

In the United States Bankruptcy Court
for the Northern District of Iowa

KEITH E. BIGGINS and DONNA M. BIGGINS
Debtors.

Bankruptcy No. X92-01065S
Chapter 7

KEITH E. BIGGINS and DONNA M. BIGGINS
Plaintiffs
vs.

Adversary No. 92-5271XS

CHRIS MILLER,
/b/a Chris Miller Construction, Inc./td>
Defendant.

MEMORANDUM OF DECISION AND ORDER RE: COMPLAINT TO INVALIDATE LIEN

Keith and Donna Biggins seek a determination that a mechanic's lien filed by Chris Miller Construction, Inc. is invalid. Trial was held on November 3, 1993 in Sioux City. Plaintiffs appeared pro se. William D. Cook appeared for defendant. [\(1\)](#)

Findings

In March, 1991, Mark Miller, job superintendent at Chris Miller Construction, Inc. (CONSTRUCTION), met with Keith and Donna Biggins to discuss a remodelling project on their home. Biggins wanted several rooms remodeled by a graduation date in May. Construction agreed to do the job for materials charges and \$16.00 per man hour of labor. The Biggins lived in Buena Vista County, near Storm Lake. From Construction's shop site in Cherokee to the job site measured about 30 miles.

It was Construction's normal practice not to charge for travel time to and from the job site. The company was located at Cherokee. Biggins say the parties agreed that the labor charge would apply only to site work, and that there would be no hourly charges for time spent by the contractor in picking up materials from suppliers. Mark Miller says no such agreement was reached, and that Construction would have charged for time spent leaving the site to pick up materials and for time spent by personnel going out of their way to pick up materials on the way to the site.

The parties did not enter into a written agreement. Mark Miller said Construction would not do so because there was no way he could know the exact amount of labor and materials. It was agreed that the Biggins would pay \$1,000.00 of the cost at the end of April and the balance upon completion of the project. Biggins did not pay the April installment. By May 3, 1991, because of the delinquent installment, Construction ceased work on the unfinished project.

On May 24, 1991, Construction filed a mechanic's lien with the Buena Vista County Clerk. [\(2\)](#) The lien claimed that the contractor had supplied labor and material to the site from April 9, 1991 through May 3, 1991, and that \$11,093.62 was due and owing (Exhibit E). Attached to the lien was an Exhibit A showing the dates materials were supplied, the place of purchase, the seller's invoice number and the amount charged. The materials totaled \$4,071.54. Biggins do not dispute the materials charges. The attachment showed also a total labor charge of \$6,752.00 and tax on labor of \$270.08. The labor charges were not broken down by date or individual labor.

Construction claims that 422 hours of labor were expended on the project by six workers before construction ceased (Exhibits 7 and F). Construction kept track of their employees' labor by the use of daily time cards. Keith Biggins was home much of the time during construction. He also kept track of the time various workers spent on the job, each day noting on a calendar who worked, when they arrived, when they left, and if they took a lunch hour different from noon to 1:00 P.M. On the few occasions when he may not have been home, Donna Biggins kept track, told her husband, and he entered the information on the calendar (Exhibit 8). Biggins calculated that Construction's workmen spent 370 hours on the job, not 422. He also claims that some of the workers loafed during work time and padded their recorded hours. Keith Biggins agrees that his entries do not show any time off the job site. Construction's calculation of time included travel time to pick up materials and time spent by Construction in building a window louver at Construction's shop.

At some point after the payment dispute had arisen, company owner and president Chris Miller met with the Biggins at their home to try to resolve the dispute. She took a tour of the home, and Biggins pointed out some dissatisfactions with the work. Nothing was resolved. Chris Miller wanted the April installment. She said that Construction would then finish the job, and they could settle disputes later.

On August 1, 1991, a letter was sent to Biggins by Construction's lawyer threatening foreclosure of the lien unless Biggins immediately paid the amount claimed (Exhibit 2). On August 5, 1991, Construction's lawyer sent another letter to Biggins (Exhibit 5). It purported to follow up on a telephone settlement discussion between Chris Miller and Biggins which involved a schedule for payments to Construction over time, without foreclosure of the lien. Instead, Biggins would execute a Confession of Judgment. The letter stated at paragraphs 3 and 5:

Chris Miller informs me that their original billing is \$500.00 more than the figure you agreed upon, however, she is willing to reduce the amount of the corporation's final billing in order to expedite this matter.

* * *

If the confession of judgment is not returned by Friday, August 23, 1991, then Chris Miller will foreclose on their mechanic's lien as we discussed earlier.

The Biggins say they signed and returned the confession because of their fear of the foreclosure. The confession (Exhibit 4) was signed on August 21, 1991. In it, Biggins confessed judgment in the amount of \$11,071.41. There is no showing on its face that it was filed. Construction's lawyer represents that it was. Execution later issued so apparently judgment was entered pursuant to Iowa Code § 676.4.

Biggins filed their joint chapter 7 petition on June 2, 1992. They received their discharges on September 4, 1992.

Discussion

Biggins state that they are submitting only one issue to the court--whether the mechanic's lien is valid under Iowa law. A determination of the validity of a lien must be sought by adversary proceeding. Fed.R.Bankr.P. 7001(2). It is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

Biggins contend that the lien is invalid under Iowa Code § 572.8 because it is not properly perfected. That section states in pertinent part:

A person shall perfect a mechanic's lien by filing with the clerk of the district court of the county in which the building, land, or improvement to be charged with the lien is situated a verified statement of account of the demand due the person, **after allowing all credits**, setting forth:

1. The time when such material was furnished or labor performed, and when completed.
2. The correct description of the property to be charged with the lien.
3. The name and last known mailing address of the owner, agent, or trustee of the property.

* * *

(Emphasis added.)

Biggins contend that the lien is not properly perfected because they did not get proper credit for labor. First, they argue that their labor calculations are correct according to fact and according to their agreement with Construction and that Construction's labor calculations are incorrect. The Biggins say that because they did not get credit for the proper amount of labor charges, the lien is not perfected and is invalid. Second, they say that the letter from the attorney dated August 15, 1991, indicates that the lien would be reduced by a compromise reduction of \$500.00. They assert that because Construction did not amend the lien to give credit for the compromise amount, the lien is not perfected.

Biggins' arguments are without merit. Their first argument has no support under the facts or Iowa law. Biggins have not shown that Construction or its employees acted in bad faith or with fraudulent intent in preparing or filing the account. Absent fraudulent intent or bad faith, inclusion in the account of items for which a lien may not be claimed does not invalidate an otherwise enforceable lien. Palmer v. McGinness, 127 Iowa 118, 102 N.W. 802, 803 (1905); Consumers' Independent Lumber Co. v. Rozema, 212 Iowa 696, 237 N.W. 433, 435 (1931). Likewise, absent bad faith or fraud, omission of credits does not invalidate a lien. Ewing v. Stockwell, 106 Iowa 26, 75 N.W. 657, 658 (1898).

As to the second argument, although it is true that a statement of account must allow for all credits, Biggins have cited no authority for the proposition that the lien must be invalidated if it is not amended to reflect a later compromise. Furthermore, it is not clear that the compromise required such an amendment. The lien was filed in the amount of \$11,093.62. The letter of August 15 does not mention reducing the claimed lien, but only reducing the final billing. It is true that the amount of the confession of judgment was \$22.21 less than the amount of the lien and not \$500.00. But it is not clear from the letter that "the original billing" referred to in Exhibit 5 was the amount of the lien. If it was, Biggins at the time made no effort to point this out to Construction or its attorney and instead signed the confession. Even if a reduction in the lien amount were warranted by the compromise, the Biggins have not shown that Construction acted in bad faith or with fraudulent intent in not reducing the amount of the lien. Ewing v. Stockwell, 75 N.W. at 658.

The court has not been asked by plaintiffs to determine the amount of the lien. The court need not decide whether the labor charge was correct or not. The court does find that Construction's labor charges were not stated in bad faith or with fraudulent intent. The lien was properly perfected and is valid.

It will be necessary for Construction to foreclose its lien in state court. That court will of necessity need to determine the amount of debt. It may be that the Biggins will be precluded by the Confession of Judgment from litigating the amount of the lien. This court need not decide that issue. To the extent that Biggins intend that claims of wrongful debt collection would come into play in the state court, the court admonishes the Biggins that any such claims that exist were not scheduled in their bankruptcy schedules. Nonetheless, they are property of the bankruptcy estate as they arise from the alleged actions of Construction prior to the filing of Biggins' bankruptcy case. Biggins cannot bring these claims against Construction absent scheduling of the claims and abandonment by the trustee.

ORDER

IT IS ORDERED that the mechanic's lien of Chris Miller Construction, Inc. filed in Buena Vista County on or about May 24, 1991, against real property of Keith and Donna Biggins as described therein is a valid lien against the property.

IT IS FURTHER ORDERED that debtors have 14 days from the service of this order to amend their schedule of personal property to set out any claims which they believe they or either of them may have against Chris Miller Construction, Inc. by virtue of pre-petition debt collection activities of Chris Miller Construction, Inc. or its personnel. Judgment shall enter accordingly.

SO ORDERED ON THIS 4th DAY OF NOVEMBER, 1993.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: Debtors, William D. Cook and U. S. Trustee.

1. ¹ The complaint was filed against Chris Miller d/b/a Chris Miller Construction, Inc. The lien was filed not by Chris Miller personally but by Chris Miller Construction, Inc., a corporation. The adversary proceeding was tried and submitted on its merits notwithstanding the plaintiffs' error in naming the defendant.

2. ² Each party offered into evidence a copy of the mechanic's lien (Exhibits E and 1). However, neither exhibit showed a recording date or location. The parties do not dispute the fact that the lien was recorded in Buena Vista County on May 24, 1991 (plaintiffs' Complaint, 3 and defendant's Answer).