

**IN THE COURT OF APPEALS OF IOWA**

No. 1-998 / 11-0750  
Filed March 28, 2012

**AARON LUKE d/b/a TOWN &  
COUNTRY CONSTRUCTION,**  
Plaintiff-Appellee,

**vs.**

**JESSE H. VALDEZ and  
MARCY C. VALDEZ,**  
Defendants-Appellants.

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Appeal from the Iowa District Court for Wapello County, Annette J.  
Scieszinski, Judge.

Homeowners appeal a district court judgment on a petition to foreclose a  
mechanic's lien. **AFFIRMED AS MODIFIED, AND REMANDED.**

Bryan J. Goldsmith of Gaumer, Emanuel, Carpenter & Goldsmith, P.C.,  
Ottumwa, for appellants.

David A. Morse of Rosenberg & Morse, Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**VAITHESWARAN, P.J.**

Jesse and Marcy Valdez appeal a district court judgment on a petition to foreclose a mechanic's lien.

***I. Background Facts and Proceedings***

The Valdezes signed a contract to have Aaron Luke build a home for them. Luke began construction on the home but discontinued his work following a disagreement with the Valdezes.

Luke filed a petition to foreclose his mechanic's lien. The Valdezes answered and counterclaimed, and the case proceeded to trial. Following trial, the district court ruled in favor of all parties, offset the awards, and granted statutory attorney fees to all parties.

The Valdezes filed a motion to enlarge and amend the ruling. They raised several issues, including the court's treatment of \$4750 in labor and material costs for work that Luke conceded he did not perform. The district court modified its ruling but declined to subtract the \$4750 from the amount owed to Luke. The court awarded Luke net damages of \$21,852.01 and net attorney fees of \$16,169.84.

***II. Analysis***

On appeal, the Valdezes raise a single issue—the district court's treatment of the \$4750 in labor and materials for work that was not completed by Luke. They contend the amount was not subject to recovery in this mechanic's lien foreclosure action. Luke concedes the \$4750 reflects the cost of labor and materials for uncompleted work but argues he is entitled to the sum because the Valdezes hindered and delayed his performance of the contract. Our review is

de novo. Iowa Code § 572.26 (noting that an action to enforce a mechanic's lien is in equity); *Nepstad Custom Homes Co. v. Krull*, 527 N.W.2d 402, 404 (Iowa Ct. App. 1994) (setting forth standard of review).

The law for recovery on a mechanic's lien claim is well established. Where a contractor seeks to foreclose on a mechanic's lien, the contractor is entitled to recover the contract price, provided he or she has substantially complied with the contract. *Nepstad*, 527 N.W.2d at 406. "The contractor has the burden of proof to show substantial performance with the contract." *Id.* Once substantial performance has been shown, the burden then shifts to the homeowner to "show any defects or incompletions which may be deducted from the contract price." *Id.* In a nutshell, the general rule is as follows:

a contractor who substantially performs under a building or construction contract is entitled to recover the contract price minus the cost of repairing the defects or completing the unfinished part of the work so as to bring the construction up to the level required by the contract.

*Lewis Electric Co. v. Miller*, 791 N.W.2d 691, 694 (Iowa 2010) (quoting 24 Richard A. Lord, *Williston on Contracts* § 66:14, at 448–51 (4th ed. 2002)).

The Valdezes do not argue that Luke failed to substantially perform the contract, and they would face an uphill battle in doing so, as they made \$192,163.48 in payments on the contract price of \$209,272.00. Instead, they contend that, under the general rule cited above, the district court should have subtracted the cost of "completing the unfinished part of the work," in this case \$4750.

We agree with the Valdezes. The rule that "incompletions" should be deducted from the amount owing a contractor dates back at least half a century.

See *S. Hanson Lumber Co. v. De Moss*, 253 Iowa 204, 208, 111 N.W.2d 681, 684 (1961). More recently, in *Moore's Builder & Contractor, Inc. v. Hoffman*, 409 N.W.2d 191, 194 (Iowa Ct. App.1987), this court applied the rule to a virtually identical factual scenario. There, as here, the contractor substantially complied with the construction contract. *Moore's Builder*, 409 N.W.2d at 193–94. The only question was “whether the trial court made deductions from the contract for any defective or incomplete work, and what deductions were, in fact, needed.” *Id.* at 194. The court determined that the trial court reasonably arrived at a judgment amount “by taking the remainder due on the contract price, plus the extras provided, and subtracting the unfinished work.” *Id.* We similarly conclude that the amount attributable to unfinished work needed to be subtracted from the remainder due on the contract price. Accordingly, the final judgment in favor of Luke should have been \$17,102.01 rather than \$21,852.01.

In reaching this conclusion, we have considered Luke’s argument that the \$4750 should not be subtracted from the amount owed to him because the Valdezes “hinder[ed] or delay[ed]” his performance of the contract. The problem with Luke’s argument is that a homeowner’s hindrance or delay has been articulated as an exception to the contractor’s “substantial performance” requirement rather than a factor bearing on whether to subtract uncompleted work from the contract price. See *Sheer Constr., Inc. v. W. Hodgman & Sons, Inc.*, 326 N.W.2d 328, 332 (Iowa 1982).<sup>1</sup> As noted, substantial performance is not an issue here.

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<sup>1</sup> *Sheer* involved a contract action for breach of a construction subcontract. *Sheer Constr.*, 326 N.W.2d at 332. The court first noted the general rule that it was the

### **III. Attorney Fees**

#### **A. Trial Attorney Fees**

The Valdezes next challenge the district court's attorney fee award. They "do not contest the hourly fee charged by Appellee's counsel, nor do they question the amount of hours Appellee's counsel claims to have spent on the case." They simply assert that the award to Luke is "greater than the ultimate Judgment entry and is not proportionate to Aaron Luke's 'success' on his mechanic's lien." They also seek to have their own fee award increased from \$1263.87 to \$1742.09.

Iowa Code section 572.32 allows a prevailing party in a mechanic's lien action to recover "reasonable attorney fees." While a district court has no discretion in deciding whether to award attorney fees, the amount awarded is discretionary. *Schaffer v. Frank Moyer Constr., Inc.*, 628 N.W.2d 11, 22 (Iowa 2001).

The district court tied its attorney fee award to the amount of Luke's recovery. As we have modified that amount, we believe the attorney fee issue should be remanded for reconsideration using the modified judgment figure.

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subcontractor's burden to show a "full, complete, and substantial performance" of the subcontract. *Id.* The court then noted an exception to the rule, as follows: "In all contracts, however, 'there is an implied term that the person for whom the work is contracted to be done will not obstruct, hinder or delay the contractor, but, on the contrary, will in all ways facilitate the performance of the work to be done by him.'" *Id.* (quoting *Kaltoft v. Nielsen*, 252 Iowa 249, 258, 106 N.W.2d 597, 602 (1960)). The court concluded that the facts did "not bring it within the exception," because even if the defendant's inaction hampered the timeliness of Sheer's performance, Sheer was given time to adjust its schedule and performance was not rendered impossible. *Id.*

***B. Appellate Attorney Fees***

Both parties request appellate attorney fees. Section 572.32 allows for recovery of appellate attorney fees in a mechanic's lien action and gives the district court the authority to decide the amount of the appellate fee award. See *Schaffer*, 628 N.W.2d at 23. We accordingly remand to the district court to determine the appropriate amount of appellate attorney fees.

***IV. Disposition***

We affirm the judgment in favor of Luke but modify the amount of the judgment to \$17,102.01. In light of this modification, we remand for a redetermination of the trial attorney fee award. We also remand for a determination of appellate attorney fee awards.

**AFFIRMED AS MODIFIED, AND REMANDED.**