



ATTORNEYS FOR APPELLANT

Christopher Jeter
Erica L. Sawyer
Massillamany Jeter & Carson LLP
Fishers, Indiana

ATTORNEY FOR APPELLEES

Richard B. Kaufman
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

R.L. Rynard Development,
Corp. and Robert L. Rynard, Jr.,
Appellant-Defendants,

v.

Martinsville Real Property LLC
and Magnolia Health Systems
57, LLC,
Appellee-Plaintiffs.

December 8, 2021

Court of Appeals Case No.
21A-CT-1108

Appeal from the Marion Superior
Court

The Honorable Gary L. Miller,
Judge

Trial Court Cause No.
49D03-1910-CT-44548

Mathias, Judge.

- [1] R.L. Rynard Development Corporation (the “Contractor”) appeals the Marion Superior Court’s grant of partial summary judgment in favor of Martinsville Real Property LLC and Magnolia Health Systems 57, LLC (collectively, the “Property Owners”). The Contractor argues that it was not fully compensated
- Court of Appeals of Indiana | Opinion 21A-CT-1108 | December 8, 2021 Page 1 of 12

for work it completed pursuant to the parties' construction contracts. The Property Owners contend that the Contractor tendered fraudulent documents in order to induce the Property Owners to release several million dollars in payments and that, as a result, the Contractor should be equitably estopped from asserting any claim that it was not paid in full. The trial court concluded, in agreement with the Property Owners, that because the Contractor fraudulently induced payments, its counterclaim should be estopped and dismissed.

[2] We affirm.

Facts and Procedural History

[3] The material facts are undisputed. In March 2016, the Contractor entered into a series of construction contracts with the Property Owners. Appellant's App. Vol. VII, pp. 8–38. The contracts required the Contractor to build a nursing home, an assisted living facility, and several duplex apartments on the Property Owners' land in Martinsville, Indiana (the "facilities"). The contracts also required that "progress payments" would be made to the Contractor as work was completed. *See, e.g., id.* at 10. Any subcontractors utilized by the Contractor were to be paid by the Contractor, and not by the Property Owners.

[4] The contracts further required the Contractor to follow certain procedures in order to receive progress payments. Namely, the Contractor was required to submit applications for payment, accompanied by lien waivers signed by the

subcontractors. The Contractor submitted several applications for payment over the course of the construction process and, as required, attached lien waivers to each application. Appellant's App. Vol. VIII, pp. 224–40. In total, the Property Owners paid the Contractor upwards of \$17 million for its construction of the facilities. Appellant's App. Vol. VII, p. 128.

[5] On February 27, 2020, a subcontractor utilized by the Contractor filed a notice of lien and third-party complaint asserting that it had not been fully compensated for its work on the facilities.¹ Appellant's App. Vol. III, pp. 167–82. This prompted the Property Owners to file an amended complaint alleging that the Contractor's president, Robert Rynard, Jr., had forged subcontractors' signatures on the lien waivers attached to its applications for payment in order to induce several million dollars of payments from the Property Owners. Rynard, Jr. had also notarized each lien waiver.

[6] As a result of these actions, the Property Owners further alleged, the Contractor committed forgery, deception, and common law fraud, entitling it to treble damages under the Crime Victim Relief Act. Appellant's App. Vol. VII pp. 121–41.

[7] The Contractor responded with a counterclaim, which it later amended, arguing that the Property Owners breached the parties' construction contracts

¹ The subcontractors are not parties to this appeal.

when they failed to compensate the Contractor for its completion of several tasks that were not originally contemplated under the contracts. More specifically, the Contractor alleged that the Property Owners had submitted change orders and that it was not compensated for completing the additional tasks requested in those change orders. Appellant's App. Vol. VII pp. 2–38. The Property Owners asserted in reply that, because the Contractor had submitted fraudulent lien waivers, it should be equitably estopped from pursuing its breach of contract counterclaim.

[8] Later, in September 2020, the Property Owners deposed Rynard, Jr., under oath, and questioned him at length about the lien waivers. Rynard, Jr. invoked his Fifth Amendment privilege against self-incrimination in response to several dozen of those questions. *See* Appellant's App. Vol. VIII, pp. 244–49; Vol. IX, pp. 23–59.

[9] The trial court's summary judgment order lists several of those exchanges:

Examples of deposition questions posed to Rynard Jr. by counsel for the Plaintiffs which prompted certain of the Fifth Amendment Assertions are as follows:

Q. When you notarized the document titled Waiver of Lien in the amount of \$132,822.65 on June 25th of 2019, had Brad Emmert signed this document?

Q. Who affixed Brad Emmert's signature to the document titled Waiver of Lien in the amount of \$132,822.65?

Q. Isn't it true that the document titled Waiver of Lien in the amount of \$132,822.65 was provided to my clients to induce my clients to make payment to Rynard Corporation?

Q. Isn't it true that the document titled Waiver of Lien in the amount of \$35,668.75 was provided to my clients to induce my clients to make payment to Rynard Corporation?

Q. When you notarized the document titled Waiver of Lien in the amount of \$70,250 on February 1st of 2019, did you notarize this document in the presence of Brad Emmert?

Q. When you notarized the document titled Waiver of Lien in the amount of \$70,250 on February 1st of 2019, had Brad Emmert signed this document?

Q. Who affixed Brad Emmert's signature to the document titled Waiver of Lien in the amount of \$70,250?

Q. Isn't it true that the document titled Waiver of Lien in the amount of \$70,250 was provided to my clients to induce my clients to make payment to Rynard Corporation?

Q. Who affixed Mary Alt's signature to the document titled Waiver of Lien in the amount of \$60,975?

Q. Isn't it true that the document titled Waiver of Lien in the amount of \$60,975 was provided to the property owners to induce the property- excuse me, to induce my clients to make payment to Rynard Corporation?

Q. Did you ever communicate that, to anyone, that you were authorized by anyone to notarize documents which are titled Waiver of Lien on behalf of anyone?

Q. When you notarized the document titled Waiver of Lien in the amount [o]f \$46,975 on February 5th of 2019, did you notarize this document in the presence of Mary Alt?

Q. When you notarized the document titled Waiver of Lien in the amount of \$46,975 on February 5th of 2019, had Mary Alt signed this document?

Q. Who affixed Mary Alt's signature to the document titled Waiver of Lien in the amount of \$46,975?

Q. Isn't it true that the document titled Waiver of Lien in the amount of \$46,975 was provided to my clients to induce my clients to make payment to Rynard Corporation?

Q. When you notarized the document titled Waiver of Lien in the amount of \$98,481.05 on June 24th of 2019, did you notarize this document in the presence of either Carla Pugh or Carlo Pugh?

Q. When you notarized the document titled Waiver of Lien in the amount of \$98,481.05 on June 24th of 2019, had either Carla Pugh or Carlo Pugh signed this document?

Q. Who affixed either Carla Pugh or Carlo Pugh's signature to the document titled Waiver of Lien in the amount of \$98,481.05?"

Q. Isn't it true that the document titled Waiver of Lien in the amount of \$98,481.05 was provided to my clients to induce my clients to make payment to Rynard Corporation?

Q. Who affixed Brad Emmert's signature to the document titled Waiver of Lien in the amount of \$680,000?

Q. Was the document titled Waiver of Lien in the amount of \$680,000 provided to my clients as part of an application for payment or draw request submitted to my clients?

Q. In what form or manner was the document titled Waiver of Lien in the amount of \$680[,]000 provided to my clients?

Q. Isn't it true that the document titled Waiver of Lien in the amount of \$680,000 was provided to my clients to induce my clients to make payment to Rynard Corporation?

Appellant's App. Vol. XV, pp. 51–54 .

[10] On October 21, 2021, following Rynard, Jr.'s deposition, the Property Owners moved for partial summary judgment on the Contractor's breach of contract counterclaim, arguing that the trial court should equitably estop the Contractor from asserting the counterclaim in light of Rynard, Jr.'s purportedly fraudulent conduct. After a hearing, the trial granted the Property Owners' motion and dismissed the Contractor's counterclaim on equitable estoppel grounds.

[11] The Contractor now appeals.

Standard of Review

[12] We review summary judgment motions de novo, applying the same standard as the trial court. *Hartman v. BigInch Fabricators & Constr. Holding Co., Inc.*, 161 N.E.3d 1218, 1220 (Ind. 2021). "That is, we draw all reasonable inferences in favor of the non-moving party and summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled

to judgment as a matter of law.” *Griffin v. Menard, Inc.*, 175 N.E.3d 811, 813 (Ind. 2021).

Discussion and Decision

- [13] The Contractor claims that the Property Owners failed to establish two elements of their equitable estoppel defense and that the court therefore erred in dismissing the Contractor’s counterclaims on estoppel grounds. We do not agree.
- [14] Estoppel is a concept based on the general principle that one who induces another to act in a particular manner will not be permitted to adopt an inconsistent position, attitude, or course of conduct. Although there are several variations of estoppel, the basis for equitable estoppel, in particular, is fraud, either actual or constructive, on the part of the person estopped. *New Chicago v. Lake Station*, 939 N.E.2d 638, 653 (Ind. Ct. App. 2010). “Equitable estoppel is a remedy available if one party through his course of conduct knowingly misleads or induces another party to believe and act upon his conduct in good faith without knowledge of the facts.” *Sheetz v. Sheetz*, 63 N.E.3d 1077, 1080 (Ind. Ct. App. 2016). The party claiming equitable estoppel must show its (1) lack of knowledge and of the means of knowledge as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) action based thereon of such a character as to change his position prejudicially. *Schoettmer v. Wright*, 992 N.E.2d 702, 709 (Ind. 2013).

[15] Here, again, the designated evidence demonstrates that there is no dispute over the material facts. The Property Owners questioned the Contractor’s president, Rynard, Jr., at length about the authenticity of the lien waivers. In response to those questions, Rynard, Jr. invoked his Fifth Amendment privilege against self-incrimination.

[16] “[T]he Fifth Amendment protects an individual from being compelled to answer questions when the answers might be used in a future criminal proceeding.” *Matter of Ma.H.*, 134 N.E.3d 41, 46 (Ind. 2019) (quoting *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973)). However, “in civil proceedings, a court can draw a negative inference from a claim of Fifth Amendment privilege against self-incrimination.” So, while Rynard, Jr. exercised his privilege not to answer questions posed during his deposition, the trial court was permitted to “infer what his answer[s] might have been.” *Ma.H.*, 134 N.E.3d at 47.

[17] Accordingly, the court drew negative inferences from Rynard, Jr.’s Fifth Amendment claim, which the court was permitted to do. *Id.* The court made the following inferences:

- a) Despite Rynard Jr.’s notarization of each and all of the Seven Purported Lien Waivers, none of the Seven Purported Lien Waivers were [] signed by or on behalf of any of the Subcontractors;
- b) Rynard Jr. was not authorized to notarize any of the signatures appearing on any of the Seven Purported Lien Waivers; and

- c) None of the Subcontractors authorized Rynard Jr. to notarize any of the Seven Purported Lien Waivers;
- d) Other than the actual signatures of Rynard Jr. as Notary Public, none of the signatures purporting to appear on any of the Seven Purported Lien Waivers were signed by any of the persons whose signatures purport to appear on the Seven Purported Lien Waivers;
- e) In addition to the actual signatures of Rynard Jr. as Notary Public, the signatures purporting to appearing on the Seven Purported Lien Waivers were affixed to the Seven Purported Lien Waivers by Rynard Jr.; and
- f) The Seven Purported Lien Waivers were delivered to the Plaintiffs by Rynard Jr. with Rynard Jr.'s intent to induce the Plaintiffs to make payments to Rynard Corporation.

Appellant's App. Vol. XV, p. 55–56

[18] Based on these factual inferences, the trial court concluded that the lien waivers submitted by Rynard, Jr. were fraudulent, that Rynard, Jr. “induc[ed] payments to be made to [the Contractor],” and that the Property Owners made those payments “in good faith and without knowledge of the facts” and in “reasonable reliance upon the truthfulness and accuracy” of the lien wavier. *Id.* at 16. The Contractor has not designated any evidence demonstrating a genuine dispute as to any material fact, including the facts drawn from these inferences, and the Property Owners are therefore entitled to partial summary judgment as a matter of law. We find no error in the court's conclusion that the Contractor, through the acts of its president, Rynard, Jr., fraudulently induced the Property

Owners to release several million dollars of payments in reliance on the purported authenticity of the lien waivers.

Conclusion

[19] For all of these reasons, the Contractor is equitably estopped from asserting its counterclaim, and we affirm the trial court's grant of summary judgment in favor of the Property Owners.

[20] Affirmed.

Tavitas, J., and Weissmann, J., concur.