed a formal credit check to verify it was in fact paying all of its creditors. Furthermore, after it learned UM could not obtain a bond, it chose to set up a two-party check system with UM's suppliers to protect itself from liability. HPC never asked UM if it was a union employer, even after it awarded UM the subcontract and decided UM did not have to obtain a bond. HPC learned in

October 2007, after UM had been on the job only two months and a minimal amount of the subcontract amount had been paid to UM, that UM was a union employer and it owed $264,000 to the BAC. Given the difficulties HPC was having with UM at that time on the project, HPC could have taken steps then to protect itself against potential double liability, including retaining five percent from the payments it dispersed to UM or setting up two-party checks with UM's union creditors to ensure they were paid. HPC took no such steps.

Although we believe it would have been a better practice if the LLU had contacted HPC sooner, we agree with the district court that there was no evidence the LLU concealed material facts from HPC. Furthermore, even if we had found the LLU concealed material facts, we cannot say there was a lack of knowledge on HPC's part, or that it was the LLU's intention to conceal material facts to be acted upon by HPC. We agree that defendants cannot establish the elements of equitable estoppel. We find no error on this issue.

***C. Constitutional Claims*.**

Defendants finally argue the district court erred in not finding Iowa Code chapter 573 violates due process and equal protection, contending the chapter essentially does not provide a contractor timely notice of labor claims. However, defendants did not indicate whether the case had been brought under the federal or state constitution, or both. Ordinarily, when a party generically refers to a constitutional claim with both state and federal counterparts but does not identify specifically which constitution he or she is proceeding under, we will consider the arguments raised under both constitutions. *King v. State*, 797 N.W.2d 565, 571 (Iowa 2011). Nevertheless, we generally "consider the substantive standards

under the Iowa Constitution to be the same as those developed by the United States Supreme Court under the Federal Constitution." *Id.* "Even in these cases in which no substantive distinction had been made between state and federal constitutional provisions, we reserve the right to apply the principles differently under the state constitution compared to its federal counterpart." *Id.*

Statutes are presumed constitutional and the challenger must show, beyond a reasonable doubt, the statute is unconstitutional and must negate every reasonable basis to support the statute. *Johnston v. Veterans' Plaza Auth.*, 535 N.W.2d 131, 132 (Iowa 1995). Every reasonable doubt will be resolved in favor of constitutionality. *See McMahon v. Iowa Dep't of Transp.*, 522 N.W.2d 51, 56-57 (Iowa 1994).

1. Due Process.

The due process clause of the Iowa Constitution provides that "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. art. I, § 9. Similarly, the Fourteenth Amendment to the United States Constitution states that "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. "Procedural due process requires notice and an opportunity to be heard at a meaningful time in a meaningful manner prior to depriving an individual of life, liberty, or property." *State v. Dudley*, 766 N.W.2d 606, 624 (Iowa 2009) (internal citation omitted).

Defendants contend chapter 573 is unconstitutional, asserting it fails to provide adequate notice to defendants. Specifically, defendants argue section 573.10(1), which requires claims for laborer, services, and transportation to be filed with the public entity thirty days after the project is completed and finally

accepted, does not give contractors meaningful notice in cases like this one, where the final acceptance is five months after the work was substantially completed.[7]

Upon our de novo review, we find the notice provided to defendants under chapter 573 satisfied due process. Defendants were on notice that the retainage would be set aside for such claims, and laborers had thirty days after the project is finally accepted to give notice of their claims. The LLU's notice of claim was provided to defendants before the retainage was paid out. The notice occurred prior to final judgment being rendered against defendants, and defendants were allowed to present evidence and argument with respect to the claim. Therefore, we find the hearing afforded defendants was "at a meaningful time" and was conducted "in a meaningful manner" as required by the Due Process Clauses. "No additional notice and opportunity for hearing were required." *See Economy Forms Corp. v. City of Cedar Rapids*, 340 N.W.2d 259, 263 (Iowa 1983).

***2. Equal Protection*.**

"The Fourteenth Amendment to the United States Constitution and article I, section 6 of the Iowa Constitution provide individuals equal protection under the law.[8] This principle requires that similarly situated persons be treated alike under the law." *Wright v. Iowa Dep't of Corr.*, 747 N.W.2d 213, 216 (Iowa 2008) (internal quotation omitted). Thus, to determine whether a statute violates

[7] Section 573.10(1) provides claims may be filed "[a]t any time before the expiration of thirty days immediately following the completion and final acceptance of the improvement."

[8] The federal and state Equal Protection Clauses are deemed "to be identical in scope, import, and purpose." *Johnson v. Louis*, 654 N.W.2d 886, 890 (Iowa 2002). Because HPC has not articulated a reason for applying different analyses under the Iowa and federal constitutions, we need not interpret them differently in this case. *Midwest Check Cashing, Inc. v. Richey*, 728 N.W.2d 396, 404 (Iowa 2007).

equal protection, we must first determine whether the statute makes a distinction between similarly situated individuals. *Id.* State laws generally are subjected to various levels of scrutiny depending on the classification the laws draw and the kind of right the laws affect. *See Sanchez v. State*, 692 N.W.2d 812, 817 (Iowa 2005). Because HPC appears to concede this case does not involve a suspect class or a fundamental right, we would apply a rational basis test, if disparate treatment of similarly situated persons were identified. *Id.* Under rational-basis review, the statute need only be rationally related to a legitimate state interest to survive an equal protection challenge. *Id.* "The party attacking the classification has the heavy burden of proving the action unconstitutional, and must negate every reasonable basis upon which the action may be sustained." *Miller v. Boone Cnty. Hosp.*, 394 N.W.2d 778-79 (Iowa 1986).

Defendants point to the following classes who allegedly receive differential treatment: (1) material supplier on a public works project who must give notice of claims within thirty days of supplying materials, *see* Iowa Code § 573.15; and (2) laborers on a public works project who must give notice of claims within thirty days of completion and final acceptance of the project, *see* Iowa Code § 573.10(1). Even assuming without deciding that the two classes are similarly situated and singled out for differential treatment, in providing for different times for filing claims for labor versus claims for material providers, we believe the legislature cannot be said to have acted without a rational basis. Materials providers supply a tangible product to contractors that is readily observable and typically billed for at delivery or shortly thereafter. That is not true for laborers. Although laborers may report their hours weekly or even daily to the

subcontractor, here UM submitted monthly payment applications to HPC that were typically paid a month later. Additionally, the union fringe benefits were to be paid monthly. Providing notice of claims for labor thirty days after the labor was performed does not seem possible. We agree with the district court's conclusion that defendants failed to show its equal protection rights were violated. We therefore conclude defendants failed to overcome chapter 573's strong presumption of constitutionality.

***IV. Conclusion*.**

For the foregoing reasons, we affirm the ruling of the district court.

AFFIRMED.

Tabor, J., concurs; Sackett, C.J., concurs specially without opinion.