D.B. EDWARDS, Individually and d/b/a BELLE APPLICATIONS CORP.,	)	
Plaintiff/Appellee,	)	Appeal No. 01-A-01-9605-CH-00205
v.	)	
RUTHERFORD COUNTY CREAMERY, F & H ASSOCIATES, AMERICAN SOCO, INC., and FLEMMING SODERLUND, Individually and d/b/a F & H ASSOCIATES,	)	Rutherford Chancery No. 92CV-452
Defendants/Appellants.	)	

COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR RUTHERFORD COUNTY

AT MURFREESBORO, TENNESSEE

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AFFIRMED AND REMANDED

SAMUEL L. LEWIS, JUDGE

MEMORANDUM OPINION[1]

Defendants, Rutherford County Creamery, F & H Associates, American Soco, Inc., and Fleming Soderlund, individually and d/b/a F & H Associates, have appealed from the judgment of the chancery court in favor of plaintiff, D. B. Edwards, individually and d/b/a Belle Applications Corp.

The appeal involves installation of certain equipment into a building owned by F & H Associates ("F & H"). F & H is a partnership composed of Fleming Soderlund ("Mr. Soderlund") and American Soco, Inc. ("Soco") which is engaged in the business of owning and leasing buildings and machinery. Soco is a New Jersey corporation duly qualified to do business in Tennessee. Rutherford County Creamery ("RCC") is an operating division of Soco which manufactures cheddar and Parmesan cheese for sale to process or grated cheese manufacturers. RCC's principal place of business is in the Murfreesboro building in Rutherford County where F & H own both the building and machinery.

In Spring of 1991, D. B. Edwards, the owner and president of Belle Applications Corp. ("Belle"), met with William D. Jones, the general manager of RCC, to discuss RCC's need for a reverse osmosis system to concentrate whey, a by-product of the cheese manufacturing process, in order to make whey a saleable product. After a visit to the plant, in a letter dated 20 May 1991, Plaintiff sent RCC an estimate of $216,500 for the installation of a used system. Though rejected by Mr. Jones, the defendants point out as relevant the letter's inclusion of estimates for "projected engineering, labor, and expenses to install" ($27,000), "projected hardware" ($35,000), and "electrical cost" ($15,500).

In a subsequent letter dated 2 July 1991, Plaintiff sent RCC an estimate of $202,675 for

[1]Court of Appeals Rule 10(b):
The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

a newer kind of system. This proposal had five items of hardware which had no price estimates listed. At trial, Mr. Edwards testified that these items would have totaled $36,800. Significantly, the estimate did include the following item: "[p]rojected labor and expenses to install $25,000." Although not accepted, Mr. Soderland claims that this estimate formed the basis behind the contract which existed between F & H and Plaintiff.

In August of 1991, Mr. Edwards told Mr. Jones of the availability of a used system in a Wisconsin plant which could be purchased for $50,000 and moved for $15,000. In addition, according to Mr. Jones, Mr. Edwards was going to sell for the defendant RCC certain membrane shrouds for $40,000 resulting in a substantial savings to the defendant. Mr. Jones compared the quotation given in the July 2, 1991 letter and based on economic considerations, F & H ultimately purchased this system. While F & H asserts that a contract with Plaintiff for the purchase and installation of this system existed at the time of the decision to purchase the system, it is Belle's contention that it was hired to remove and transfer the system and only subsequently was it hired to supervise the installation of the system. Due to the size of the system, a delay as well as additional costs occurred in removing the system from the Wisconsin plant.

Once in Murfreesboro, the defendants testified that they believed the plaintiff was responsible for the entire installation, including labor, which was to be completed by October 31. However, Mr. Edwards testified that Mr. Jones and Mr. Soderland informed him that they had some local people to do the installation. When Mr. Edwards returned to the plant two weeks after delivering the equipment, he was surprised to find that nothing had been done. Mr. Jones told him that they had been too busy and requested that Mr. Edwards find installers. Mr. Edwards did locate some installers at which time, as he testified, he was requested to supervise the job. According to the trial court's findings, installation began in November and some invoices were sent and paid during that period.

On November 18, 1991, a meeting occurred between Mr. Edwards, Mr. Soderland, Mr. Jones and RCC's accountant, Mr. Dempsey, to discuss the progress of the installation and future costs associated therewith. While Mr. Soderland contends that this meeting was a confirmation of

the contract under which the parties were working, Mr. Edwards saw it a check on the progress of the work. Mr. Soderland and Mr. Dempsey testified that they asked Mr. Edwards for the total and final cost at this meeting telling him of the importance of such a figure as financing of the project was being sought from an outside lender. Mr. Soderland and Mr. Dempsey stated that Mr. Edwards agreed that the total cost would be approximately $150,000.

While Mr. Edwards was on the premises of RCC, it is undisputed that he was requested by RCC to do some additional work on other equipment previously installed in order to maintain or regain its U.S.D.A. certification. This work was not a part of any prior discussion with F & H but was only for RCC to be able to sell its cheese in compliance with government standards. Mr. Edwards testified that the installers spent approximately 40% of their time on this U.S.D.A. work and that it delayed the completion of the reverse osmosis system for as long as a month. According to Mr. Edwards, additional labor expenses associated with this work totaled $13,685.00 and additional hardware expenses totaled $25,637.

In December of 1991, Defendants refused to pay Plaintiff any more and on March 22, 1992, Plaintiff filed a notice of mechanics' and materialmen's lien against the real estate owned by F & H located in Murfreesboro on which the reverse osmosis system was installed. This suit commenced as a "Suit for Enforcement of Lien."

Defendants have presented four issues which are as follows:

1. Did the trial court err in finding no contract existed between Belle and defendant F & H?
2. Did the trial court err in finding F & H should be ultimately liable for the portions of the debt attributed to RCC?
3. Did the trial court err in holding that the action was an appropriate application of the mechanics' and materialmen's lien as provided by Tennessee Code Annotated § 66-11-101 et seq.
4. Whether the evidence supports the trial court's finding of an ascertainable amount due for work performed and Defendant RCC and F & H are entitled to no significant effect.?

The defendants in their appellate brief and the appellee in its reply brief have discussed these issues together and in a convoluted manner.

We adopt the "opinion" of the trial court filed in this matter and attached as an addendum to this opinion.

The evidence in the record fully supports the finding of the trial court and the trial court's findings of fact are supported by a preponderance of the evidence. We are therefore of the opinion that the judgment of the trial court should be affirmed pursuant to Rule 10 of the Court of Appeals. The judgment of the trial court is therefore affirmed, and the cause is remanded to the trial court for the enforcement of its judgment and any further necessary proceedings. Costs on appeal are assessed to the defendants/appellants.

_____
SAMUEL L. LEWIS, JUDGE

CONCUR:

_____
HENRY F. TODD, PRESIDING JUDGE,
MIDDLE SECTION

_____
BEN H. CANTRELL, JUDGE