IN THE COURT OF APPEALS OF IOWA

No. 7-610 / 06-1964
Filed December 12, 2007

ROBERT ZAHN, d/b/a ZAHN PLUMBING & SHEET METAL,
Plaintiff-Appellee,

vs.

THOMAS W. SCHOLL and CATHY SCHOLL,
Defendants-Appellants.

Appeal from the Iowa District Court for Allamakee County, Margaret L. Lingreen, Judge.

Thomas and Cathy Scholl appeal a district court judgment in favor of Robert Zahn on his petition to foreclose a mechanic's lien. **AFFIRMED.**

Robert J. Cowie, Jr. of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.L.C., Decorah, for appellant.

Jeanne K. Johnson, Des Moines, and James U. Mellick, Waukon, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Thomas and Cathy Scholl appeal a district court judgment in favor of Robert Zahn on his petition to foreclose a mechanic's lien. We affirm.

I. Background Facts and Proceedings.

Robert Zahn operated a business known as Zahn's Plumbing, Heating and Sheet Metal. He was contacted by Thomas Scholl about doing some work on a remodeling project.

According to Zahn, Scholl briefly outlined the project and faxed "a list of things to be done, a drawing of the work to be done, and supposedly an estimate sheet to write the materials and labor which we were going to perform." Zahn took the transmittal cover sheet that accompanied the list and drawing, wrote "estimate on project" at the top, itemized the cost of the requested parts and labor, arrived at a total cost of $5063.43, and faxed the sheet back to Thomas Scholl. Scholl faxed back the estimate with an "accepted" notation at the bottom.

Zahn inspected the construction site a month later. He concluded he would have to re-engineer the piping, ductwork, vents and gas lines, and would have to reinstall an outside faucet and install a high-efficiency rather than a low-efficiency furnace. In addition, Zahn noted that insulation had to be removed and reinstalled and, at Cathy Scholl's request, floor joists had to be cut to move a stool three inches.

Zahn sent the Scholls a revised billing statement that included an additional labor charge of $2500 and brought the total cost to $7090.26. Although Zahn's additional labor costs ended up being more than $2500, he

elected to stand by this statement. The Scholls declined to pay the amount on the revised statement.

Zahn filed a mechanic's lien in the amount of $7090.26 and, later, a petition to foreclose the mechanic's lien. The district court entered judgment in favor of Zahn for $7090.26, with interest "as allowed by law from commencement of the suit." The court ordered the Scholls to pay Zahn $3000 in trial attorney fees and $266.42 in advanced costs.

On appeal, the Scholls contend (1) "the district court erred in finding that an express contract term for price did not exist between the parties," (2) "the district court erred in finding that the defendant owed interest on the judgment entered against him," and (3) "the district court erred in ordering the defendant to pay plaintiff's attorney fees and in declining to order the plaintiff to pay defendant's attorney fees." The parties agree our review is de novo.

II. Price.

Iowa Code section 572.2(1) (2005) provides:

> Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof, . . . by virtue of any contract with the owner, the owner's agent, trustee, contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated . . . to secure payment for the material or labor furnished or labor performed.

The district court found that the initial faxes containing a cost estimate of $5063.43 did not amount to an express agreement as to price. The court pointed to the additional work that needed to be performed. Given the absence of an

express agreement on price, the court implied a promise to pay reasonable compensation, which the court found was $7090.26.

The district court's fact findings are supported by the record. Although there was some disagreement concerning what Zahn knew when he faxed his original estimate to Scholl and whether, with diligence, he could have provided a more accurate initial estimate, that disagreement was uniquely within the district court's power to resolve. As we have stated, "in mechanic's lien cases, involving as they do numerous charges and countercharges which depend entirely on the credibility of the parties, . . . the trial court is in a more advantageous position than we to put credence where it belongs." *Sulzberger Excavating, Inc. v. Glass*, 351 N.W.2d 188, 191-92 (Iowa Ct. App. 1984).

Turning to the court's legal conclusions, the parties do not dispute the applicable law and, specifically, the court's authority to determine a reasonable value for materials and labor in the absence of an express agreement on price. *See Olberding Constr. Co., Inc. v. Ruden*, 243 N.W.2d 872, 875-76 (Iowa 1976); *Denniston & Partridge Co. v. Mingus*, 179 N.W.2d 748, 752 (Iowa 1970); *Sulzberger*, 351 N.W.2d at 193-94. For these reasons, we affirm the district court's adoption of the higher cost figure.

III. Interest.

The Scholls next challenge the court's order requiring payment of interest "as required by law." They presume that the pertinent interest provision is Iowa Code section 535.11. They argue "[n]o contractual interest rate, of 18 percent or otherwise, was ever established between these parties." *See* Iowa Code §

535.11(1). They also maintain Zahn did not notify them at the time the debt arose of his intent to charge interest. Iowa Code § 535.11(2)(b).

Zahn concedes "[t]here was no written agreement between the parties regarding the charge of interest." He maintains, however, that he was entitled to interest of eighteen percent per year under Iowa Code section 535.11(3). That section provides, "With respect to an account other than an open account, the creditor may impose a finance charge not exceeding that permitted by section 537.2201, subsections 2 to 5."

As a preliminary matter, we note some question as to whether section 535.11(3) is implicated at all. *See Landon v. Mapco, Inc.*, 405 N.W.2d 825, 828 (Iowa 1987) (noting argument that charges imposed on account were "in fact a default charge for an unanticipated late payment excluded from the definition of 'finance charge' by Iowa Code section 537.1301(19)(b)(1)" but rejecting this argument based on facts in the record).) As this question was not addressed by the parties, we assume without deciding that the provision potentially applies.

We turn to the Scholls' contention that a precondition to application of section 535.11(3) is "notice to the debtor at the time the debt arises" and this precondition was not satisfied. *See* Iowa Code § 535.11(2)(b). Section 535.11(2)(b) provides that

> [t]he notice shall be contained on the invoice or bill of sale evidencing the credit transaction, and shall disclose the rate of the finance charge and the date or day of the month before which payment must be received if the finance charge is to be avoided.

Whether there was a valid notice under this provision is a fact issue for the trial court. *Power Equip., Inc. v. Tschiggfrie*, 460 N.W.2d 861, 865 (Iowa 1990).

As noted, Zahn sent the Scholls a revised statement to account for the additional work. This statement became the final amount billed by Zahn. Although the statement said "1 ½% Per Month After 30 Days – Minimum $1.00," it also stated, "If not past due, this statement is for comparison only." Two months after the date of the statement, Zahn notified the Scholls by letter that the materials and labor "are correct and overdue." In that letter, he made no mention of a finance charge, when it had begun accruing or would begin accruing and what the Scholls could do to avoid it. The district court essentially found, and we agree, that the billing statement could not be read to include a finance charge.

This brings us to the mechanic's lien. The district court found that the lien served as the requisite notice of a finance charge under section 535.11(2)(b). We cannot agree. Although the mechanic's lien specified "interest" at the rate of eighteen percent per year, it made no mention of a finance charge and did not afford the Scholls time to avoid the finance charge. Moreover, as the district court noted, Zahn filed his petition to foreclose the mechanic's lien within thirty days of filing the mechanic's lien. Assuming the revised billing statement attached to the mechanic's lien could be read to provide for a thirty-day pay-off period, the Scholls were not allowed to avail themselves of that period.

We conclude that, even if section 535.11(3) were potentially applicable to the facts of this case, the Scholls were not properly notified of its applicability as required by Iowa Code section 535.11(2)(b). Therefore, Zahn was precluded from obtaining a finance charge under that provision.

However, Zahn was entitled to interest under Iowa Code section 535.2(1)(b), for "[m]oney after the same becomes due." The interest rate under

that provision is "five cents on the hundred by the year." We read the district court's order concerning interest "as provided by law" to refer to this provision rather than Iowa Code section 535.11(3). Because the court simply ordered interest "as provided by law," we find it unnecessary to modify the court's ruling. We agree with the district court that the interest begins "from commencement of the suit."

IV. Attorney Fees.

The Scholls argue the district court should not have ordered them to pay a portion of Zahn's trial attorney fees. Iowa Code section 572.32(1) permits such an award, stating "[i]n a court action to enforce a mechanic's lien, if the plaintiff furnished labor or materials directly to the defendant, a prevailing plaintiff may be awarded reasonable attorney fees." The amount awarded is "vested in the district court's broad, but not unlimited discretion." *Schaffer v. Frank Moyer Const. Inc*., 628 N.W.2d 11, 22 (Iowa 2001).

Zahn prevailed on his mechanic's lien claim. His attorney sought fees for twenty-three hours of work at the rate of $150 per hour. The district court awarded $450 less than the requested sum, concluding certain charges were not relevant to this action. We discern no abuse of discretion in the award.

Both parties request an award of appellate attorney fees. Such an award is also available under section 572.32. *Id.* at 23. The Scholls partially prevailed on their effort to clarify the applicable interest rate and the Zahns prevailed on the amount of the lien. We decline both parties' requests for appellate attorney fees.

AFFIRMED.