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2012 IL App (3d) 110578-U

Order filed May 21, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

MEISTER PLUMBING, INC.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Peoria County, Illinois
)	
v.)	Appeal No. 3-11-0578
)	Circuit No. 10-CH-716
)	
JODY KIMBRELL, MICHAEL KIMBRELL,)	
and ANNA ISAACS,)	Honorable
)	Michael E. Brandt,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Wright concurred in part and dissented in part.

ORDER

¶ 1 *Held:* (1) Plaintiff plumbing contractor did not waive its right to sue defendants for breach of contract by signing a waiver of its lien rights under the Mechanics Lien Act; (2) the circuit court's award of damages in the amount of the full contract price was not against the manifest weight of the evidence; (3) the circuit court properly awarded attorney fees under the contract even though it caused the plaintiff's total recovery to exceed the \$10,000 jurisdictional limit for small claims; and (4) the parties' contract entitled the plaintiff to collect attorney fees relating to the appeal. The circuit court will determine the proper amount of such attorney fees on remand.

¶ 2 The plaintiff, Meister Plumbing, Inc. (Meister), a plumbing contractor, sued the defendants for breach of contract, alleging that the defendants failed to pay sums due under a written contract for plumbing installation services. The parties agreed to try the case pursuant to the procedural rules governing small claims. After a bench trial, the circuit court entered judgment in favor of Meister for \$9,099 plus interest at 2% per year up to the \$10,000 limit for small claims. The court also awarded Meister \$2,863.30 in attorney fees and \$425.84 in costs. This appeal followed.

¶ 3 **FACTS**

¶ 4 On November 10, 2009, Meister entered into a written contract with the defendants for plumbing work to be performed at the Jeth Court apartment complex in Peoria. The defendants were the owners of the apartment complex. The contract provided that Meister would furnish the labor and materials to install specified plumbing and site utilities at the apartment complex at a price of \$29,399. The contract also provided that the defendants "agree[d] to pay a 2% per month late fee on all past due accounts **** up to 50% of the balance, court costs, and/or any attorney fees incurred by Meister *** to collect past due accounts."

¶ 5 Meister began working on the project and billed the defendants periodically as the work progressed. Meister sent the defendants a bill for \$2,700 on December 30, 2009, and a second bill for \$17,600 approximately one month later. The defendants paid both of these bills in full.

¶ 6 On March 2, 2010, after it received payment on its second invoice, Meister signed a waiver of lien. In relevant part, the lien waiver provided as follows:

We/I, the Undersigned, MEISTER PLUMBING, INC., for and in consideration of \$17,600, and other good and valuable considerations, the receipt whereof if [*sic*] hereby acknowledged, do hereby waive and release any and all lien, or claim, or right of lien on said above described building and premises and on the monies or other considerations due or to become due from the owner under 'An Act to Revise the Law in relation of Mechanics' Liens approved May 18, 1903,' and in force July 1, 1903 and all the lien laws of the State of Illinois on account of labor or materials, or both, furnished or which may be furnished by the undersigned to the property located at JETH COURT, PEORIA, IL for said building premises."

¶ 7 After signing the lien waiver, Meister finished installing and trimming some plumbing fixtures at the site and sent the defendants a final bill in the amount of \$9,099, which represented the balance of the amount due under the contract. The defendants did not pay this bill.

¶ 8 Meister brought this suit in chancery court to collect the amount due on the unpaid bill. Meister's complaint initially asserted two causes of action: breach of contract and foreclosure of a mechanics lien. However, Meister voluntarily dismissed its claim for foreclosure of a mechanics lien and proceeded to a bench trial solely on the breach of contract claim. The parties stipulated that the case would be tried according to the civil procedure rules governing small claims.

¶ 9 Jason Clayton, the defendants' agent who signed the contract on the defendants' behalf, testified that Meister completed all of the work called for under the contract except for some

"rough plumbing" in the recreation room of the apartment complex. The defendants presented no testimony or other evidence regarding the value of any plumbing work that was not completed. Clayton claimed that, after March 2, 2010, Meister performed some "finishing work" at the job site, such as installing fixtures, toilets, and faucets. Clayton estimated that this finishing work was worth somewhere between \$3,000 and \$4,000.

¶ 10 Clayton testified that he thought that Meister "did good work for the most part" and that the "overall the quality of the work was really well. [*sic*]" However, Clayton stated that, when Meister turned on the water system in the four-bedroom unit, water began leaking from the ceiling, causing damage to eight sheets of installed dry wall and some insulation. According to Clayton, the leak was caused by Meister's failure to weld a "T" in the ceiling and its failure to properly air test the system before turning it on. Clayton testified that it took the defendant's maintenance man four days of work to clean up the water and "redo the drywall." When asked how much it cost the defendants to repair the damage, Clayton responded "[p]robably about, I would say under a thousand dollars." The defendants did not present any other evidence regarding the cost of removing the water and repairing the damage.

¶ 11 Defendant Jody Kimbrell also testified. Kimbrell stated that she did not know what Meister's final invoice was meant to cover. Kimbrell claimed that, when she asked Meister's representative what work Meister had done to justify the charges in that bill, he "couldn't answer" her.

¶ 12 Quint Koehl, the owner of Meister Plumbing, testified that, although the defendants initially assured Meister that they would pay Meister's final invoice, they never did so. When asked to put a value on the work that Meister performed after March 2, 2010, Koehl responded

that it was "enough to fulfill the contract, the final remaining balance." Koehl claimed that he had several conversations with Kimbrell and Clayton in the three months after Meister sent the final invoice. According to Koehl, neither Kimbrell or Clayton ever complained that Meister's bill was too high or mentioned any leak caused by Meister.

¶ 13 Koehl also testified that Meister completed all of the work listed in the contract, including the "rough in" plumbing in the recreation room. According to Koehl, Meister's plumbers "roughed in water, waste, and vent" in the recreation room "to the point that [Clayton] advised [them] not to go any further."

¶ 14 After considering the evidence and the arguments of the parties, the circuit court ruled in favor of Meister. The court found that the lien waiver signed by Meister had no effect on the contract between the parties because it provided that Meister was waiving "any claim of monies under the Mechanics Lien Act," not under the contract. The court found that it was "uncontradicted" that Meister performed the work listed in the contract and that the work was of good quality. Accordingly, the circuit court entered judgment in favor of Meister for \$9,099, the amount remaining under the contract, "plus interest at 2% per annum." However, the court's order noted that the damages plus interest could not exceed the "small claims limit" of \$10,000. In addition, the circuit court awarded Meister costs and attorney fees relating to Meister's breach of contract claim, pursuant to the contract. The court awarded \$428.84 in costs and \$2,863.30 in attorney fees, bringing Meister's total recovery to \$13,292.14. This appeal followed.

¶ 15

ANALYSIS

¶ 16

1. The Effect of the Lien Waiver

¶ 17 The defendants argue that Meister waived its right to seek payment on its final invoice by signing a waiver of lien. We disagree. The Mechanics Lien Act (Act) (770 ILCS 60/1 *et seq.* (West 2008)) affords contractors a special statutory remedy to collect monies due for services rendered. This remedy supplements, but does not supplant, ordinary common law remedies for the enforcement of a contract out of which the lien arises. *Fieldcrest Builders, Inc. v. Antonucci*, 311 Ill. App. 3d 597, 609 (1999); see also *H.G. Wolff Co. v. Gwynne*, 246 Ill. App. 86, 91 (1927) (ruling that the Act "merely undertakes to provide an additional remedy," but does not affect the contractual obligations of the parties or the parties' common law rights to enforce those obligations). Accordingly, while the execution of a lien waiver bars the right to assert a lien under the Act, it does not extinguish the underlying contractual obligation. *Lyons Federal Trust & Savings Bank v. Moline National Bank*, 193 Ill. App. 3d 108, 113 (1990); see also *H.G. Wolff Co.*, 246 Ill. App. at 91 (ruling that a lien waiver merely waives the right to "a particular form of remedy offered by the lien statute," and that the parties' contractual obligations "still subsist to the full"); *Decatur Bridge Co. v. Standart*, 208 Ill. App. 592, 596 (1917) ("The lien is a cumulative remedy, and to deny it does not deprive a party of the right to recovery upon his contract in the usual way.").¹

¹ See also *William Aupperle & Sons, Inc. v. American National Bank & Trust Co. of Chicago*, 28 Ill. App. 3d 573, 577 (1975); *Capitol Plumbing & Heating Supply Co. v. Snyder*, 104 Ill. App. 2d 431, 439 (1969).

¶ 18 Although the defendants acknowledge these principles, they argue that the lien waiver signed by Meister acknowledged that Meister had been paid in full for the work it had performed at the apartment complex and expressly waived all claims to any additional payment for such work. The defendants contend that this broad language amounted to a release of all claims regarding the property, not merely a waiver of the right to foreclose a mechanics lien. The defendant's argument is refuted by the plain terms of the lien waiver. The waiver provides that Meister waived and released "any and all lien, or claim, or right of lien *** *due from the owner under 'An Act to Revise the Law in relation of Mechanics' Liens approved May 18, 1903,' and in force July 1, 1903 and all the lien laws of the State of Illinois.*" This language makes it clear that Meister merely waived its lien rights under the Act. It did not release its common-law rights to enforce the contract. Accordingly, the lien waiver signed by Meister does not bar it from bringing this action for breach of contract.

¶ 19 2. Meister's Entitlement to the Full Contract Price

¶ 20 The defendants argue that the circuit court erred by awarding Meister the full contract price because Meister "admitted that it had not completed the work" listed in the contract. Whether Meister completed the work called for in the contract is a question of fact. After a bench trial, we will not disturb the circuit court's findings of fact unless they are against the manifest weight of the evidence. *Gonzalez v. Second Federal Savings & Loan Association*, 2011 IL App (1st) 102297, ¶ 45. A finding is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the finding appears to be arbitrary, unreasonable or not based on the evidence. *Id.*

¶ 21 Applying this deferential standard, we cannot say that the circuit court's conclusion that Meister completed the work under the contract is against the manifest weight of the evidence. Although Clayton testified that Meister did not complete certain "rough" plumbing in the recreation room, Koehl testified that Meister's plumbers "roughed in water, waste, and vent" in the recreation room as required by the contract "to the point that [Clayton] advised [them] not to go any further." Clayton did not identify any specific "rough in" work that was not completed, and the defendants provided no evidence of the value of any such allegedly uncompleted work. Under these circumstances, the circuit court's finding that the work was completed was not against the manifest weight of the evidence.²

¶ 22 The defendants also argue that, at a minimum, they are entitled to a \$1,000 offset for the repairs they forced to make as a result of the water leak allegedly caused by Meister. This claim is not supported by the evidence. The defendant produced no documentary evidence of the cost

² Relying on Clayton's testimony, the defendants also maintain that the "finish work" done by Meister after March 2, 2010, was worth only \$3,000 to \$4,000, not \$9,099. However, the trial court was not required to credit Clayton's testimony on this point, particularly given that Koehl testified that the value of the work was "enough to fulfill *** the final remaining balance" on the contract. See *Flack v. McClure*, 206 Ill. App. 3d 976, 984-85 (1990) ("In a bench trial it is within the province of the trial court to determine the credibility and weight of testimony [and] to resolve inconsistencies and conflicts" in the evidence). Regardless, because there was evidence to support the circuit court's conclusion that Meister completed all of the work called for by the contract, the court properly concluded that Meister was entitled to collect the entire amount the parties agreed to for the performance of that work.

of the alleged repair work or the cost of the sheets of drywall that allegedly had to be replaced. The only evidence that the defendants presented on this issue was Clayton's vague and unsupported testimony that the repair work cost "probably about, I would say under a thousand dollars." Clayton did not even estimate a specific amount, much less provide testimony or other evidence to support such an estimate; he merely stated that the repair costs were "probably" less than \$1,000. Moreover, Koehl testified that, when he spoke with Clayton and Kimbrell in the months after Meister sent its final invoice, neither of them ever mentioned the alleged leak or complained about Meister's final bill. To the contrary, Koehl testified that Clayton and Kimbrell assured Meister that they would pay the final bill in full, and there is no evidence that the defendants demanded an offset to cover any alleged repair costs. Under these circumstances, the circuit court's decision not to grant the defendants an offset was not against the manifest weight of the evidence.

¶ 23

3. Attorney Fees

¶ 24 The defendants also argue that the circuit court's award of attorney fees was improper because it allowed Meister's total recovery to exceed the small claims limit of \$10,000. A "small claim" is "a civil action based on either tort or contract for money not in excess of \$10,000, exclusive of interest and costs." Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). As noted, the parties agreed that the case would be tried under the small claims rules. In recognition of this agreement, the circuit court's judgment order provided that the money judgment plus interest was "not to exceed **** the \$10,000 small claims limit."³ However, the circuit court awarded attorney fees and

³ As noted, the small claims limit is \$10,000 "*exclusive of interest*." (Emphasis added.) Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). Accordingly, the circuit court could have awarded interest

costs under the contract that caused Meister's total recovery to exceed \$10,000. The defendants maintain that, by causing the total recovery to exceed the jurisdictional limit of a small claims case, the court's award of attorney fees stripped the court of jurisdiction to decide the case. They also argue that attorney fees may not be awarded over and above the \$10,000 small claims limit because they are not "costs."

¶ 25 We disagree. First, the circuit court's judgment created no jurisdictional problem. Although the parties agreed to try the case using the procedural rules governing small claims, they did not try the case in small claims court. Rather, they tried the case in chancery court, which unquestionably had the jurisdiction to enter a judgment in the amount at issue here.

¶ 26 Moreover, the defendants waived any nonjurisdictional challenge to the circuit court's award of attorney fees by failing to object to the award of attorney fees before the circuit court. *Johnson v. Machetti*, 228 Ill. App. 3d 420, 423 (1992). Even if we were to address this issue, however, we would uphold the circuit court's judgment. Contrary to the defendants' argument, there is nothing in the judgment order or elsewhere in the record suggesting that the circuit court awarded attorney fees as "costs." Rather, the circuit court expressly awarded attorney fees in addition to costs. It did so because the parties' contract provided that the defendants "agree[d] to pay **** court costs, and/or any attorney fees incurred by Meister *** to collect past due accounts." If a contract unambiguously provides for awarding attorney fees, courts will enforce

on the money judgment even if it caused Meister's total recovery to exceed \$10,000. However, because Meister did not raise this issue below or in a cross-appeal, we need not address it further.

such a provision. *Overton v. Kingsbrooke Development, Inc.*, 338 Ill. App. 3d 321, 331 (2003); see also *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 952-53 (2004).

¶ 27 The defendants do not argue that Meister is not entitled to collect attorney fees under the contract. Rather, they maintain that the circuit court's award of attorney fees in this case exceeded the small claims limit agreed to by the parties. However, the small claims rules do not address attorney fees, and the small claims limit of \$10,000 applies only to the *underlying claim itself*, not to an award of attorney fees. See S. Ct. R. 281 (eff. Jan. 1, 2006) (defining a "small claim" as "a civil action based on either tort or contract for money not in excess of \$10,000, exclusive of interest and costs"). The defendants have cited no authority suggesting that an award of attorney fees is improper in a small claims case if the amount of attorney fees plus the judgment exceeds \$10,000. Nor have we found any such authority. We therefore affirm the circuit court's award of attorney fees.

¶ 28 4. Attorney Fees and Costs Related to the Appeal

¶ 29 Meister asks us to award attorney fees and costs related to this appeal pursuant to Illinois Supreme Court Rule 366, which authorizes us to make any further order or grant any relief that "the case may require." Il. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994). We hold that the language of the cost and attorney fee provision in the parties' contract includes costs and attorney fees relating to this appeal because such costs and fees were "incurred by Meister *** to collect past due accounts." However, because "the amount of attorney fees *** on appeal are more properly determined upon a petition and evidentiary hearing in the trial court [citation]," we remand the cause for such petition and evidentiary hearing. *Erlenbush*, 353 Ill. App. 3d at 953 (*quoting*

Exchange National Bank of Chicago v. Sampson, 186 Ill. App. 3d 969, 976 (1989)); see also *Wilmette Partners v. Hamel*, 230 Ill. App. 3d 248, 265–66 (1992).

¶ 30

CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County and remand the cause to the circuit court so that Meister may file a petition for attorney fees relating to this appeal and the court may conduct an evidentiary hearing and consider briefing from the parties on Meister's petition.

¶ 32 Affirmed; cause remanded.

2012 IL App (3d) 110578-U, *Meister Plumbing v. Jody Kimbrell, et al.*

¶ 33 JUSTICE WRIGHT, concurring in part, and dissenting in part:

¶ 34 I agree with the majority that the lien waiver has no effect on the plaintiff's right to recover based on the court's finding that a breach of contract occurred. However, I dissent because I do not agree that plaintiff can recover attorney fees in excess of \$901.00 based on the stipulation to treat the contract action as a small claims case with a limitation on the amount to be recovered of \$10,000.

¶ 35 I note Supreme Court Rule 281 restricts recovery in a small claims context to the amount of \$10,000 *exclusive* of interest and costs. Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). Thus, the trial court properly allowed plaintiff to recover the amount of \$9,099.00 for a breach of contract. While statutory interest could have been assessed at 9%, the court ordered the assessment of interest at the rate set out in the written contract which was 2%. Interest and costs are not to be considered when calculating the total damages arising out of the breach of contract in this case.

¶ 36 Therefore, I agree the with the majority that the trial court properly awarded court costs of \$428.84, in addition to the judgment amount for breach of contract.

¶ 37 Since the contract allowed for plaintiff to recover attorney fees in the event litigation became necessary to enforce the terms of the contract, plaintiff would have been entitled to recover all attorney fees reasonably incurred by plaintiff. However, the parties agreed to proceed in an expeditious manner pursuant to Supreme Court Rule 281. As noted by the majority, in recognition of the parties' agreement to proceed under Rule 281, the circuit court's judgment order "provided that the money judgment plus interest was " 'not to exceed **** the \$10,000 small claims limit.'" Slip Op. at ¶ 24. Based on that agreement and court order, regardless of whether it was filed in small claims court or chancery court, which the majority distinguishes, I

believe the court was bound by Rule 281. Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). Consequently, for the judgment not to exceed \$10,000, the attorney fees cannot exceed \$901.00, bringing the total judgment amount to \$10,000. Thus, the trial court should have awarded only the portion of the requested attorney fees required by the terms of the contract, which was consistent with the parties' agreement to be bound by the procedures set out in Rule 281.

¶ 38 Therefore, I respectfully concur, in part, and dissent, in part, and, on remand, would direct the trial court to merely calculate the amount of interest, at the contractual rate of 2%, from the date this sum of \$9,099.00 became due, and add that amount of interest to the award of \$10,000 plus court costs of \$428.84.