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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1939

Rasminde, LLC,
Respondent,

vs.

Hutchinson Properties, LLC,
Appellant,

Citizens Bank & Trust Co., Hutchinson, MN,
Defendant.

Filed May 22, 2017
Affirmed
Bjorkman, Judge

McLeod County District Court
File No. 43-CV-15-668

Nathan R. Sellers, Fabyanske, Westra, Hart & Thomson, P.A., Minneapolis, Minnesota (for respondent)

Curtis M. Bradford, Bradford Law Office, Ltd., Hutchinson, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

After a bench trial in this dispute concerning payment for architectural services, appellant argues that the district court clearly erred in not finding that the parties' oral contract conditioned appellant's payment obligation on actual construction. We affirm.

FACTS

Appellant Hutchinson Properties, LLC owns the Hotel Jorgensen (the property) in Hutchinson, Minnesota. In 2011, Hutchinson co-owner Jeff Haag met with Steve Jensen, the owner of respondent Rasminde, LLC, to discuss possible redevelopment of the property. The parties agreed that Rasminde would provide architectural services in connection with the project; they did not reduce the agreement to writing.

Over the next two and a half years, Jensen created and provided Hutchinson with plans for various potential uses of the property, including apartments, office space, and a hotel. Jensen recorded 144 hours of work on the project from December 2011 through June 2012; 633.5 hours from January 2013 through June 2013; 58.5 hours from November 2013 through March 2014; and 20 hours from April 2014 through May 2014. The parties dispute how much money Hutchinson paid Rasminde and whether it was in the form of progress payments. But Hutchinson admits paying Rasminde $5,000 in 2013 for work performed on the project. In May 2014, Rasminde concluded that "the nature of the project and the construction date ha[ve] become uncertain" and submitted a final bill totaling $84,650.[1]

[1] Construction did not occur.

Haag refused to pay, advising Jensen by e-mail that the bill "caught [him] totally off guard." In June 2014, Rasminde recorded a mechanic's lien in the amount of $84,650. Nearly one year later, Rasminde commenced this action, alleging entitlement to payment on the lien, and damages based on breach of contract and unjust enrichment. Hutchinson interposed an answer and counterclaim, denying the existence of a contract or other obligation to pay and alleging slander of title. At some point during the litigation, Jensen discovered an accounting error and filed a partial satisfaction, reducing the lien amount to $75,600.

The parties agreed to submit the case to the district court for a bench trial. The evidence focused on whether the parties' oral contract conditioned Hutchinson's responsibility to pay for architectural services on actual construction of the redevelopment project. It was undisputed that the parties entered into an oral contract and that Rasminde provided the services reflected in its bill. Haag admitted that Rasminde performed some of the work at his direction and does not dispute that he periodically discussed the project with Jensen. Both Haag and Jensen acknowledged that they did not discuss an hourly rate for Rasminde's services.[2] But the two gave conflicting testimony concerning whether Hutchinson's responsibility to pay was contingent on the project's construction.

Haag testified that the only discussion of fees occurred after they received proposals from a few contractors. At that point, Haag asked Jensen for the percentage of architectural fees to be charged, to which he never received a definitive answer. And Haag stated that

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[2] On appeal, Hutchinson does not dispute that Rasminde's $100 hourly rate is reasonable.

it was clear to both parties “all along” that compensation was “subject to the project going forward” and being formalized.

Jensen testified that the parties’ agreement did not condition payment on construction of the project. He noted that he would not track his hours as he did here if a project called for a fixed fee, such as a percentage of the overall project costs. Jensen testified that contingent agreements are unusual in the context of architectural services, and would be in writing.

The district court found that (1) the parties entered into a contract, (2) Rasminde performed the recorded services, (3) Rasminde’s customary rate for architectural services is $100 per hour, and (4) the evidence does not support a finding of a contingent compensation agreement. And the district court concluded that even if no contract existed, Rasminde was entitled to payment on its mechanic’s lien pursuant to Minn. Stat. § 514.06 (2016).

Hutchinson appeals, but does not challenge the district court’s findings of fact or conclusions of law as to the mechanic’s lien.

D E C I S I O N

“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01; *see also Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (“On appeal, a [district] court’s findings of fact are given great deference, and shall not be set aside unless clearly erroneous.”).

> [W]e examine the record to see if there is reasonable evidence in the record to support the [district] court's findings. And when determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the verdict. To conclude that findings of fact are clearly erroneous, we must be left with the definite and firm conviction that a mistake has been made.

Rasmussen v. Two Harbors Fish Co., 832 N.W.2d 790, 797 (Minn. 2013) (quotations and citations omitted).

Hutchinson challenges the district court's finding that the parties' oral agreement did not condition Rasminde's compensation for architectural design services "on the building of the proposed project." Hutchinson argues that the district court's rejection of its contingent-compensation evidence reflects clear error. Specifically, Hutchinson contends that Jensen's testimony is undermined by the "objective evidence," including Rasminde's failure to submit more than two invoices over the term of its work, its continued work in the absence of payment, and its failure to send past-due notices. We are not persuaded.

First, Hutchinson's argument invites us to second-guess the district court's credibility determinations. In addition to reviewing documentary evidence, the district court weighed the conflicting testimony of both Jensen and Haag. It found Jensen's explanations of the parties' behavior to be more credible, and relied on that testimony as grounds for its determination that compensation was not contingent on actual construction of the project. It is not our role to reconcile conflicting evidence; we generally defer to a district court's credibility determinations and discern no reason to do otherwise in this case. Minn. R. Civ. P. 52.01; *Fletcher*, 589 N.W.2d at 101.

Second, we are not convinced that what Hutchinson calls "objective evidence" renders the district court's challenged findings of fact clearly erroneous.

Hutchinson contends that the lack of invoices objectively demonstrates that the parties entered into a contingent compensation agreement. We disagree. Jensen testified that he understood the parties' arrangement to include a grace period, then progress payments based on his hourly rate. The record reflects that Rasminde first sent an invoice to Hutchinson in June 2012, which supports Jensen's testimony regarding a grace period. The invoice included 144 hours of work completed from December 2011 through June 2012. Though Haag initially testified that he never saw the invoice, he ultimately acknowledged that he may have received it. Rasminde submitted another invoice and requested payment in the spring of 2014. The timing and work reflected in the invoices correspond with Rasminde's completion of substantial sub-projects, supporting Jensen's testimony regarding progress payments and rebutting Hutchinson's argument that the objective evidence undermines Jensen's testimony.

Hutchinson next argues that Rasminde's continued work in the absence of payment supports a finding of a contingent compensation agreement. But Jensen testified that Hutchinson paid $10,000 in the spring of 2012 and $5,000 in the spring of 2013. The district court found that half of the 2012 payment went toward the hotel project and half toward an unrelated project. Hutchinson provides no support for his contention that this payment was solely related to a different project. And Haag admits making a $5,000 payment in 2013. Like the invoices, these payments coincide with completion of sub-projects and therefore support the progress-payment theory.

Finally, Hutchinson suggests that the lack of past-due notices is objective evidence that a contingent compensation agreement existed. But, as noted above, Jensen explained that the parties agreed Rasminde could submit invoices after a grace period and that Hutchinson would then make progress payments. And the record demonstrates such payments were made at fairly regular intervals.

Ultimately, Hutchinson's appellate arguments mirror the arguments the district court rejected—that the behavior of the parties supports a finding of a contingent compensation agreement. We are not persuaded that the evidence before the district court only supports Hutchinson's theory. And we decline the implicit invitation to reweigh the testimony and documentary evidence. In sum, we discern no clear error in the district court's findings of fact. And we are not left with the definite and firm conviction that a mistake has been made.

Affirmed.