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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1234**

Timothy Aadland, et al.,
Respondents,

vs.

Joseph Ranweiler, et al.,
Defendants,

B-Dirt, LLC,
Appellant.

**Filed April 23, 2018
Affirmed
Ross, Judge**

Crow Wing County District Court
File No. 18-CV-16-618

David D. Hammargren, Inga K. Schuchard, Larkin, Hoffman, Daly & Lindgren, Ltd.,
Minneapolis, Minnesota (for respondents)

Thomas C. Pearson, Daniel M. Hawley, Gammello-Pearson PLLC, Baxter, Minnesota (for
appellant)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Timothy and Sally Aadland terminated their design-and-build contract with B-Dirt
LLC for the construction of a new home and hired Esser Construction to complete the

project. B-Dirt filed and sought to foreclose a mechanic's lien on the property. The Aadlands countered by filing a civil suit. The district court held a bench trial and concluded that B-Dirt breached the contract, breached its warranties, and slandered the Aadlands' title by filing an invalid mechanic's lien. It also held that neither party was entitled to attorney fees. Because the district court's record-supported fact findings justified its legal conclusions on the merits and because it properly interpreted and applied the contract's attorney-fee provision, we affirm.

FACTS

Timothy and Sally Aadland contracted B-Dirt LLC for the design of a new home in Brainerd. The contract required the Aadlands to pay B-Dirt \$12,350 for the design but allowed them to fold that payment into the amount they would owe B-Dirt to construct the home, if they chose B-Dirt as their general contractor, which they did. The parties executed the general-construction contract on February 16, 2015, and the contract identified the completion date of July 24, 2015. The contract required the Aadlands to pay the full contract price of \$777,600 in six installments that would become due as the project passed specified milestones.

The same day the parties executed the construction contract, they also signed a copy of the Builders Association of Minnesota Performance Guidelines (BAM guidelines). The signature page of the BAM guidelines reads, "We (I) received these Building Performance Guidelines as part of our Construction Contract or Purchase Agreement." The BAM guidelines detailed, among other things, general specifications for projects and how project defects should be handled.

B-Dirt met the first three milestones, and the Aadlands promptly paid the three corresponding installments for a total of \$390,000. After this, the Aadlands emailed Joe and Andrew Ranweiler, the brother owners of B-Dirt, requesting an inspection. Joe Ranweiler, the company's vice president and project coordinator, responded saying he would perform the inspection. The next day, Joe emailed the Aadlands representing that the project, including the recently poured basement floor, was in good shape. The Aadlands wanted a second opinion, and they hired professional inspector Bob Baumann.

Baumann gave an unfavorable report. He reported that the home's lateral bracing did not comply with the building code. He cited problems with the concrete, lower-level floor, observing that it "was very rough" with "dipped pockets throughout" and incorrect "finishing around corners." Timothy Aadland called Joe Ranweiler with Baumann's findings, and Ranweiler defended the quality of the floor as normal. When Baumann learned Ranweiler's response, he told Aadland that drywalling the lower level before repairing the floor would make fixing the floor practically impossible. Ranweiler learned of Baumann's assessment but again said the floor needed no repair. Timothy Aadland told Ranweiler not to drywall the lower level until Aadland received a third opinion.

The Aadlands asked masonry contractor Travis Van Vickle to inspect the concrete. Van Vickle did so and opined that the concrete floor was done poorly, describing it as "disgusting." Van Vickle recommended removing and replacing the floor altogether.

The Aadlands met with Joe and Andrew Ranweiler about the floor. The Aadlands requested that the floor be removed and replaced. The parties reached no agreement about it. A month later, Timothy Aadland, Joe Ranweiler, and an attorney for a title company

met to determine the costs B-Dirt had incurred on the project. But Joe Ranweiler failed to bring invoices, receipts, statements, or other documentation supporting his cost calculations. They also discussed the floor again, and Ranweiler refused to remove and replace it. The parties discussed ending their agreement.

The day after the meeting, Joe Ranweiler sent the Aadlands an email stating that the Aadlands must pay \$80,757, minus the cost of the concrete floor, to end the contract. Ranweiler again included no documentation supporting the cost amount. Timothy Aadland responded by rejecting Ranweiler's calculation and proposing two other options, both of which required B-Dirt to pay the Aadlands. B-Dirt never responded.

The Aadlands then sent B-Dirt a seven-day written notice of their intent to terminate the construction contract. And they entered into a contract with Esser Construction to investigate the condition of the project and finish it. Esser investigated over the course of several months and provided the Aadlands with the estimated cost to make repairs and complete the project. Esser discovered additional problems that it said needed to be corrected. It cited problems with the roof, concrete floor, framing, insulation, and exterior siding. The Aadlands contracted to pay Esser \$527,100 to make the necessary repairs and complete the project. Esser completed the home.

Before Esser completed the home, the Aadlands sued B-Dirt. The suit alleged, among other things, breach of contract, breach of express and statutory warranties, and slander of title for the mechanic's lien that B-Dirt had recently filed. The complaint also alleged the right to recover attorney fees. The district court conducted a bench trial and found that B-Dirt breached the contract as well as express, implied, and statutory

warranties, and that it slandered the Aadlands' title by filing an invalid and unenforceable mechanic's lien. It found that the Aadlands were entitled to damages totaling \$161,881.85 (\$65,052 for repairs of construction defects; \$68,350 for excess costs to complete the project; and \$28,479.85 for miscellaneous extra costs for rent, utilities, storage, moving, interest, engineering fees, and Esser's consulting fees). The district court denied the Aadlands' request for attorney fees. B-Dirt then moved the district court unsuccessfully for amended findings.

Both B-Dirt and the Aadlands appeal.

D E C I S I O N

B-Dirt asks us to reverse based on seven arguments. B-Dirt argues that the district court (1) improperly interpreted the contract by failing to recognize that the BAM guidelines were incorporated into the contract; (2) clearly erred by finding that the Aadlands did not hinder B-Dirt's performance under the contract; (3) wrongly construed the contract's cure provisions; (4) improperly omitted portions of the contract's default provision; (5) improperly concluded that B-Dirt breached the contract; (6) wrongly concluded that it breached express, statutory, and implied warranties; and (7) improperly found that its mechanic's lien was invalid. The Aadlands dispute each of these arguments and also maintain that the district court improperly construed the contract as not allowing them to collect the attorney fees incurred in the prosecution of this lawsuit.

I

B-Dirt argues that the district court wrongly failed to include the BAM guidelines as part of the contract. Questions about the meaning of unambiguous contract terms are

legal questions we review de novo. *See Bus. Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009). The parties argue over whether the contract is ambiguous as to whether it incorporates the BAM guidelines. The district court did not explicitly say whether it saw the contract as unambiguously including or excluding the BAM guidelines, and it did not analyze the guidelines as if they were part of the contract. Because it did not analyze the guidelines and also did not include them among the documents it listed as making up the contract, we surmise that the district court assumed that the contract unambiguously excluded the BAM guidelines from its terms. We think this was a mistake.

The contract unambiguously incorporates the BAM guidelines. A contract term is unambiguous if it lends itself to only one reasonable interpretation. *See Trondson v. Janikula*, 458 N.W.2d 679, 681 (Minn. 1990). The BAM guidelines appear on their face to be an independent document, but three factors work together making it unambiguously clear that the guidelines are part of the contract. The first is the language itself. The signature page of the guidelines reads, “We (I) received these Building Performance Guidelines *as part of our* Construction Contract or Purchase Agreement.” (Emphasis added.) The second is the timing of the signing. The BAM guidelines, like all the other documents that undisputedly constitute the contract, were signed on February 16, 2015. And the third is the statutory requirement that every contract for the construction of a new home must include “performance guidelines for the services to be performed.” Minn. Stat. § 326B.809 (2016). We conclude that the district court erred by omitting the BAM guidelines from the contract’s terms. But as we discuss below, the error does not affect the district court’s conclusions or findings.

II

B-Dirt maintains that the Aadlands prevented B-Dirt from performing under the contract and that this defeats the district court's conclusion that B-Dirt breached the contract. All contracts include an implied condition that neither party may unjustifiably hinder the other's performance and that, if either party breaches that condition, the other's nonperformance is excused. *Zobel & Dahl Constr. v. Crotty*, 356 N.W.2d 42, 45 (Minn. 1984). B-Dirt says that Timothy Aadland hindered its performance by instructing it not to install drywall on the lower level before repairing the concrete floor. Whether a party hindered the other's performance is a question of fact that we review for clear error. See *id.* at 46.

We see no clear error in the district court's decision not to find that the Aadlands hindered B-Dirt's performance. A clear-error review requires us to scan the record to see if any evidence reasonably supports the district court's findings, considering all evidence in the light most favorable to the district court's decision. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). The evidence reasonably supports the finding that the Aadlands did not hinder B-Dirt's performance. The district court found that Timothy Aadland "did not direct B-Dirt to stop work on the entire project" and that "Joe Ranweiler's testimony that Timothy Aadland told him to stop work on the entire project is not credible." We rely on the district court's credibility determinations, and in this case, the evidence supporting the credibility determination also independently defeats the assertion that B-Dirt actually stopped working on the project because of the drywalling restriction. The district court emphasized that Joe Ranweiler's testimony was contradicted by Andrew

Ranweiler's actions, as Andrew "continued to work on the Project and meet with [Timothy] Aadland and the electrician on site and Tisha Warner of B-Dirt continued to work on the Project." These findings indicate that preventing the drywalling did not prevent work on the project otherwise.

B-Dirt asks for a different result by arguing that, under the BAM guidelines, the "Aadlands had no right to direct [it] to stop work because the fix was already contractually prescribed [by the BAM guidelines]." Our analysis remains the same; even if the BAM guidelines provided for a different solution (and we are not convinced this is so), the Aadlands' temporary restriction on drywalling did not prevent B-Dirt from working on other aspects of the project. The district court's finding that the Aadlands did not hinder B-Dirt's performance is not clearly erroneous.

III

B-Dirt maintains that the district court failed to properly construe the cure provisions of the contract. According to B-Dirt, the district court ignored the "Quality of Work" section of the contract that, by its terms, allowed B-Dirt to cure defects in the project. That section reads, in pertinent part,

Upon substantial completion of the Project all work that in the [Aadlands'] reasonable opinion is not yet complete or which fails to meet Contract requirements will be specified in a punch list executed by the [Aadlands] and [B-Dirt] and will be promptly corrected by [B-Dirt], and all cost or damages to other portions of the Project resulting from such corrections thereof will be paid by [B-Dirt].

According to B-Dirt, it was never given the opportunity to cure under this section and therefore the district court's conclusion that it materially breached the contract was based on an erroneous interpretation of the contract.

B-Dirt had no right to cure the project's defects under this provision. This provision is conditioned on "substantial completion of the [p]roject," a condition B-Dirt never met. The BAM guidelines define "[s]ubstantial completion" as "the point at which the home construction project is completed and the areas are functional for their intended use per the contract between the Contractor and the Homeowner." The defects in the project's concrete floor, roofing, siding, and framing prevent any finding that the project was "completed and the areas [were] functional for their intended use." Invoking this punch-list provision in this context fails on its face; it is self-evident that a general contractor cannot wait until a house is essentially complete, including drywall and trim, before beginning major structural corrections, like repairing or replacing an entire lower-level, concrete floor.

IV

B-Dirt argues that the district court failed to apply part of the default provision that required the Aadlands to demand payment from B-Dirt after the project was complete. In pertinent part, the provision reads:

[If B-Dirt defaults, it] will not be entitled to receive any further payments until the Project is finished. If the unpaid balance of the Contract Price exceeds all cost to the [Aadlands] of Completing the work, then [B-Dirt] will be paid for all work performed by [B-Dirt] to the date of termination. If such costs to the [Aadlands] of completing the work exceed such unpaid balance, [B-Dirt] will pay the difference to the [Aadlands] upon [the Aadlands'] demand for such payment.

B-Dirt argues that the record shows that the Aadlands never made the required demand for payment. It insists that we must reverse because the Aadlands' lack of demand resulted in B-Dirt being "subjected to protracted litigation before discovering . . . the 'cost to the owner of completing the work' exceeded the unpaid balance of the Contract."

At least four problems defeat this argument. First, nothing in the provision specifies when the demand for payment must be made or what form it must take. B-Dirt does not explain why the Aadlands' lawsuit against B-Dirt (which demanded, among other things, payment of the difference between the unpaid balance of the contract and the costs over that unpaid balance) was not a "demand for . . . payment." Second, Timothy Aadland did in fact make a demand for payment shortly after the parties' meeting when he proposed two options for parting ways with B-Dirt, each of which involved B-Dirt paying a specified amount to the Aadlands. Third, B-Dirt refused to provide documentation of its alleged costs in the project, preventing the Aadlands from determining what amount, if any, was actually owed to B-Dirt on the project. Fourth, the Aadlands' seven-day written notice of intent to terminate the contract claimed that the Aadlands were "overbilled for the work that has actually been completed and overcharged for what has been done" and that they were retaining their right for "claims of overpayment." B-Dirt's argument based on the Aadlands' alleged failure to demand payment fails.

V

B-Dirt argues that the district court improperly concluded that it breached the contract by failing to complete the home on or before the contractual completion date of July 24, 2015. A material breach is "[a] breach of contract that is significant enough to

permit the aggrieved party to elect to treat the breach as total (rather than partial), thus excusing that party from further performance and affording it the right to sue for damages.” *BOB Acres, LLC v. Schumacher Farms, LLC*, 797 N.W.2d 723, 728 (Minn. App. 2011) (quotations omitted). “A material breach goes to the root or essence of the contract.” *Id.* (quotations omitted). B-Dirt maintains that its failure to finish the project by that date can never represent a material breach because the contract provided that “B-Dirt will pay the Aadlands \$0 per day that the Completion Date is delayed for a reason not stated in a Change Order.” The argument is unavailing.

B-Dirt reasons that failing a condition to which no damages can be ascribed is not material because the no-damages provision establishes that the condition does not go to the “root or essence of the contract.” The argument fails for three reasons. First, although the contract says that B-Dirt owes nothing for delays in completing the project, the contract also provides that, in the event of a breach by B-Dirt that causes a delay in the completion, B-Dirt must pay the Aadlands “any . . . interest or fee [incurred by the Aadlands] . . . by reason of a delay in the completion of the work.”

Second, the contract includes the express statement, “Time is of the essence of this contract.” It is true that this court has stated that a breach of an express temporal condition of a contract does not necessarily mean that breach was material even when the temporal condition includes the express phrase, “time is of the essence” of the contract. *Id.* at 728–29. But this statement is difficult to reconcile with our duty to apply an unambiguous contract term declaring that time is of the essence. *See Grant v. Munch*, 54 Minn. 111, 114, 55 N.W. 902, 903 (1893) (“It is now thoroughly established . . . that the intention of the

parties must govern, and if the intention clearly and unequivocally appears from the contract, by means of some express stipulation, that time shall be essential, then the time of completion, or of performance, or of complying with the terms, will be regarded as essential in equity, as much as in law.”). At the very least, the parties’ decision to include the phrase is an important factor in determining whether a deadline breach is material in a home-construction contract. *Baker Domes v. Wolfe*, 403 N.W.2d 876, 878 (Minn. App. 1987) (pointing to the parties’ failure to include a “time is of the essence” clause as a reason to reject the argument that time was of the essence). The term is entitled to enforcement.

And third, although a party might forfeit the right to claim a material breach by allowing work to continue after the completion deadline, *see id.*, that did not occur in this case. In this case the parties agreed to a July 24, 2015 deadline, B-Dirt stopped working on the project on July 8, 2015, and the Aadlands sent their notice of default and termination on September 8, 2015. Although the notice did not expressly identify the deadline breach, the notice’s list of quality-related reasons to terminate indicated that the list was not exclusive. The district court properly found that B-Dirt materially breached the contract when it failed to complete the project on time.

VI

B-Dirt argues that the district court improperly concluded that it breached an express, implied, and statutory warranty. But the district court found that the breach-of-contract and breach-of-warranty damages are the same. Because we affirm the district court’s breach-of-contract conclusions and B-Dirt does not contend that those damages were incorrectly calculated, we need not address its warranty-damages argument.

VII

B-Dirt last argues that the district court improperly found that its mechanic's lien was invalid. The district court gave three independent reasons for holding the lien invalid: (1) B-Dirt overstated the amounts allegedly secured by a mechanic's lien by including future profits for work not performed; (2) the lien statement was signed by someone without personal knowledge of the facts stated; and (3) B-Dirt offered no evidence that the lien statement was properly and timely served on or received by the Aadlands.

The law supports the district court's determination that B-Dirt has no right to relief under the lien statute based on its concern that B-Dirt overstated the amounts allegedly secured in its mechanic's lien by including future profits for work not performed. A lien statement must list the "amount [that] is due and owing to the claimant for labor performed, or for skill, material, or machinery furnished, and for what improvement the same was done or supplied." Minn. Stat. § 514.08, subd. 2(2) (2016). "To deprive the [lien] claimant of [the] right to a lien under [the] statute there must be a showing of fraud, bad faith, or an intentional demand for an amount in excess of that due." *Delyea v. Turner*, 264 Minn. 169, 175, 118 N.W.2d 436, 440 (1962). B-Dirt argues that the district court expressly found that "[t]here has been no bad faith by either party in the bringing of or prosecution of this action," and that the finding should control here. But the Aadlands convincingly argue that B-Dirt reads that finding too broadly, based on the district court's more specific finding:

B-Dirt filed and served a mechanic's lien statement, and is attempting to foreclose a mechanic's lien, that intentionally seeks to recover more than [the amount] to which it is entitled because the amount of the lien claimed (\$110,817.00) includes \$30,060.00 in anticipated lost profit on future work to be

provided by B-Dirt, and did not account for deductions for (i) the \$12,350.00 credit due on the Design Contract and (ii) the amount necessary to correct the defective concrete floor.

This specific finding that B-Dirt's lien statement "intentionally" overstated the amount owed applies to the district court's lien-enforcement analysis and trumps its broad no-bad-faith finding. Because the district court may refuse to enforce a lien on this ground, we affirm its decision. We therefore need not address the district court's other bases for rejecting B-Dirt's mechanic's lien.

VIII

The Aadlands' cross-appeal asks us to reverse the district court's decision declining to award them attorney fees incurred in this suit. We will not award attorney fees in litigation without a specific authorizing statute or contract term. *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983). The Aadlands contend that their contract authorizes an attorney-fee award. The contract's language does not support the contention:

If the Contractor . . . violates the provisions of this contract, the Owner may . . . terminate the services of the Contractor . . . and finish the [project]. . . . If [the] costs to the Owner of completing the work exceed [the unpaid balance of the contract], the Contractor will pay the difference to the Owner The cost to the Owner of completing the work will include any costs incurred in retaining another contractor or subcontractors, any additional interest or fees which the Owner must pay by reason of a delay in the completion of the work, reasonable attorneys' fees and expenses, and other damages, costs and expenses the Owner may incur by reason of completing the work.

This language is not ambiguous. The operative sentence sandwiches the term "attorneys' fees" between the phrases, "The cost to the Owner *of completing the work* will include,"

and “other damages, costs and expenses the Owner may incur *by reason of completing the work.*” (Emphasis added.) It is clear that the listed types of recoverable “damages, costs, and expenses” available to the Aadlands under this provision, including their “reasonable attorneys’ fees,” are those amounts that the Aadlands “incur *by reason of completing the work,*” not by reason of winning a breach-of-contract lawsuit. The Aadlands do not argue that the attorney fees they incurred in this lawsuit were incurred to complete the work or as a result of completing the work. A loser-pays-attorney-fees provision must be sufficiently clear to overcome our presumption that each litigating party pays its own way. This provision clearly says something else.

Affirmed.