

IN THE COURT OF APPEALS OF IOWA

No. 8-861 / 07-1022
Filed November 26, 2008

BARCLAY PULLMAN CORPORATION,
an Illinois Corporation,
Plaintiff,

vs.

HAU HING POON, individually, WEI MIN ZHAO,
individually, **CAI QIANG, individually, and**
RIVERSTONE GROUP, INC., an Illinois
corporation, and **SCHIMBERG, INC.,**
an Iowa corporation, and **MATTHEW HOWARD**
d/b/a EIFS SERVICES, and RENTAL SERVICE
CORPORATION, an Iowa corporation, and
CONTINENTAL FIRE SPRINKLER CO.,
a Delaware corporation, and **SUPERIOR**
PLUMBING, INC., an Iowa corporation, and
CROELL REDI MIX, INC., an Iowa corporation, and
KELLEY & SONS BULLDOZING & EXCAVATING, INC.,
an Illinois corporation, and **ANDERSON COMMERCIAL**
CONCRETE, INC., an Iowa corporation,
CONSTRUCTION PARTNERS, INC.,
an Illinois corporation, and
DELFS LANDSCAPE AND IRRIGATION
and **THE HEIGHTS BANK,**
Defendants.

THE HEIGHTS BANK,
Third-Party Plaintiff-Appellee,
vs.

BLACKHAWK TITLE COMPANY,
Third-Party Defendant-Appellant.

HAU HING POON, WEI MIN ZHAO, and CAI QUIANG,
Third-Party Plaintiffs-Appellees,

vs.

BLACKHAWK TITLE COMPANY,
Third-Party Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,
Judge.

A third-party defendant argues that the claims against it were not subject
to joinder with the plaintiff's action to foreclose a mechanic's lien. **AFFIRMED.**

Stephen Hardy of Grefe & Sidney, P.L.C., Des Moines, for appellant
Blackhawk Title Company.

Ian Russell of Lane & Waterman, LLP, Davenport, and George Goebel of
Goebel Law Office, Davenport, for appellee The Heights Bank.

Roni N. Halabi for appellee Hau Hing Poon.

Considered by Vaitheswaran, P.J., and Potterfield, J. and Robinson, S.J.*

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

VAITHESWARAN, P.J.

A third-party defendant argues that the claims against it were not subject to joinder with the plaintiff's action to foreclose a mechanic's lien.

I. Background Proceedings

Barclay Pullman Corporation sued several defendants alleging in pertinent part that (1) it was not paid in full for a construction project, (2) it had a mechanic's lien on the property, (3) its lien was superior to the rights of other named defendants including the Heights Bank, which held the mortgage on the property, and (4) it was entitled to judgment of foreclosure on its mechanic's lien. The Heights Bank filed a third-party petition against a previously unnamed defendant, Blackhawk Title Company. The bank alleged Blackhawk acted as the closing agent, title company, and construction loan escrow agent on the project and, in that capacity, failed to obtain lien waivers as required by contract. The bank sought a money judgment in the amount of the outstanding mechanics' liens and indemnification for all claims that were paid without lien waivers.¹ Blackhawk moved to strike and dismiss the bank's third-party petition on the ground that Iowa Code section 572.26 (2005) disallows the joinder of mechanic's lien foreclosure actions with other actions. The district court denied the motion. The court reasoned that "the third-party petition [was] not a joinder of another

¹ Other defendants filed similar claims against Blackhawk. These claims were also attacked by Blackhawk in the district court. The court heard the arguments for all of the motions to strike and dismiss at the same time and issued one ruling concerning the motions. To avoid confusion, we will refer only to the Heights Bank as the defendant/third-party plaintiff, although our opinion applies to all third-party plaintiffs and all motions to strike and dismiss in this action.

cause of action so as to be barred by statute.” Blackhawk’s request for interlocutory appeal was granted.

II. **Analysis**

The sole issue on appeal is whether the district court correctly denied Blackhawk’s motion to strike and dismiss. Both parties agree that our review is for errors of law. See *North Iowa Steel Co. v. Staley*, 253 Iowa 355, 112 N.W.2d 364 (1961).

Iowa Code section 572.26 states, “An action to enforce a mechanic’s lien shall be by equitable proceedings, and no other cause of action shall be joined therewith.” *Id.* Resolution of this appeal turns on the meaning of “joined.”

As construed by our courts, joinder is “the statement of more than one cause of action in a declaration.” *North Iowa Steel*, 253 Iowa at 358, 112 N.W.2d at 366. Under this definition, section 572.26 prohibits a plaintiff from joining in its original action an equity count to foreclose a mechanic’s lien with a law count for money judgment. See *Capitol City Drywall Corp. v. C.G. Smith Constr. Co.*, 270 N.W.2d 608, 610–11 (Iowa 1978); *Gilcrest/Jewett Lumber Co. v. Moyer*, 448 N.W.2d 711, 711 (Iowa Ct. App. 1989).

Joinder is not “a separate cause of action set up in a separate declaration.” *North Iowa Steel*, 253 Iowa at 358, 112 N.W.2d at 366. Section 572.26, therefore, does not prohibit a plaintiff from separately pleading an independent cause of action in response to a defendant’s pleading of set-off or counterclaim. *Capitol City Drywall*, 270 N.W.2d at 611. Section 572.26 also does not prohibit a named defendant from asserting a counterclaim against the plaintiff. *North Iowa Steel*, 253 Iowa at 358, 112 N.W.2d at 366.

Blackhawk seeks to apply section 572.26 to a third-party petition filed by a named defendant in the original mechanic's lien foreclosure action. The cited precedent does not permit such an expansive application of the statute. Therefore, the district court did not err in concluding that the section 572.26 bar was inapplicable to the bank's third-party petition against Blackhawk.

We turn to Blackhawk's assertion that it will suffer prejudice because its "constitutional right to trial by jury could be foreclosed or effectively foreclosed." As the bank points out, courts faced with a combination of mechanic's lien foreclosure actions and law issues have simply tried the equitable foreclosure action to the court and the law issues to the jury. See *Moore's Builder & Contractor, Inc. v. Hoffman*, 409 N.W.2d 191, 193 (Iowa Ct. App. 1987). This procedure preserves a party's right to a jury trial.

We affirm the district court's ruling on Blackhawk's motion to strike and dismiss.

AFFIRMED.