STATE OF MICHIGAN

COURT OF APPEALS

DIMITRIOS ECONOMIDES ASSOCIATES,

Plaintiff-Appellee,

v

MAX LARSEN,

Defendant-Appellant.

UNPUBLISHED
February 7, 1997

No. 175486

Ingham Circuit Court
LC No. 90-066877-CK

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

PER CURIAM.

Defendant appeals from a judgment for plaintiff in this breach of contract action. Following a bench trial, plaintiff was awarded $88,000 plus interest and a construction lien on defendant's property. We affirm.

Plaintiff contracted with the developer of a housing project for the elderly, known as the "Reeds" project, for architectural services. Defendant owned the property on which the Reeds project would be built. Plaintiff had no contract with defendant but defendant paid plaintiff's first two invoices. Both the developer and defendant refused to pay the third invoice, prompting this litigation. Plaintiff had previously entered into a similar agreement with the same developer on another project, the "Ponds" project, not at issue in this suit. Defendant paid plaintiff for architectural services in the Ponds project, although plaintiff had no contract with defendant.

Defendant first argues that the trial court erred in finding defendant liable under plaintiff's contract with the developer. We disagree. The developer testified that in order to develop the Reeds project, he had to obtain a special use permit, which required the services of an architect, and that defendant was aware of the need for such a permit. The developer also testified that before he contracted with plaintiff, he and defendant agreed that defendant would pay for architectural services.

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

Based on this evidence, the trial court's finding that defendant agreed to finance all architectural pre-construction costs was not clearly erroneous.

Defendant next argues that the fact that defendant did not have written contracts with the developer in the Ponds project should not have been construed as tainting his credibility in this case involving the Reeds project. However, there was ample evidence to support that defendant had a history of not signing contracts in his dealings with the developer, including defendant's testimony, although defendant had agreed to finance certain aspects of the development costs. Since the trial court had the opportunity to judge defendant's credibility and its factual finding was supported by testimony, we affirm the trial court's findings.

Defendant also argues that the trial court erred in finding that plaintiff completed all the pre-construction drawings. However, plaintiff testified that one hundred percent of the work had been completed, and no testimony was offered in rebuttal. Therefore, the trial court's finding that plaintiff was entitled to the entire contract price for the pre-construction drawings was not clearly erroneous.

Defendant next argues that the trial court erred in finding that defendant was an undisclosed principal and was liable under plaintiff's contract with the developer. We conclude, however, that there was adequate evidence to support the court's finding and that the court did not err in relying on the rationale of *Rowen & Blair Electric Co v Flushing Operating Co*, 66 Mich App 480; 239 NW2d 633 (1976), aff'd 399 Mich 593; 250 NW2d 481 (1977).

Defendant next argues that the trial court's finding that defendant was an undisclosed principal throughout the pre-construction phase ignores the fact that the developer was plaintiff's agent for payment and plaintiff had knowledge of the way the developer operated in his projects. Defendant argues that, if anything, he was a disclosed principal in plaintiff's contract with the developer on the Reeds project. Again the court did not err in concluding that Runquist was Larsen's agent. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). Moreover, if defendant was a disclosed principal, it would be even more clear that he is liable under plaintiff's contract with the developer because a disclosed principal is liable for his agent's actions so long as they are within the scope of the agency, as was the case here. *Id.* at 698-699.

Defendant next argues that he should have been allowed to amend his pleadings to argue the defense of usury because the trial court erred in construing the prejudgment interest as "contract damages." Defendant maintains that the prejudgment interest of eighteen percent, per annum, compounded annually was usurious. We disagree. Defendant never properly or timely moved to amend his pleadings. As to the remainder of defendant's argument, we observe the eighteen percent interest award was based on a contract provision in plaintiff's contract with the developer. Contract interest may be awarded separately from prejudgment interest awards. See *Sullivan Industries, Inc v Double Seal Glass Co, Inc*, 192 Mich App 333, 352; 480 NW2d 623 (1991).

Defendant next argues that the trial court erred in awarding interest from October 3, 1989 because there was no evidence presented as to when the working drawings had been completed We

disagree. There was evidence presented at trial that the working drawings had been completed and the trial court properly used the date of the last invoice as the starting date for the contractual damages interest award.

Finally, defendant argues that the Michigan Construction Lien Act, MCL 570.1101 *et seq*.; MSA 26.316(101) *et seq*., does not entitle architects to a lien for architectural services for plans only. We disagree. The Michigan Construction Lien Act specifically allows a contractor to obtain a lien upon the interest of the landowner for improvements, which includes architectural planning, to the real property. MCL 570.1107(1); MSA 26.316(107)(1); MCL 570.1102(5); MSA 26.316(105)(5); MCL 570.1104(7); MSA 26.316(104)(7).

Affirmed.

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