IN THE COURT OF APPEALS OF IOWA

No. 1-378 / 10-1277
Filed July 13, 2011

PAUL KIEFFER d/b/a
KIEFFER CONSTRUCTION,
Plaintiff-Appellee/Cross-Appellant,

vs.

RENAE FARRELL f/k/a/
RENAE D. LANSING and
JAMES E. FARRELL,
Defendants-Appellants/Cross-Appellees.

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

Appellants appeal from the district court's decision granting in part appellee's petition to enforce mechanic's lien. **AFFIRMED.**

Judith M. O'Donohoe of Elwood, O'Donohoe, Braun & White, L.L.P., Charles City, for appellants.

Nathaniel W. Schwickerath of Schwickerath, P.C., New Hampton, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

I. Background Facts and Proceedings

In the fall of 2003, Renae Farrell contacted Paul Kieffer, a self-employed contractor, regarding an addition she wished to have built on her house. On September 18, 2003, Kieffer presented Farrell with three bids: one for $33,270 to build the addition, one for $5523 to replace windows in the existing part of her house, and one for $9192 to re-side the existing part of the house. Apparently these bids were accepted because Kieffer soon began work on the project. While the project was in progress, Kieffer also agreed to do work in Farrell's bathroom and kitchen, although no written bids were prepared for these projects.

Farrell received her first bill from Kieffer on December 23, 2003, for $17,500. She paid the full amount. Kieffer's work continued into the spring. Farrell received two more bills totaling $16,696.88, both of which she paid on April 16, 2004. Farrell did not make any other payments to Kieffer.

By the summer of 2004, Farrell testified she had issues with the quality of Kieffer's work. She testified she mailed him a letter detailing her concerns. She further testified she went over the letter with Kieffer and he tried to fix several of her concerns, but he did not fix them properly. She stated that sometime in early October she left a note on the door for Kieffer to stop working and locked him out of the house.

Kieffer testified he never received a letter from Farrell. He testified he went to Farrell's house on August 29, 2004, and found a note on the door directing him to stop working.

On November 4, 2004, Kieffer filed a mechanic's lien, asserting Farrell owed him $24,210.68.[1] Kieffer asserts his total billing includes deductions for incomplete work resulting from Farrell demanding he stop work before he was finished. On November 1, 2006, Kieffer filed a petition to enforce his mechanic's lien against Farrell and her husband, asserting breach of contract and quantum meruit. On December 6, 2006, the Farrells counterclaimed, asserting, among other things, breach of contract and breach of implied warranties. The Farrells asserted the money already paid to Kieffer was in excess of the value of the work he had performed and requested damages for expenses to correct problems caused by Kieffer's allegedly substandard workmanship.

After a bench trial, the district court sustained in part Kieffer's petition to enforce mechanic's lien, entering judgment for Kieffer in the amount of $1685.88 after applying offsets for work it determined to be incomplete or deficient and awarding him $4500 in attorney fees.

The Farrells now appeal, asserting the district court erred in: (1) finding Kieffer did not commit a material breach of contract justifying termination of his performance; (2) finding Kieffer's conduct did not constitute a breach of implied warranties; (3) failing to construe the construction contracts against Kieffer; (4) allowing Kieffer to foreclose his mechanic's lien; and (5) determining the amount and type of damages. Kieffer cross-appeals, asserting the district court erred in applying offsets against the amount the Farrells owed him.

[1] This amount appears to be the sum of an August 24, 2004 bill for $2269.80 for repairing water damage in the bathroom; an August 26, 2004 bill for $15,082 for work on the addition; an August 29, 2004 bill for $5301.83 for work on the kitchen; and an August 29, 2004 bill for $1557.05 for work on the bathroom.

II. Standard of Review

Because the claims on appeal relate to the breach of contract claims tried to the district court at law, we review for errors at law. Iowa R. App. P. 6.907. The district court's findings of fact are binding upon this court if supported by substantial evidence. Iowa R. App. P. 6.904(3)(*a*).

III. Breach of Contract

Farrell contends she was justified in terminating the parties' contract because Kieffer's allegedly deficient work constituted a material breach of the contract, relieving her of her duty to perform under the contract. *See Van Oort Constr. Co., Inc. v. Nuckoll's Concrete Serv., Inc.*, 599 N.W.2d 684, 692 (Iowa 1999). We conclude the district court correctly determined Kieffer did not materially breach the contract. In reaching this conclusion, we have considered the factors discussed in *Van Oort*, including the adequacy of monetary compensation to provide the Farrells the benefit they reasonably expected under the contract and the extent to which Kieffer would suffer a forfeiture. *Id.*

IV. Breach of Implied Warranties

The Farrells assert the district court erred in finding Kieffer's conduct did not constitute a breach of implied warranties in addition to a breach of contract, asserting Kieffer breached an implied warranty of habitability, an implied warranty of fitness for a particular purpose, and an implied warranty to do construction work in a good and workmanlike manner. The district court found "Kieffer breached the implied agreement in his contract with Farrell that his work would be sufficient for the particular purpose desired and the projects he completed for

her would be done in a reasonably good and workmanlike manner." We conclude the district court sufficiently addressed this issue.

V. Amount of Damages

The Farrells assert the district court erred in failing to award damages based on the decision to provide for an eight-foot high basement as requested by the Farrells when this resulted in water in the basement and for the uneven floor between the addition and the existing house. The Farrells contend they are entitled to the total amount of the cost of repair damages or the loss of market value of the home.

We believe the district court properly concluded the Farrells were not entitled to damages related to the depth of the basement. Farrell testified she wanted a standard basement in the addition. Dennis Steinlage, who poured the basement, testified that when digging the basement, "we hit the water table, and we were concerned about maybe raising the basement floor up so we wouldn't have to deal with the water issue." Steinlage testified he discussed this issue with Kieffer and Farrell and asked if he could raise the basement, but Kieffer directed him to keep the eight-foot basement walls. Steinlage testified he was aware "the water table was higher" in relation to the basement and spoke with Farrell and Kieffer about how to solve this problem. They decided to tile around the basement and run a tile line down to the creek. Farrell testified no one ever asked for her opinion on how deep the foundation should be.

We conclude substantial evidence supports the district court's finding that Farrell "was present when the issue of the basement's depth and the water table came up with Steinlage and Kieffer." We believe Farrell knew the basement was

placed too low in relation to the water table but still contracted for a standard basement with modifications made to alleviate water problems in the basement. Further, many problems with the water in the basement were related to the sump pump, which Kieffer did not install, and the decision to drain the sump pump into a creek on the property that might flow back into the basement. Accordingly, we believe the district court properly declined to award Farrell damages for the low basement.

We also believe the district court properly declined to award damages for the uneven floor where the addition met the existing house. Farrell and Kieffer both recognized at the outset of the project that the existing kitchen floor was not level. Because of this, Kieffer's bid stated he would take out the west wall of the old house into the addition and "match in as close as possible."

We believe the district court properly determined Kieffer had substantially performed and was entitled to recover the value of his work with deductions for defects or incompletions. *See Moore's Builder & Contractor, Inc. v. Hoffman*, 409 N.W.2d 191, 194 (Iowa Ct. App. 1987) ("[W]hen the contractor has substantially complied with his contract he is entitled to recover the contract price with deductions for any defects or incompletions."). Exhibit O admitted by the Farrells at trial is a summary of bids from Kieffer along with credits to which the Farrells believed they were entitled based on Kieffer's incomplete work. The district court included deductions for many of the items listed in this exhibit. Further, the district court allowed deductions in the amount of $12,850 for deficient work. We conclude the district court properly awarded damages for incomplete and deficient work.

VI. Cross-Appeal

Kieffer asserts the district court erred in applying offsets for work it determined to be incomplete or deficient when calculating his damages. He argues that because his access to the property to repair alleged deficiencies was denied by Farrell, she was not entitled to offsets for incomplete work or deficiencies, citing *Jerry Palmer Homes, Inc. v. Simpson*, No. 05-0162 (Iowa Ct. App. Apr. 26, 2006). However, the record shows Farrell spoke to Kieffer about deficiencies in his work and gave him the opportunity to remedy these deficiencies. Farrell testified that she did not deny Kieffer access to the property until after she had determined his attempts to remedy the deficiencies were inadequate. Because Kieffer was given at least some opportunity to repair alleged deficiencies, we reject his argument on cross-appeal.

We have considered all issues presented on appeal and conclude the judgment of the district court should be affirmed. We decline to award appellate attorney fees as requested by Kieffer.

AFFIRMED.