STATE OF MINNESOTA
IN COURT OF APPEALS
A09-298

Installed Building Solutions, LLC,
Plaintiff,

vs.

John Allenburg, et al.,
Appellants,

Warner Building and Remodeling, LLC, et al.,
Defendants,

Michael A. Hilk,
d/b/a Mike's Electrical Contracting,
Respondent.

Filed December 29, 2009
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-CV-07-23197

Peter W. Johnson, 15250 Wayzata Boulevard, Suite 103, Wayzata, Minnesota 55391 (for appellants)

Richard J. Haefele, 1059 Stoughton Avenue, P.O. Box 85, Chaska, Minnesota 55318; and

Jaclyn M. Hoey, Hoey Law Office, 7525 Mitchell Road, Suite 217, Eden Prairie, Minnesota 55344 (for respondent)

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and Crippen, Judge.*

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

HUDSON, Judge

On appeal from a judgment enforcing respondent's mechanics' lien and awarding attorney fees, appellants argue that the district court erred in determining that respondent's mechanics' lien is enforceable. Specifically, appellants argue that the district court erred in determining that the plain meaning of the term "contract price" in Minn. Stat. § 514.03, subd. 2(c) (2008), is unambiguous and that the statutory cap on mechanics' liens under that statute was not exceeded. Appellants further argue that respondent's lien should be invalidated because it was not timely filed. Because the district court did not err in its interpretation and application of Minn. Stat. § 514.03 (2008) and did not abuse its discretion in awarding attorney fees to respondent, we affirm.

FACTS

This matter arose in Hennepin County district court as two mechanics' lien foreclosure actions, which were consolidated. Three subcontractors sought to enforce and foreclose their claimed liens upon the new home of appellants John and Margaret Allenburg. Appellants settled with two of the claimants, leaving respondent

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

subcontractor Michael Hilk d/b/a Mike's Electrical Contracting as the sole remaining lien claimant.

Respondent's lien arises from his work performed and materials used as a subcontractor in the construction of appellants' new home by general contractor Warner Building and Remodeling, LLC (WB&R). On July 24, 2006, appellants entered into a building contract with WB&R for construction of a house in Minnetrista. The original contract listed the price for construction as "$617,000.00 with the price not to exceed $617,00[0]."

According to the stipulation of the parties, respondent provided labor and materials for the improvement of the new home between January 17, 2007 and September 14, 2007. On or about January 24, 2007, within 45 days of his first item of contribution of labor or materials to the new home, respondent served his prelien notice on appellants. But at trial, respondent testified that he had provided temporary electrical power for the new home when construction began in the fall of 2006. On or about September 14, 2007, respondent contributed his last item of material or labor and filed his mechanics' lien statement on WB&R and appellants. On September 18, 2007, respondent filed his mechanics' lien statement with the Hennepin County registrar of titles. The amount listed in respondent's mechanics' lien statement was $25,000. Ultimately, respondent reduced the amount of his mechanics' lien statement to $9,527.50, the amount of the invoice respondent sent to WB&R for a partial rough-in of electrical service to the property.

After receiving WB&R's prelien notice, but prior to receiving prelien notice from any subcontractor, appellants paid $440,000 to WB&R. This payment was intended to be applied generally against the contract price, including amounts owed to subcontractors and suppliers. No payment was made by appellants to WB&R after receipt of the first prelien notice from a subcontractor. Appellants amended the building contract price in writing to $575,000 on August 8, 2007, and ultimately terminated the contract on October 31, 2007, for nonperformance. Appellants subsequently contracted with new vendors and subcontractors to complete the home.

On November 12 and 14, 2008, a bench trial was held to determine the validity of respondent's lien. The district court concluded that respondent's lien was not intentionally overstated because the initial statement of $25,000 was a reasonable estimate for the work and projected future work to be performed when respondent filed the lien, and because the lien amount was ultimately reduced to the invoice amount of $9,527.50 following cancellation of the WB&R building contract.

The district court noted that Minn. Stat. § 514.03, subd. 2(c), limits the total amount of money paid to lien claimants under a building contract to the contract price minus certain enumerated deductions in the statute. The parties refer to this amount as the "lien cap." In calculating the lien cap, the district court determined that section 514.03 fixes the contract price at the time the first prelien notice is served upon the homeowners because "[t]o find otherwise would allow homeowners and contractors to reduce liability after subcontractor work has been completed." The district court further determined that because the first subcontractor prelien notice was served on

November 13, 2006, the contract price for purposes of section 514.03 was $617,000. After making deductions for amounts paid under each enumerated deduction, the district court determined that the cap of the sum for all remaining liens was $86,000. The district court found respondent's lien of $9,527.50 "valid in all respects." The district court further concluded that respondent's attorney fees of $25,947.50 were reasonable and that respondent is entitled to recover the full amount of the costs and fees. This appeal follows.

D E C I S I O N

I

Appellants argue that the district court erred in determining that the contract price for purposes of determining the statutory cap on liens is the price listed in the contract at the time of the first prelien notice. Appellants argue that the term "contract price" is ambiguous and should be interpreted to mean "the amount that an owner is responsible to pay a general contractor given all of the facts and circumstances."

Statutory construction is a legal issue, which this court reviews de novo. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007). The object of statutory interpretation is to ascertain and give effect to the intention of the legislature. Minn. Stat. § 645.16 (2008). "When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted). "When the words of a law in their application to an existing situation are clear and free

from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16. "A statute is to be enforced literally as it reads, if its language embodies a definite meaning which involves no absurdity or contradiction." *Arlandson v. Humphrey*, 224 Minn. 49, 55, 27 N.W.2d 819, 823 (1947) (quotation omitted). "[P]rior to consideration of legislative history, a determination that [the section in question] is ambiguous is necessary." *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995).

Minn. Stat. § 514.03, subd. 2, limits, or "caps," the total dollar amount for subcontractor mechanics' liens on a property where, as here, prelien notice is required under Minn. Stat. § 514.011, subd. 2(a) (2008).[1] It states:

> With respect to any contract or improvement as to which notice is required by section 514.011, the lien shall be as follows:
>
> (a) If the contribution is made under a contract with the owner and for an agreed price, the lien as against the owner shall be for the sum agreed upon;
>
> (b) In all other cases, it shall be for the reasonable value of the work done, and of the skill, material, and machinery furnished. Provided, however:

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[1] Every person who contributes to the improvement of real property so as to be entitled to a lien . . . except a party under direct contract with the owner must, as a necessary prerequisite to the validity of any claim or lien, cause to be given to the owner . . . not later than 45 days after the lien claimant has first furnished labor, skill or materials for the improvement, a written notice . . . .

Minn. Stat. § 514.011, subd. 2(a) (2008).

> (c) The total sum of all liens, whether the contribution is made under a contract with the owner or otherwise, shall not exceed the total of said *contract price* plus the contract price or reasonable value of any additional contract or contracts between the owner and the contractor or additional work ordered by the owner, less the total of the following:
>
> (i) Payment made by the owner or the owner's agent to the contractor prior to receiving any notice prescribed by section 514.011, subdivision 2;
>
> (ii) Payments made by the owner or the owner's agent to discharge any lien claims as authorized by section 514.07; and
>
> (iii) Payments made by the owner or the owner's agent pursuant to presentation of valid lien waivers from persons or companies contributing to the improvement who have previously given the notice required by section 514.011, subdivision 2.

Minn. Stat. § 514.03, subd. 2 (emphasis added).

Under subdivision 2(c), the "contract price" is the starting point for determining the dollar amount which all mechanics' liens may not exceed. Words and phrases must be construed according to rules of grammar and according to their common and approved usage. Minn. Stat. § 645.08(1) (2008); *Arlandson*, 224 Minn. at 55, 27 N.W.2d at 823. A "contract price" has been widely regarded by Minnesota courts as simply the price listed in a contract. *See, e.g.*, *Asp v. O'Brien*, 277 N.W.2d 382, 384 (Minn. 1979) (referring to the price written in the contract document as the "contract price"); *Wallboard, Inc. v. St. Cloud Mall, LLC*, 758 N.W.2d 356, 357 (Minn. App. 2008) (same). This is a common sense understanding of the term, and we see no ambiguity in this phrase. Our holding is bolstered by the fact that no special or technical meaning is provided by the statute. Thus, when enforcing the statute literally as it reads, "contract

price" is an unambiguous term referring to the agreed-upon price listed in the contract document when entering a contract.

The district court did not err in using the original contract price

Here, the original contract price was $617,000, as agreed to on July 24, 2006. The contract price was amended to $575,000 on August 8, 2007, more than six months after the prelien notice was served on appellants by respondent on January 24, 2007, and less than three months before the contract was terminated on October 31, 2007. The district court determined that the contract price for purposes of calculating the lien cap is the written contract price at the time the first prelien notice was served on appellants because "[t]o find otherwise would allow homeowners and contractors to reduce liability after subcontractor work has been completed." The first prelien notice was served on appellants on November 13, 2006. Accordingly, based on the contract price at that time, the district court determined that the contract price for purposes of calculating the lien cap was $617,000.

Minn. Stat. § 514.03, subd. 2(c), does not state the time that a contract price is fixed for the purpose of determining the lien cap. But we agree with the district court's decision to use the contract price at the time that the first prelien notice was served on appellants. Allowing the "contract price" used to determine the lien cap to be reduced by later agreement between the general contractor and property owner, regardless of when the subcontractors filed prelien notice, could have the effect of potentially invalidating every subcontractor's mechanics' lien. The property owner and the general contractor could simply reset the final contract price to whatever amount had already been paid to

the general contractor before prelien notices were filed by subcontractors and thereby invalidate any liens on the property. Instead, fixing the contract price at the time when the first prelien notice is filed better ensures that subcontractors who conform to the statute have a remedy if they remain unpaid. Furthermore, because subdivision 2(c)(i) allows a deduction from the contract price for amounts paid to the contractor before any prelien notices are provided to the owner, it is appropriate to fix the contract price at the time that prelien notice is first served. *See* Minn. Stat. § 514.03, subd. 2(c)(i).

The "contract price" should not be reduced based on partial performance

Again, the price listed in the original building contract was $617,000. Nevertheless, appellants argue that they are entitled to use a lower "contract price" to determine the lien cap because the contract was never completed by WB&R. They rely on *E.C.I. Corp. v. G.G.C. Co.*, 306 Minn. 433, 237 N.W.2d 627 (1976), to support this assertion. In *E.C.I. Corp.*, a landowner appealed from a judgment enforcing a mechanics' lien in favor of a single contractor. *Id.* at 434, 237 N.W.2d at 628. The parties had agreed to a contract price, but the contractor had not substantially completed performance. *Id.*, 237 N.W.2d at 629. Instead of granting a lien for the full contract price, the district court awarded judgment based on the reasonable value of what the contractor provided. *Id.* In affirming the reduced lien award, the supreme court noted that Minn. Stat. § 514.03 fixes a contractor's mechanics' lien as the contract price in a case when the project was completed, but "when the project is incomplete the measure of the *lien* may vary depending on whether the contract was for a specific price, whether the work is substantially complete, whether the plaintiff or defendant is in breach, and

whether the contract is treated as at an end." *Id.* at 437, 237 N.W.2d at 630 (emphasis added).

Appellants' reliance on *E.C.I. Corp.* is misplaced. First, in *E.C.I. Corp.*, the court reduced the *lien amount* based on common-law principles because the contract was unfinished. *See id.* The contract price itself presumably remained unchanged. Second, as the district court here noted, *E.C.I. Corp.* deals with a single contractor and is not applicable to calculations of the lien cap under subdivision 2(c) when multiple subcontractors are involved. While *E.C.I. Corp.* may hold that an individual lien amount can be reduced to the actual value of work performed when a contract is unfinished, Minn. Stat. 514.03, subd. 2(c), does not limit the amount of mechanics' liens to the reasonable value of the property. *Carolina Holdings Midwest, LLC v. Copouls*, 658 N.W.2d 236, 241 (Minn. App. 2003).

In contrast to *E.C.I. Corp.*, this case involves multiple subcontractors' liens which must be calculated under subdivision 2(c), rather than a single contractor's lien which would otherwise be calculated under subdivisions 2(a) or 2(b). Accordingly, those provisions do not apply to the determination of the contract price for purposes of the lien cap. Therefore, the district court did not err in refusing to reduce the contract price based on WB&R's partial performance.

II

Appellants next argue that the statutory cap on mechanics' liens was exceeded, thereby invalidating respondent's lien. The district court determined that the lien cap was not exceeded. Findings of fact will not be reversed unless clearly erroneous. Minn. R.

Civ. P. 52.01. Legal conclusions are reviewed de novo. *Home Lumber Co. v. Kopfmann Homes, Inc.*, 535 N.W.2d 302, 304 (Minn. 1995). Once the court has determined that a lien has properly attached, the lien statute will be construed liberally. *Enviro-Fab, Inc. v. Blandin Paper Co.*, 349 N.W.2d 842, 848 (Minn. App. 1984), *review denied* (Minn. Sept. 12, 1984).

Respondent did not have a contract directly with appellants. Hence, under Minn. Stat. § 514.03, subd. 2(b), respondent's lien should be for the reasonable value of the work done. Here, the parties stipulated that the invoice and value for the work completed by respondent is $9,527.50. Therefore, respondent has established a lien for $9,527.50.

The total sum of all liens on a property shall not exceed the total of the contract price plus the contract price or reasonable value of any additional contract between the owner and contractor or additional work ordered by the owner, less the total of: (i) payments made to the contractor prior to receiving any lien notice prescribed by Minn. Stat. § 514.011, subd. 2 (2008); (ii) payments made to discharge any lien claims as authorized by Minn. Stat. § 514.07 (2008); and (iii) payments made pursuant to presentation of a valid lien waiver from persons who have previously given lien notice under section 514.011, subdivision 2. Minn. Stat. § 514.03, subd. 2(c).

Here, the starting contract price is $617,000. Appellants paid $440,000 to WB&R before receiving any lien notice. This undisputed amount can be deducted under section 514.03, subdivision 2(c)(i), as payments made to the contractor prior to receiving any lien notice.

The second statutory deduction is for payments made by the owner to discharge lien claims as authorized by section 514.07. Minn. Stat. § 514.03, subd. 2(c)(ii). Section 514.07 authorizes the owner to pay and discharge liens for improvements to the property for which the contractor is liable and deduct that amount from the contract price. Minn. Stat. § 514.07. Appellants agreed to pay subcontractor Installed Building Solutions, LLC a minimum of $18,000 to satisfy its lien and agreed to pay subcontractor Chaska Building Center, Inc. a minimum of $55,000 to satisfy its lien. Appellants paid $4,150 to Henning Excavating, $8,000 to Cityscape Contractors, Inc., and $10,000 to Tonka Plumbing directly for a full release and satisfaction of each subcontractor's mechanics' lien. The district court concluded that the Henning lien was not valid because appellants presented no evidence that the lien was ever properly noticed and thus declined to include it in the amount deducted under subdivision 2(c)(ii).[2] The district court determined that the total amount deductible under subdivision 2(c)(ii) was $91,000, not including the Henning payment.

The last deduction allowed is for payments made by the owner pursuant to the presentation of valid lien waivers from persons who had previously given notice of their liens as required by section 514.011, subdivision 2. Minn. Stat. § 514.03, subd. 2(c)(iii). The district court determined that no deductions should be made under that section, and appellants have not presented any evidence that they made payments to any subcontractors pursuant to the presentation of a valid lien waiver.

[2] Appellants do not address and apparently do not dispute the district court's determination regarding the Henning lien.

Appellants, however, argue that they made other payments that should be included as deductions for determining the lien cap. These payments include approximately $50,000 for materials purchased directly by appellants, approximately $163,000 in payments made to new contractors after the termination of the WB&R contract, and $45,000 in estimated remaining costs to complete work on the house. But these payments are not listed in the statute as permissible deductions for the calculation of the lien cap. Under the plain language of the statute, only three types of deductions are permitted—payments made to the contractor before receiving any lien notice, payments made to discharge liens, and payments made pursuant to valid lien waivers. *See* Minn. Stat. § 514.03, subd. 2(c). Therefore, these additional payments may not be considered in determining the lien cap.

The district court concluded that "[t]he contract price of $617,000 minus $440,000 paid to WB&R minus $91,000 to discharge valid liens leaves the cap of the sum of all remaining liens at $86,000." Using these numbers, the district court determined that respondent's lien of $9,527.50 was valid and enforceable under the statute. The district court's findings and conclusions are well supported by the record and the applicable statute.

III

Appellants also argue that respondent's lien is not valid because respondent failed to provide timely notice of the lien. Appellants raise this issue now based on respondent's testimony that he set up temporary on-site power when the new home project began. But appellants did not object to this testimony during trial or otherwise

raise the notice issue to the district court. Generally, this court will not consider issues not litigated before the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). In addition, the parties stipulated to certain facts before the trial, including setting the dates that respondent furnished labor, skill, and material to the project as January 17, 2007 through September 14, 2007. According to the parties' stipulation, respondent served prelien notice on appellants within the statutory timeframe. When the parties take fact questions out of the case in district court, the stipulation defines the issues, and this court generally will not consider those questions for the first time on appeal. *Olson v. Gopher State Benevolent Soc'y*, 203 Minn. 267, 269, 281 N.W. 43, 43 (1938). Therefore, we decline to address this issue on appeal.

IV

Finally, appellants argue that the district court abused its discretion in awarding attorney fees and costs to respondent. The amount of attorney fees awarded is at the discretion of the district court. *Jadwin v. Kasal*, 318 N.W.2d 844, 848 (Minn. 1982). "On review, this court will not reverse a trial court's award or denial of attorney fees absent an abuse of discretion." *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

A prevailing lien claimant may recover costs, disbursements, and attorney fees. *Enviro-Fab, Inc.*, 349 N.W.2d at 848; Minn. Stat. § 514.14 (2008). Factors considered in the determination of attorney fees include the time and effort required, value of the interest involved, skill and standing of the attorney, difficulty or novelty of the issues, results secured at trial, loss of opportunity for other employment, customary charges for

similar services, certainty of payment, and the taxed party's ability to pay. *Jadwin*, 318 N.W.2d at 848. "In addition, the award must bear a reasonable relation to the amount of the judgment secured." *Lyman Lumber Co. v. Cornerstone Constr., Inc.*, 487 N.W.2d 251, 255 (Minn. App. 1992) (quotation omitted), *review denied* (Minn. Aug. 4, 1992). But attorney fees are not excessive merely because they exceed the amount of the lien. *Kirkwold Constr. Co. v. M.G.A. Constr. Inc.*, 498 N.W.2d 465, 470 (Minn. App. 1993), *aff'd*, 513 N.W.2d 241 (Minn. 1994). "Limiting fees in such a manner would discourage small lienholders from pursuing valid claims through the legal system." *Id.*

In this case, respondent was a prevailing lien claimant and was entitled to an award of attorney fees. In its order, the district court concluded that the fees were reasonable and that respondent is entitled to the full amount of the costs and fees because respondent "did not cause the need for the substantial work required of his counsel." The amount of attorney fees awarded here was $25,947.50, more than twice the amount recovered under respondent's lien. In *Kirkwold*, this court upheld an award of fees that was greater than the lien amount secured when the case involved numerous parties and complex issues, and the district court had reviewed the issue by securing supplementary memoranda and supporting affidavits. 498 N.W.2d at 470-71. Here, respondent's attorney submitted a motion and affidavit for fees, a supplemental affidavit, and invoices to the court supporting respondent's motion for attorney fees. This case involved numerous pretrial motions, a summary-judgment hearing, extensive discovery, a late neutral evaluation, and a trial. This case required substantial attention from counsel, which significantly increased the amount of legitimate fees incurred by respondent.

Because an award of fees is within the discretion of the district court, and because fees are not excessive merely because they exceed the lien amount, the district court did not abuse its discretion in awarding attorney fees and costs of $25,947.50 to respondent.

Affirmed.