STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1016

J. H. Larson Electrical Company,
Appellant,

vs.

C & S Electric, LLC, et al.,
Defendants,

Rochon Corporation, et al.,
Respondents.

Filed April 2, 2012
Affirmed
Crippen, Judge[*]

Hennepin County District Court
File No. 27-CV-09-20064

Stephen M. Harris, Meyer & Njus, P.A., Minneapolis, Minnesota (for appellant)

Robert J. Huber, Kristin R. Sarff, Leonard, Street & Deinard, Minneapolis, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Crippen, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

In this appeal following a bench trial, appellant challenges the district court's judgment dismissing appellant's claim for recovery under a payment bond, specifically challenging the court's conclusion that appellant was estopped from succeeding on the claim. Because the evidence presented to the district court supports its finding that respondent contractor reasonably relied on appellant's lien waivers as representations that it was receiving timely payments from the subcontractor, we affirm.

FACTS

This action arises out of appellant J.H. Larson Electrical Company's claim against a payment bond issued by respondent Ohio Farmers Insurance Company to respondent Rochon Corporation on a public school construction project. Rochon was the general contractor for the project, and Larson was a supplier to a subcontractor, C&S Electrical, LLC.[1] This appeal follows the district court's order for judgment after trial.

D E C I S I O N

In an appeal from a bench trial, this court reviews for abuse of discretion the district court's application of equitable estoppel to bar a party's claims. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). The district court abuses its discretion when it acts on an erroneous view of the law or decides the case against the facts in the record. *Id.* Factual findings will be affirmed unless they are clearly erroneous. *Id.*

[1] Larson also asserted in this action breach-of-contract claims against C&S and its owners. The district court found in Larson's favor on those claims, and that portion of the court's judgment is not challenged on appeal.

(citing Minn. R. Civ. P. 52.01). And "[i]f the district court's ruling is free from legal or factual errors, we will not overturn the decision unless the district court's decision is exercised in an arbitrary or capricious manner." *Id.*

The Public Contractors' Performance and Payment Bond Act requires contractors to obtain performance and payment bonds for public-works contracts. Minn. Stat. § 574.26, subd. 2 (2010). The purpose of the act "is to protect laborers and materialmen who perform labor or furnish material for the execution of a public work to which the mechanics' lien statute does not apply." *Nelson Roofing & Contracting, Inc. v. C. W. Moore Co.*, 310 Minn. 140, 144, 245 N.W.2d 866, 868 (1976).

Lien waivers generally have been construed to waive only lien rights, and not the right to pursue payment. *See generally* 53 Am. Jur. 2d Mechanics' Liens § 280 (noting that lien waiver "does not prevent the claimant from filing for a personal judgment against the debtor"). But the claim for payment fails when the language in the waiver supports an estoppel defense. *See, e.g., B.G. Equip. Co. v. Amer. Ins. Co.*, 402 N.Y.S.2d 479, 481 (N.Y. App. Div. 1978) (acknowledging that waiver itself is limited to lien rights but considering waiver in conjunction with "totality of facts before us" to determine that claimant was estopped from seeking recovery under bond).

Larson's challenge focuses on the district court's factual finding that Rochon, covered by the payment bond, reasonably relied upon lien waivers Larson furnished to Rochon. *See Anderson v. Minn. Ins. Guaranty Ass'n*, 534 N.W.2d 706, 709 (Minn. 1995) (explaining that reasonable reliance is an essential element of the equitable-estoppel defense).

The district court found and the record confirms that Rochon required C&S to provide lien waivers from its suppliers before Rochon issued payments to C&S and that lien waivers are "customarily used on both public and private construction projects to keep the general contractor . . . informed of the payment status of subcontractors and suppliers and to protect the projects from . . . bond claims." The district court further found, based on the documents of record, that the lien waivers provided not only an election between a partial and full payment but also contained a space for the supplier to list any outstanding amounts owed; and these documents permit the court's finding that Larson never indicated amounts owing in the lien waivers it furnished to Rochon.

Based on these findings, the court found that Rochon relied on Larson's failure to indicate any amounts owing as a representation that it was receiving prompt payments from C&S. And the court found that "Larson knew that C&S would be providing these lien waivers to Rochon as proof that J.H. Larson had been paid and to induce Rochon to make monthly progress payments to C&S." The court emphasized that the Larson lien waivers were "signed by authorized persons from J.H. Larson without indicating that J.H. Larson was still owed money by C&S or how much was owed."[2]

The evidence in the record, although not overwhelming, is sufficient to support the district court's findings on the customs of the industry and reasonable reliance. Rochon

[2] Larson asserts that the district court's findings with respect to the estoppel defense are taken verbatim from respondents' proposed findings of facts. This court has "strongly caution[ed] that wholesale adoption of one party's findings and conclusions raises the question of whether the trial court independently evaluated each party's testimony and evidence." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992). Adoption of a party's proposed findings, however, "is not reversible error per se." *Id.* (citing *Sigurdson v. Isanti County*, 408 N.W.2d 654, 657 (Minn. App. 1987)).

project manager Karl Hinkle testified to the importance of lien waivers generally and to his specific reliance on the lien waivers provided by Larson in this case. The district court expressly credited Hinkle's testimony, and we will not interfere with its credibility determination on appeal. Minn. R. Civ. P. 52.01.

Larson argues that Hinkle's testimony was belied by the timing of Larson's lien waivers in relation to the payments made by Rochon to C&S, as well as Hinkle's concession that payments were prompted not by requests for payment but by Rochon's receipt of payments from the school district. But Larson made this argument to the district court, and it was rejected in the court's weighing of the evidence. We are not at similar liberty to weigh the evidence on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court's finding of reasonable reliance was not clearly erroneous.[3]

Larson asserts error in the district court's reference, in a post-judgment order, to the doctrine of promissory estoppel, asserting that promissory estoppel is an affirmative cause of action, rather than a defense, and thus that the district court erred by applying it. Promissory estoppel is better understood as a cause of action rather than a defense, although the caselaw has sometimes applied promissory estoppel as a defense. *See, e.g.*, *Sussel Co. v. First Federal Savings & Loan Ass'n of St. Paul*, 304 Minn. 433, 437, 232

[3] Larson expanded his argument against reasonable reliance at oral argument, arguing inter alia that items in the record show Rochon payment dates that belie the district court's findings. These constructions of details in the record were not presented to the district court or in briefing to this court. We are not to consider arguments raised for the first time at oral argument. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to address issues not raised and addressed by district court); *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issue not briefed on appeal are waived).

N.W.2d 88, 90 (1975) (citing cases standing for proposition that, "where the conditions of promissory estoppel are present, the materialman is barred from denying the waiver's validity"); *Peterson Mechanical, Inc. v. Nereson*, 466 N.W.2d 568, 571 (N.D. 1991) (explaining that district court "construed the mechanic's lien waiver in terms of promissory estoppel" and "factually found that Peterson Mechanical was estopped" from enforcing the lien).

Because both promissory estoppel and equitable estoppel require proof of reasonable reliance, any error by the district court in the terminology employed was harmless error not warranting reversal. *See Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992) (reciting elements of promissory estoppel to include reasonable reliance); *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990) (same for equitable estoppel); *see also* Minn. R. Civ. P. 61 (requiring this court to disregard harmless error).

There being no factual or legal errors in the district court's order for judgment, the court did not abuse its discretion in determining that Larson is equitably estopped from asserting a claim against the payment bond in this case. Because we affirm the judgment on that ground, we need not reach Larson's argument that the district court erred by determining that a portion of the bond claim was also barred as untimely asserted.

Affirmed.