

**IN THE COURT OF APPEALS OF IOWA**

No. 7-738 / 06-0968  
Filed November 15, 2007

**D.M. METRO ELECTRIC, INC.,**  
Plaintiff-Appellee,

**vs.**

**SAP REAL ESTATE, L.C.,**  
Defendant-Appellant,

COMMUNITY BANK OF BOONE,  
Defendant.

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Appeal from the Iowa District Court for Polk County, John D. Lloyd, Judge.

The owner of real estate appeals the district court's foreclosure of a mechanic's lien in favor of a subcontractor. **REVERSED.**

James R. Monroe, Des Moines, and Jerrold Wanek of Garten & Wanek, Des Moines, for appellant.

R. Bradley Skinner of Skinner Law Office, P.C., Altoona, for appellee.

Michael Mahoney of Mahoney Law Firm, P.C., Boone, for defendant Bank.

Considered by Vogel, P.J., and Mahan, J., and Schechtman, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**SCHECHTMAN, S.J.**

The trial court entered a decree of foreclosure of a mechanic's lien filed by the plaintiff electrical subcontractor, D.M. Metro Electric, Inc. (Metro), against the owner, SAP Real Estate, L.C. (SAP), in the amount of \$7535. SAP appeals, asserting (1) full payment of its contract sum by the general contractor; (2) Metro's failure to file appropriate change orders and to receive approval prior to the work; (3) the need for the additional labor costs was caused by the subcontractor's shortage of laborers; and (4) a lack of perfection of the lien prior to suit. Community Bank of Boone was the mortgagee on the project and is not involved in this appeal. We reverse.

**I. Background Facts & Proceedings**

Metro contracted by written agreement to perform the electrical portion of the construction of a franchised fast-food restaurant in Clive with Rochon Corporation of Iowa (Rochon), as the general contractor. The contract sum was \$127,500. There was no contractual relationship between Metro and the owner, SAP.

Delays were encountered arising from a myriad of problems. Metro contends that the delays, not of its making, caused it to expend 274 hours of overtime for its employees due to longer workdays and a need to work weekends.<sup>1</sup> Metro gave written notice to Rochon on December 17, 2004, with a detailed breakdown of the overtime hours by its six employees. The vast

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<sup>1</sup> Although Metro labeled the extra hours as "overtime," the claim was not for hours exceeding forty hours per week, but rather for days greater than eight hours or work on weekends. It was not for traditional overtime as generally perceived or required by the Fair Labor Standards Act. We continue to employ the term "overtime" throughout, with that understanding.

majority of overtime hours (252 of 274) were incurred in October 2004, when the project was essentially wound up. Rochon denied the claim, concluding that it was the result of an inadequate number of workers on the job.<sup>2</sup> Seventeen other change orders (labeled as claims for extra labor or materials) were approved, totaling over \$7400.

Metro filed a mechanic's lien for \$66,030.55 on December 16, 2004, which contained no amount for overtime. On March 28, 2005, it filed two additional liens, one for the identical amount of the earlier filing by correcting the legal description, and another for \$7535, representing the overtime. The record does not show there were any written notices served upon the owner or the principal contractor.<sup>3</sup> The last date for providing labor or materials was recited as December 8, 2004.<sup>4</sup>

Metro filed its petition on April 5, 2005. It obtained personal service on April 21, 2005. The petition was verified and had copies of the three mechanic liens attached, with an accounting. Metro requested a judgment in rem for \$73,571.55. At the time of trial, the contract sum plus change orders and claims

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<sup>2</sup> Records in evidence reflect that two employees quit on October 15; no one replaced them; seventy-nine of the overtime hours arose after the employees quit; and sixty of the assessed hours were paid to the president and sole stockholder, as one of Metro's six electrical employees.

<sup>3</sup> Iowa Code section 572.10 (2005) provides in relevant part:

After a lapse of the ninety days prescribed in section 572.9, a subcontractor may perfect a mechanic's lien by filing a claim with the clerk of the district court and giving written notice thereof to the owner, the owner's agent, or trustee. Such notice may be served by any person in the manner original notices are required to be served.

The ninety day period runs "from the date on which the last of the material was furnished or the last of the labor was performed." Iowa Code § 572.9.

<sup>4</sup> SAP contends the last date of overtime to be October 23, 2004. It makes little difference since ninety days had expired prior to the last two lien filings.

for extras had been paid, except for the disputed claims for overtime in the sum of \$7535. SAP had fully paid Rochon, the general contractor, before the end of April 2005, although it had owed the general contractor substantially more than Metro's claim on March 28, 2005, as well as at the time the suit was filed.

The trial court foreclosed the lien filed on March 28, 2005, in the sum of \$7535, and cancelled the remaining two liens for the larger amount.

## **II. Standard of Review**

An action to enforce a mechanic's lien lies in equity. *Bidwell v. Midwest Solariums, Inc.*, 543 N.W.2d 293, 295 (Iowa Ct. App. 1995). Our review is de novo. *Id.* Weight is given to the findings of fact and credibility assessments of the trial court, especially in mechanic's lien cases. *Id.* A mechanic's lien is purely statutory in nature. *Carson v. Roediger*, 513 N.W.2d 713, 715 (Iowa 1994). Mechanic's lien statutes are liberally construed to promote restitution, prevent unjust enrichment, and to obtain justice. *Id.* The burden of proof is upon the claimant. *Giese Constr. Co., Inc. v. Randa*, 524 N.W.2d 427, 430 (Iowa Ct. App. 1994).

## **III. Merits**

The trial court's findings of fact were abbreviated. Although the court found, "[t]here were numerous delays and difficulties encountered during the project," there was no finding as to the responsibility for these delays. The court concluded:

There is little factual dispute in this case. All parties agree that Metro Electric fully performed its obligations under the contract with Rochon and has been paid except [for the overtime dispute].

There is generally no dispute about the amounts of the various items. . . . The real issues are legal.

The court reasoned that Metro was entitled to a mechanic's lien for its labor by statute; that SAP made payments to the general contractor, after notice, without demanding lien waivers; and SAP's payment to Rochon "was made at its own risk."

On our de novo review, we find the clear cause for the overtime was Metro's lack of personnel assigned to the project during the critical period. Employees quit and were not replaced. There were other employees who were not transferred to this undertaking.

Metro was fully paid for its labor and materials (including extras), which it contracted to furnish for its contract sum. Overtime was its choice under its employment arrangement with its workers (which included its president and sole shareholder). The subcontract agreement provided:

The Subcontractor agrees to furnish all labor, material, and equipment necessary to perform and complete all the Work as described . . . .

. . .

The Subcontractor shall pay for all equipment, materials, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish releases, lien waivers and waivers of claims (of Subcontractor, its subcontractors and suppliers), and satisfactory evidence of such payment when requested by the Contractor to verify compliance with this requirement.

Metro did not contend that these 274 hours of overtime comprised extra work; its lien was limited to \$27.50 per hour, one-half of the regular rate of \$55.00 per hour. This was a cost of labor which Metro had contracted to furnish. Metro did not satisfy its burden to show that the overtime hours were the result of a

breach of the contract terms or were the responsibilities of the general contractor or owner.

The fact that SAP satisfied the charges of its general contractor, after it received notice of this suit, rather than to withhold its amount, does not obligate it to pay a lien which has no merit. An owner can opt to defend even though a statute protects it from a double payment by allowing it to withhold when a lien waiver is not furnished. Choosing to defend and to pay the general contractor should not penalize the owner. The assumption of that risk of defense does not validate an otherwise unproven lien.

There are other issues relating to the statutory perfection of a mechanic's lien prior to its foreclosure, and the lack of appropriate change orders. Those issues are now moot as Metro has not met its burden to prove that the overtime was prompted by Rochon, SAP, or someone acting for them. Metro has failed to meet its burden of proof for foreclosure of its mechanic's lien.

The judgment and decree of foreclosure is reversed, with costs on appeal assessed to D.M. Metro Electric, Inc.

**REVERSED.**