STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0767

Superior Classic, Inc.,
d/b/a MN Superior Exteriors,
Respondent,

vs.

Naomi C. Taylor,
Appellant,

Mortgage Electronic Registration Systems, Inc., et al.,
Defendants.

Filed September 3, 2013
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-CV-10-13138

Dana K. Nyquist, John J. Todd (of counsel), Michael J. Orme, Orme & Associates, Ltd., Eagan, Minnesota (for respondent)

Naomi C. Taylor, Maple Grove, Minnesota (pro se appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Schellhas, Judge.

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

KALITOWSKI, Judge

Pro se appellant Naomi C. Taylor challenges the district court's denial of her motion for a new trial and to alter or amend the judgment. She argues that the district

court erred by (1) finding that the contract at issue is a lump-sum contract instead of a unit-cost contract, (2) concluding that respondent is entitled to a mechanic's lien judgment, and (3) awarding respondent attorney fees. We affirm.

D E C I S I O N

Contract at Issue is a Lump-Sum Contract

"Review on appeal from an order denying a new trial is limited to those grounds assigned as error in the notice of the motion." *Beckman v. Universal Enters., Inc.*, 367 N.W.2d 577, 579 (Minn. App. 1985). "Absent ambiguity, the interpretation of a contract is a question of law." *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011). We review questions of law de novo. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003). But the interpretation of an ambiguous contract is a question of fact. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. Here, the district court found that the subject contract was ambiguous. Thus, we apply the clear-error standard.

"[T]he primary goal of contract interpretation is to determine and enforce the intent of the parties." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). "A contract is ambiguous if its language is reasonably susceptible to more than one interpretation." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). The language of the contract should be

given its plain and ordinary meaning. *Id.* "We read contract terms in the context of the entire contract and will not construe the terms so as to lead to a harsh and absurd result." *Id.* And we "interpret a contract in a way that gives meaning to all of its provisions." *Id.*

"Under a lump-sum agreement, the contractor agrees to complete the work for a set price, regardless of the actual costs incurred in completing the construction." *United States v. Johnson*, 937 F.2d 392, 394 n.2 (8th Cir. 1991). Under a unit-cost contract, however, "the contractor submits a price per unit (the cement work, for example, may be a unit) for each of the various categories involved." *Johnson, Drake & Piper, Inc. v. United States*, 483 F.2d 682, 684 (8th Cir. 1973). A unit-cost contract is used when the amount of work cannot be determined accurately until completion. *Id.*

Appellant argues that the district court clearly erred by finding that the contract at issue is a lump-sum contract instead of a unit-cost contract. We disagree.

Here, the plain language of the contract between appellant and respondent-contractor Superior Classic Inc. shows that it is a lump-sum contract: "The Owner(s) shall pay the Contractor the sum of $58,240.25 for completion of the work . . . ." The contract does not—as a unit-cost contract would do—provide a total price that is subject to variation according to the amount of work performed. Our interpretation of this contract as a lump-sum contract is also supported by the itemized repair subtotals attached to the contract. The close-ended projects—siding, caulking, wood floors, cabinetry, cleanup, etc.—have fixed prices that are not subject to variation.

Moreover, even if the contract is ambiguous, we conclude that the district court's finding that the contract is a lump-sum contract is not clearly erroneous. At trial, the

district court heard testimony from a Department of Housing and Urban Development (HUD) consultant, who has prepared HUD loans for about 15 years. The consultant testified that there are essentially two types of contracts: (1) "lump-sum" or "fixed-cost" contracts, under which the contractor receives a total sum of money for completion of the work, or (2) "cost-plus" contracts, under which the contractor receives the actual costs incurred plus a percentage. Here, the consultant testified that the contract was a fixed-cost contract. Respondent's president also testified that the contract was a fixed-cost contract. And appellant testified that she understood that respondent would make repairs to her property for $58,240.25, which she recognized as the total contract price.

Based on the testimony of these witnesses, along with the plain language of the contract, we conclude that the district court did not clearly err by finding that the contract at issue is a lump-sum contract.

Respondent is Entitled to a Mechanic's Lien Judgment

"Construction of the mechanic's lien statute is a question of law that we review de novo." *Eclipse Architectural Grp., Inc. v. Lam*, 799 N.W.2d 632, 634 (Minn. App. 2011), *aff'd*, 814 N.W.2d 692 (Minn. 2012). The purpose of the statute is to protect the rights of individuals who furnish labor and materials, so we accord a liberal construction to accomplish that purpose. *Id.*

The mechanic's lien statute allows a person or entity that contributes to the improvement of property through labor, skill, material, or machinery to place a lien against the property improved. Minn. Stat. § 514.01 (2012). The mechanic's lien provides the claimant with a lien or security interest in the improved property. *Id.* In

order to claim and enforce a mechanic's lien, generally a claimant must (1) provide notice to the owner within 45 days after the work is provided, (2) file a proper statement of claim within 120 days, and (3) file a lis pendens notice and commence an action against the owner within one year. *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 758 (Minn. 2010).

Appellant contends respondent is not entitled to a mechanic's lien judgment because she did not owe respondent any lienable sums at the time it filed the mechanic's lien statement. We disagree. Applying the mechanic's lien statute liberally, we conclude that the district court did not err when it concluded that respondent was entitled to $1,911.16 of its $9,206.66 lien claim.

Both parties conceded that appellant was entitled to a $4,405 credit for unproven structural repairs. And appellant conceded that she agreed to the installation of shakes on the front of her house. She testified that she requested the installation of the shakes, and that she did not object to their installation. Thus, the district court did not err by concluding that appellant owed respondent $1,086.40 for the installation of the shakes.

In addition, the district court correctly concluded that appellant owed respondent $98.13 for the installation of a custom side light and $75 for floor repairs. These conclusions are supported by (1) a June 17th letter that appellant sent to respondent requesting repairs and (2) respondent's president's testimony about the costs of these repairs.

Finally, the district court correctly concluded that appellant was entitled to various credits on a $3,542.13 holdback from an approved draw request. First, the district court

credited appellant $1,587.50, the difference it calculated between the $3,387.50 respondent claimed for cabinetry and the actual price of the cabinetry delivered, which was $2,000.[1] This conclusion is supported: respondent's president testified that the $2,000 cabinets were delivered but "never got installed," and the record shows that a supplier charged $2,000 for the cabinets. Second, the district court credited appellant $649.50, which was the difference it calculated between respondent's $750 miscellaneous-expense claim for permits and the $100.50 that the district court found respondent actually spent on permits. This conclusion is supported: respondent's final bid shows that it allocated $750 for permit fees; however, respondent's invoice for permit fees shows that it only spent $100.50 on permits. Finally, the district court credited respondent $653.50, which was the difference it calculated between respondent's $803.50 request for electrical work and the $150 that the district court found respondent actually spent on electrical work. This conclusion is supported: the electrician charged respondent $136 for the electrical work, and respondent's president testified that he usually charges 10-12% for overhead costs.

Applying the above credits, the mechanic's lien is summarized as follows:

$9,206.66	respondent's lien claim
− 4,405.00	credit for unproven structural repairs
−1,387.50	credit for uncompleted cabinet installation

[1] The district court mathematically erred by $200. The credit should have been $1,387.50. The district court acknowledged this in its denial of appellant's motion for a new trial; and therefore, it correctly altered the amount due to respondent by $200.

− 649.50	credit for unused permit fees
− 653.50	credit for electrical work
$2,111.16	total due under mechanic's lien

The district court did not err by concluding that respondent is entitled to a mechanic's lien judgment in this amount.

District Court did not Abuse its Discretion by Awarding Attorney Fees

"We will not reverse the district court's decision on attorney fees absent an abuse of discretion." *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). In a mechanic's lien action, the prevailing party is entitled to costs and disbursements that are fixed by the district court. Minn. Stat. § 514.14 (2012). And "[a]s part of the lienor's costs and disbursements, the [district] court may award a reasonable attorney fee." *Stiglich Const., Inc. v. Larson*, 621 N.W.2d 801, 803 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001).

Appellant argues that the district court abused its discretion by awarding respondent attorney fees because respondent failed to prove that it is entitled to a mechanic's lien judgment. We disagree.

Appellant's argument is merely a reiteration of her assertion that respondent is not entitled to a mechanic's lien judgment. She argues that "respondent failed to prove [that it] is entitled to a mechanic's lien judgment. The attorney-fee award must be reversed." But because the district court correctly concluded that respondent is entitled to a mechanic's lien judgment, it did not abuse its discretion by awarding respondent attorney fees. Moreover, the parties' contract supports the attorney-fee award:

> In the event that it becomes necessary for the COMPANY to file a Mechanic's Lien Statement because of non-payment by the CUSTOMER (OWNER) of any sum required under this remodeling construction contract, then, and in that event, the CUSTOMER shall pay . . . the cost of the preparation and filing of the Mechanic's Lien Statement, including reasonable attorney's fees in connection, therewith, as well as all other fees and costs allowed by statute.

Thus, the district court did not abuse its discretion by awarding attorney fees.

Appellant's Miscellaneous Challenges

Appellant argues that numerous findings of fact made by the district court are clearly erroneous. But appellant waived many of these challenges when she did not raise them in her motion for a new trial. And her remaining challenges to the findings of fact are without merit. Appellant also argues that numerous conclusions of law made by the district court are unsupported. But appellant's challenges are repetitive of her challenges in prior sections of her brief. Moreover, the district court's conclusions of law are supported by its findings of fact and the record.

Affirmed.