

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WOLOHAN LUMBER COMPANY,

Plaintiff-Appellant,

v

RODNEY L. PIERSON, DARLENE M. PIERSON,  
RON KEEN, BARBARA PECKINS, and JB  
INSTALLED SALES,

Defendants-Appellees.

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UNPUBLISHED

September 27, 1996

No. 184925

LC No. 92-013853-CH

Before: White, P.J., and Griffin, and D. C. Kolenda,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order awarding plaintiff \$1,081.49 in satisfaction of a construction lien in the amount of \$9,410.24 on the Piersons' property. We affirm.

Plaintiff brought a foreclosure action against the Piersons under the Construction Lien Act, MCL 570.1101 *et seq.*; MSA 26.316(101) *et seq.*, to recover \$9,410.24, the cost of materials supplied for use in the remodeling of defendants' building. The trial court awarded plaintiff \$1,081.49 because it concluded that defendants were entitled to a setoff in the amount they paid to their contractor, Ron Keen (\$8,328.75), against the amount of plaintiff's lien (\$9,410.24). Plaintiff appealed, and this Court remanded the case to the trial court for further findings of fact and conclusions of law because it was unable to discern the basis of the trial court's decision. On remand, the trial court explained that it awarded plaintiff \$1,081.49 rather than the \$9,410.24 that plaintiff claimed it was entitled to pursuant to its construction lien because plaintiff was equitably estopped from recovering the entire amount of its lien. The court found that plaintiff, through its employees, told Mrs. Pierson that she did not owe any money for materials Keen had purchased for their project and that the Piersons subsequently paid Keen in reliance on plaintiff's representation.

Plaintiff first argues that the trial court improperly reduced its recovery by \$8,328.75, the amount that defendants paid to Keen, because plaintiff did not waive its lien as required by the

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Construction Lien Act, MCL 570.1101 *et seq.*; MSA 26.316(101) *et seq.*, and the act does not allow the application of equitable estoppel.

Construction lien laws serve two purposes: to protect the right of lien claimants to payment for wages or materials and to protect owners from paying twice for such services. *MD Marinich, Inc v Michigan National Bank*, 193 Mich App 447, 453; 484 NW2d 738 (1992). The act provides in relevant part:

Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property shall have a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property, as described in the notice of commencement. [MCL 570.1107(1); MSA 26.316(107)(1).]

In order for a supplier to recover payment for materials in accordance with a lien, a supplier must provide a notice of furnishing to the designee named in the notice of commencement within twenty days after furnishing the first material. MCL 570.1109(1); MSA 26.316(109)(1).

Plaintiff recorded a claim of lien against defendants' building in the amount of \$9,410.24 for the cost of materials supplied to Keen for use in defendants' building. Plaintiff did not complete a written waiver form and, therefore, did not waive the construction lien that it had on defendants' property.

However, the trial court, on remand, properly found that plaintiff was equitably estopped from collecting the entire amount of its construction lien from defendants because defendants justifiably relied on plaintiff's assurance that no money was owed for materials.

Equitable estoppel arises where a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party will be prejudiced if the first party is allowed to deny the existence of those facts. [*Soltis v First of America*, 203 Mich App 435, 444; 513 NW2d 148 (1994).]

The elements of estoppel were met in the present case. First, plaintiff made a representation to defendants that defendants did not owe plaintiff any money for building materials. Darlene Pierson testified that she called plaintiff and spoke with Mary Schlaud and Theresa Ramirez on December 16, 1991. She stated that Ramirez told her that there was no money owed by Keen on their account. She spoke with Ramirez the next day or the day after that, and Ramirez again confirmed that there was no money owed. Although Ramirez denied telling Pierson that the account receivable balance was zero, the court, as the trier of fact, was entitled to weigh the witnesses' credibility and believe Pierson's testimony. *Triple E Produce Corp v Mastronardi Produce*, 209 Mich App 165, 171; 530 NW2d 772 (1995).

Next, defendants justifiably relied on the assurances of plaintiff's employee that no money was owed for building materials. Based on that assurance, defendants paid Keen \$8,328.75 on December 20, 1991. Both defendants testified that they would not have paid Keen if plaintiff had indicated that

money was owed for the materials supplied. Finally, defendants would be prejudiced if plaintiff were allowed to deny the existence of these facts. Since plaintiff was in a position to inform defendants of the amount owing on their account at the time they inquired about their balance, it could have precluded defendants from having to pay twice for materials. Thus, plaintiff was entitled to recover only the difference between the amount of its construction lien and the amount paid by defendants to Keen because defendants justifiably relied on plaintiff's representation that they did not owe any money for building materials.

Plaintiff argues that equitable considerations should not be considered in an action under the Construction Lien Act. However, nothing in the act precludes application of equitable principles. Statutes will not be extended by implication to abrogate established rules of common law. *Smeester v Pub-N-Grub, Inc (On Remand)*, 208 Mich App 308, 312; 527 NW2d 5 (1995). Moreover, equitable estoppel has been applied to defeat mechanic's liens claimed under earlier statutes. *Frohlich v Ashton*, 164 Mich 132, 133-134; 129 NW 18 (1910); *Fairbairn v Moody*, 116 Mich 61, 62; 74 NW 386 (1898).

Plaintiff next contends that the trial court's findings of fact on remand should be reversed because they were made without the benefit of the record and a review of the record compels findings that are opposite to those made by the court. Although a party need not take any action to preserve a claim on appeal that the trial court's findings of fact were clearly erroneous, MCR 2.517(A)(6) and (7), plaintiff has failed to preserve this issue for appeal because it did not cite any authority in support of its claim that a trial court may make findings of fact on remand only if it has the record before it. *In Re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). Moreover, the court made three pages of detailed findings of fact on remand, in which the court's recollection of the facts was clear, specific, and accurate. There is nothing in the record to indicate that the court based its decision on an inaccurate or incomplete version of the facts. Thus, the court's findings of fact were supported by the evidence and were not clearly erroneous.<sup>1</sup>

Finally, plaintiff argues that it is entitled to recover the entire amount of its attorney fees, \$3,192, since it is entitled to recover the full value of its construction lien.

The Construction Lien Act permits an award of attorney fees to the prevailing party. MCL 570.1118(2); MSA 26.316(118)(2); see *Vugterveen Systems, supra* at 46. An award of attorney fees in a construction lien case is reviewed for an abuse of discretion. *Vugterveen Systems, supra* at 46. The trial court awarded plaintiff \$1,081.49. Given that plaintiff is not entitled to the full amount of its lien, an award of approximately one-third of its attorney fees seems reasonable. Moreover, plaintiff has not provided any additional reasons upon which to base an award of the entire amount of its attorney fees. Therefore, the trial court did not abuse its discretion in awarding plaintiff only part of the attorney fees it requested.

Affirmed.

/s/ Helene N. White  
/s/ Richard Allen Griffin  
/s/ Dennis C. Kolenda

<sup>1</sup> This Court reviews a trial court's findings of fact for clear error. MCR 2.613(C); *Triple E Produce, supra* at 171.