

2011 CASES INVOLVING MECHANIC'S LIENS

In 2011, only a handful of Iowa appellate decisions were entered involving mechanic's liens. None of the holdings from those decisions were exceedingly surprisingly or controversial.

American Disaster Serv. v. Wagner (Iowa App. 2011): Contractor prevailed against homeowner.

- The district court enforced a mechanic's lien filed by a contractor regarding certain work performed to remedy fire damage to a house. The lower court's decision was fully affirmed on appeal.
- The court rejected the owner's lack of substantial performance argument, holding that the contractor had completed 70% of the work, and all such work was completed in workmanlike, before the homeowner began hindering and delaying the contractor's performance.
- The court concluded that the additional work that had to be done by a second contractor after the relationship with the first contractor broke down was "extreme remodeling" work that was not part of the contract and was not necessary to repair the fire damage.
- Practice Pointers:
 - Describe, in great detail, the scope of work in your written contract.
 - Remediation work can be problematic when homeowners may want additional work beyond actual remediation work. Make sure all parties are on the same page regarding scope of work.

Kiefer Const. v. Farrell (Iowa App. 2011): Contractor partially prevailed against homeowner.

- The district court (partially) enforced a mechanic's lien filed by a contractor regarding certain work performed regarding an addition built on a house and basement work. The lower court's decision was fully affirmed on appeal.
- The court rejected the owner's lack of substantial performance argument, holding that the contractor had substantially completed the work and was thus, entitled to recover the contract price of his work, minus deductions for defects or incompleteness.
- Though, the court rejected the contractor's argument that he should get paid the full contract price because the contractor was denied access to the property to repair the deficiencies, finding that the homeowner had given him the contractor access to repair the work and only denied him access when the remedy work was inadequate.
- The court rejected the counterclaim by the owner for damages relating to issues with the basement depth because the owner confirmed with the contractor the depth of the basement despite being told about the low water table, and because some of the water damage issues stemmed from a sump pump which was not supplied or installed by the contractor.
- Practice Pointers:
 - Deductions will be made by the court from the full contract price to account for work not performed or deficiency performed work.
 - The safest route is to clearly document times when a homeowner is advising you to proceed against your recommended course of action and in spite of risks.

L & L Builders v. Quirk (Iowa App. 2011): Subcontractor recovered certain money from the contractor.

- First, the lower court concluded that there originally was no "meeting of the minds" (on the scope of the work or the price for such work) between the contractor and subcontractor for the price the subcontractor would be paid for certain rock sub-base work, but notwithstanding, the subcontractor began work.
- Second, the lower court concluded that there was, however, a later meeting of the minds with these parties in settling that dispute on such rock sub-base work and enforced that price amount. Subcontractor was awarded from the contractor the amount remaining from that price.
- The appellate court disagreed with the lower court's first holding. The appellate court found that there was an original meeting of the minds. Such court concluded that the contractor had accepted a counteroffer made by the subcontractor through the contractor's action. In particular, when subcontractor made changes to a proposed contract and faxed the revised contract back to contractor and the contractor then permitted the subcontractor to begin work (while remaining silent on the revised agreement), the contractor's silence and actions was deemed an acceptance of the counteroffer, i.e., the revised contract. This court noted that this conclusion was proper despite a contract provision requiring amendments and revisions to be in writing.
- The appellate agreed with the lower court's second holding, that a second contract was formed between the parties on the rock sub-base work, which replaced the first contract. Accordingly, the appellate court affirmed the judgment entered by the lower court, with the correction of a math calculation error.

- Practice Pointers:
 - Remember that silence and/or action in the face of a counteroffer can equate to acceptance of that counteroffer without written acceptance.
 - Be sure that there is a fully executed contract fully setting forth the terms of the agreement, including the scope of work and price terms.

Welte Insurance v. Big Red Lighting, Lumberman's Brick (Iowa App. 2011): Subcontractor was denied recovery.

- A homeowner's contractor, which was hired to contract a home, only paid some of the subs prior to disappearing. Certain funds were deposited in escrow at closing, pending the resolution of the disputes between the homeowner and various subcontractors.
- Among other things, the appellate court found that a certain subcontractor (of a subcontractor) was not entitled to any of the available escrows to compensate the sub for the value of the work performed because the sub failed to timely file a mechanic's lien (and enforce that lien). The court emphasized that the sub's only available method of payment other than from the general contractor (or subcontractor), with whom the sub (or sub-sub) contracted, was to promptly perfect/file and enforce a mechanic's lien. This conclusion remains true even if there may be money available to remedy the unjust enrichment claimed by the sub. This was a reversal of the lower decision.
- Practice Pointers:
 - Subs must file a mechanic's lien if they want to enforce any right to payment against the owner.

Advance Custom Builder, Debtor (Scharnhorst v. Advanced Custom Builders and Noack) (N.D. Bank. 2011)

- The bankruptcy court pierced the corporate veil of a general contracting company.
- Practice Pointers:
 - Engage in proper actions to maintain corporate protection against personal liability and piercing the corporate veil, including the following: maintain separate books for the company, fully maintain separate finances, guard against the company being undercapitalized, etc.

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