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# American Bank v. Wadsworth Golf Construction Co Appellant's Brief Dckt. 39415

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IN THE SUPREME COURT OF THE STATE OF IDAHO

AMERICAN BANK,

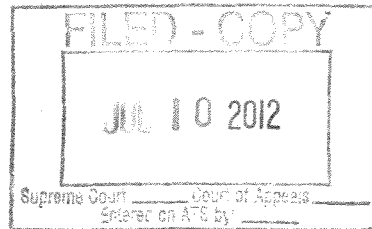
Plaintiff/Cross-  
Defendant/Appellant,

vs.

WADSWORTH GOLF CONSTRUCTION  
COMPANY OF THE SOUTHWEST,

Defendant/Cross-  
Claimant/Respondent.

Supreme Court No. 39415-2011



**APPELLANT AMERICAN BANK'S OPENING BRIEF**

---

Appeal from the District Court of the First Judicial District  
of the State of Idaho in and for the County of Kootenai

---

Honorable John P. Luster presiding

---

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Company of the Southwest

COPY

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TABLE OF CONTENTS

|   | Page      |
|---|-----------|
| <b>I. INTRODUCTION.....</b>   | <b>1</b>  |
| <b>II. COURSE OF PROCEEDINGS.....</b>   | <b>3</b>  |
| <b>A. Proceedings Relating to Underlying Dispute Between American Bank and Wadsworth.....</b>   | <b>3</b>  |
| <b>B. Proceedings Relating to the Foreclosure of American Bank’s Mortgage.....</b>  | <b>9</b>  |
| <b>III. STATEMENT OF FACTS.....</b>   | <b>10</b> |
| <b>IV. STATEMENT OF ISSUES ON APPEAL.....</b>   | <b>14</b> |
| <b>V. STANDARD OF REVIEW.....</b>   | <b>14</b> |
| <b>VI. ARGUMENT.....</b>  | <b>15</b> |
| <b>A. The District Court Erred by Refusing to Consider the Priority of American Bank’s Mortgage Over Wadsworth’s Claim of Lien, Thereby Allowing Wadsworth to Collect Over \$2.4 Million From the Lien Bond When Wadsworth Would Have Recovered Nothing by Foreclosing Its Claim of Lien Against the Property. ....</b> | <b>15</b> |
| <b>1. The district court erred by failing to give effect to all parts of Idaho’s Lien Bond Statute.....</b>   | <b>16</b> |
| <b>a. Idaho’s Lien Bond Statute limits Wadsworth’s recovery to the amount determined “to have been secured by his lien,” a past tense phrase that limits Wadsworth’s recovery to the amount Wadsworth would have recovered by foreclosing its lien against the Property. ....</b>                                       | <b>17</b> |
| <b>b. Wadsworth’s interpretation of the phrase “to have been secured by his lien” is unreasonable, leads to an absurd and unreasonably harsh result, and defeats the purpose of Idaho’s Lien Bond Statute.....</b>  | <b>21</b> |

|      |   |    |
|------|---|----|
| 2.   | Any order releasing a mechanic’s lien upon the posting of a lien bond does not remove the lien for all purposes, but rather the bond replaces the property as the collateral securing the mechanic’s lien. .... | 26 |
| 3.   | The district court erroneously concluded that Virginia’s lien bond statute is distinguishable from Idaho’s Lien Bond Statute. ....  | 28 |
| 4.   | The legal citations adopted by the district court do not support the district court’s holding that the issue of lien priority was waived or mooted as a result of American Bank posting the lien bond.....      | 30 |
| B.   | Because Wadsworth Was Not Registered Under the ICRA at All Times It Performed Work on the Project, the District Court Erred in Allowing Wadsworth to Recover on Its Claim of Lien. ....                         | 33 |
| C.   | Alternatively, Because Wadsworth Violated the ICRA by Engaging Unregistered Subcontractors, the District Court Erred in Allowing Wadsworth to Recover on Its Claim of Lien. ....                                | 38 |
| D.   | The District Court’s Award of Prejudgment Interest, Attorney Fees and Costs Should Be Reversed. ....  | 40 |
| VII. | CONCLUSION .....  | 41 |

**ADDENDUM**

Addendum A – Idaho’s Lien Bond Statute, Idaho Code Sections 45-518 through 45-524.

Addendum B – Idaho’s Contractor Registration Act (“ICRA”), Idaho Code Sections 54-5201 through 54-5219.

Addendum C – Published Legislative History of Idaho’s Lien Bond Statute.

Addendum D – Judge Michael Wetherell’s Memorandum Decision and Order entered in *Prowall v. Plainridge, LLC*, Ada County Case No. CV-09-1225.

TABLE OF CASES AND AUTHORITIES

|  | Page           |
|--|----------------|
| <b>Cases</b>   |                |
| <i>Application of Tumac Realty Corp.</i> ,<br>203 Misc. 649, 123 N.Y.S.2d 642 (1952).....  | 23             |
| <i>Camputaro v. Stuart Hardwood Corp.</i> ,<br>180 Conn. 545, 429 A.2d 796 (1980) .....  | 24, 28         |
| <i>Cent. Atlanta Tractor Sales, Inc. v. Athena Dev., LLC</i> ,<br>289 Ga. App. 355, 657 S.E.2d 290 (2008).....                     | 28             |
| <i>Curlee v. Kootenai County Fire &amp; Rescue</i> ,<br>148 Idaho 391, 224 P.3d 458 (2008).....                                    | 15, 35         |
| <i>DBM Consulting Eng'rs, Inc. v. United States Fid. &amp; Guar. Co.</i> ,<br>142 Wash. App. 35, 170 P.3d 592 (2007).....          | 27, 31, 32     |
| <i>Elec. Wholesale Supply Co. v. Nielson</i> ,<br>136 Idaho 814, 41 P.3d 242 (2001).....   | 41             |
| <i>Flying Elk Inv., LLC v. Cornwall</i> ,<br>149 Idaho 9, 232 P.3d 330 (2010).....   | 16             |
| <i>George W. Kane, Inc. v. Nuscope, Inc.</i> ,<br>243 Va. 503, 416 S.E.2d 701 (1992).....  | 19, 28         |
| <i>Hayden Lake Fire Prot. Dist. v. Alcorn</i> ,<br>141 Idaho 307, 109 P.3d 161 (2005).....   | 16, 21         |
| <i>Hutnick v. United States Fid. &amp; Guar. Co.</i> ,<br>47 Cal. 3d 456, 763 P.2d 1326, 253 Cal. Rptr. 236 (Cal. 1988).....       | 20, 23, 28, 32 |
| <i>Lockheed Martin Corp. v. Idaho State Tax Comm'n</i> ,<br>142 Idaho 790, 134 P.3d 641 (2006).....                                | 15             |
| <i>May Constr. Co. v. Town Creek Constr. &amp; Dev., LLC</i> ,<br>___ S.W.3d ___, 2011 Ark. 281, 2011 WL 2477185, *4-5 (2011)..... | 20             |
| <i>Mountain Ranch Corp. v. Amalgam Enters., Inc.</i> ,<br>143 P.3d 1065 (Colo. App. 2005).....                                     | 32             |

|   |                |
|---|----------------|
| <i>North v. Waffle House, Inc.</i> ,<br>177 Ga. App. 162, 338 S.E.2d 750 (1985).....                        | 24             |
| <i>Ohio Plate Glass Co. v. Paskin</i> ,<br>4 Ohio Misc. 136, 209 N.E.2d 640 (1965).....                     | 24             |
| <i>ParkWest Homes, LLC v. Barnson</i> ,<br>149 Idaho 603 238 P.3d 203 (2010).....                           | 36, 37         |
| <i>PDS Eng'g &amp; Constr., Inc. v. Double RS</i> ,<br>42 Conn. Supp. 460, 627 A.2d 959 (1992).....         | 19             |
| <i>Prowall Drywall &amp; Insulation, Inc. v. Plainridge</i> ,<br>Ada County Case No. CV-09-1225 .....       | 38             |
| <i>Royster Constr. Co. v. Urban W. Cmty.</i> ,<br>40 Cal. App. 4th 1158, 47 Cal. Rptr. 2d 684 (1995).....   | 24             |
| <i>Six Carpenters, Inc. v. Beach Carpenters Corp.</i> ,<br>172 Conn. 1, 372 A.2d 123 (1976).....            | 25             |
| <i>State v. Alkire</i> ,<br>79 Idaho 334, 317 P.2d 341 (1957).....  | 18             |
| <i>State v. Doe</i> ,<br>147 Idaho 326, 208 P.3d 730 (2009).....  | 21             |
| <i>State v. Payne</i> ,<br>146 Idaho 548, 199 P.3d 123 (2008).....  | 17             |
| <i>Stonebrook Constr., LLC v. Chase Home Fin., LLC</i> ,<br>277 P.3d 374 (Idaho 2012).....                  | 15, 21, 34, 35 |
| <i>T.O. IX v. Super. Ct. of Ventura County</i> ,<br>165 Cal. App. 4th 140, 80 Cal. Rptr. 3d 602 (2008)..... | 27             |
| <i>Univ. of Utah Hosp. &amp; Med. Ctr. v. Bethke</i> ,<br>101 Idaho 245, 611 P.2d 1030 (1980).....          | 18             |
| <i>VFP VC v. Dakota Co.</i> ,<br>141 Idaho 326, 109 P.3d 714 (2005).....                                    | 15             |

*York Fed. Sav. & Loan Ass'n v. Hazel*,  
256 Va. 598, 506 S.E.2d 315 (1998)..... 19, 28, 29

**Statutes**

I.R.C.P. 54..... 8

IDAHO CODE § 45-512..... 26

IDAHO CODE § 45-513..... 40

IDAHO CODE § 45-518..... 2, 4

IDAHO CODE § 45-519..... 4, 17, 18, 20, 26, 30

IDAHO CODE § 45-521..... 26

IDAHO CODE § 45-522..... 17, 18, 26, 40

IDAHO CODE § 45-524..... 2

IDAHO CODE § 54-5208..... 38

IDAHO CODE § 54-5217..... 34, 35, 37, 38

IDAHO CODE § 54-5219..... 2

VA. CODE § 43-70..... 19, 30

VA. CODE § 43-71..... 19

**Other Authorities**

56 C.J.S. *Mechanic's Liens* § 304 (2010)..... 33

56 C.J.S. *Mechanics' Liens* § 299 (2010)..... 31

Kevin J. Russell, *Mechanics Lien Discharge Bonds*,  
FOR THE DEFENSE, 46 No. 9 DRIFTD 58 (Sept. 2004)..... 20

Minutes, House State Affairs Committee, Feb. 16, 1993 (HB 305)..... 22, 24, 27



## I. INTRODUCTION

This appeal relates to two competing lienhold interests in a failed real estate development project in Coeur d'Alene, Idaho, known as Black Rock North. The appellant American Bank ("American Bank") provided financing to the owner of the project, BRN Development, Inc. ("BRN"). American Bank secured its money lent with a mortgage recorded against Black Rock North. BRN defaulted on its loan with American Bank, whereupon American Bank filed this action to judicially foreclose its mortgage.

The respondent Wadsworth Golf Construction Company of the Southwest ("Wadsworth") was the general contractor responsible for the construction of the golf course that encompassed one aspect of Black Rock North. BRN failed to pay Wadsworth for some of Wadsworth's work on the project. As a result, Wadsworth filed a claim of lien against Black Rock North for its unpaid work on the project.

American Bank named Wadsworth as a defendant in this action for the purpose of foreclosing out Wadsworth's junior lienhold interest. In the proceedings below, the district court determined as a factual matter that Wadsworth's claim of lien was subordinate to American Bank's mortgage. Additionally, the district court entered a decree of foreclosure that resulted in American Bank obtaining a sheriff's deed to the property by American Bank credit bidding the amount that BRN owed to American Bank, with no surplus proceeds to pay any junior creditors. Notwithstanding the subordination of Wadsworth's claim of lien and that there were no surplus proceeds from the foreclosure to pay any junior creditors, the district court held American Bank liable for the entirety of Wadsworth's claim of lien because American Bank posted a lien bond to

remove Wadsworth's lien from the Black Rock North property. As a result of the judgment entered by the district court, American Bank and the bond surety are jointly and severally liable to Wadsworth for a judgment in the total amount of \$2,425,483.50.

American Bank now appeals the rulings and judgment entered by the district court. American Bank respectfully asserts that the district court misapplied the lien bond statute governing American Bank's liability to Wadsworth.<sup>1</sup> In sum, by posting the lien bond, American Bank and the bond surety obligated themselves to pay Wadsworth that sum of money that Wadsworth would have recovered by foreclosing its claim of lien against the Black Rock North property. As it pertains to this action, because Wadsworth would not have recovered anything by foreclosing its lien against the property, the district court should not have allowed Wadsworth to recover anything from the lien release bond. At best for Wadsworth, this matter should be remanded to give Wadsworth an opportunity to prove the amount it would have recovered by foreclosing its lien against the property, after considering the priority of American Bank's mortgage.

Alternatively, given that Wadsworth violated the Idaho Contractor Registration Act<sup>2</sup> by (1) failing to register under the Act at all times it performed work on the project and (2) engaging unregistered subcontractors to work on the project, the district court should have

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<sup>1</sup> Idaho's Lien Bond Statute, Idaho Code Sections 45-518 through 45-524, is attached to this Brief as Addendum A.

<sup>2</sup> Idaho's Contractor Registration Act ("ICRA"), Idaho Code Sections 54-5201 through 54-5219, is attached to this Brief as Addendum B.

dismissed Wadsworth's counterclaim, including its claim to recover against the lien bond, in its entirety.

## II. COURSE OF PROCEEDINGS

### A. Proceedings Relating to Underlying Dispute Between American Bank and Wadsworth.

1. On April 1, 2009, American Bank filed this action to foreclose its mortgage that secured BRN's debt obligation to American Bank. Clerk's Record ("R") Vol. 1, pp. 110-33. American Bank named a number of defendants who filed competing claims against the Black Rock North property. One of those defendants was Wadsworth, who filed a claim of lien against the Black Rock North property on January 6, 2009 (hereinafter the real property upon which American Bank and Wadsworth hold competing liens shall be referred to as the "Property"). In its Complaint, American Bank asserted that its mortgage was prior and superior to Wadsworth's claim of lien and the other competing liens recorded against the Property, and American Bank sought to foreclose all such junior liens. *Id.*, p. 120, ¶ 2. The principal amount that American Bank sought to recover by the foreclosure of its mortgage was \$14,600,000.00. *Id.*, pp. 119-20, ¶¶ 1-3.

2. On May 12, 2009, Wadsworth filed a counterclaim against American Bank, wherein Wadsworth sought to foreclose its claim of lien for its unpaid work on the Black Rock North project. R Vol. 1, pp. 159-209. In such counterclaim, Wadsworth asserted that its claim of lien was prior and superior to American Bank's mortgage. *Id.*, pp. 168-69, § XL. The principal amount that Wadsworth sought to recover through the foreclosure of its claim of lien was \$2,329,439.72. *Id.* at p. 170, ¶¶ 1-3.

3. On April 7, 2010, American Bank purchased a Release of Mechanic's Lien Bond ("Lien Release Bond") for the purpose of bonding around Wadsworth's claim of lien, as Wadsworth was at that time the only lienholder claiming priority to American Bank's mortgage. R Vol. 4, pp. 0848-88. The Lien Release Bond identifies American Bank as the principal posting the bond and International Fidelity Insurance Company ("International Fidelity") as the surety. *Id.*, p. 848. The bond issued by International Fidelity contains the following language mandated by Idaho Code Section 45-519:

WHEREAS, American Bank, desires to give a bond for releasing the following described real property from that certain claim of mechanic's lien in the sum of \$2,329,439.72, recorded January 6, 2009, in the office of the recorder in Kootenai County, Idaho: See Exhibit A for Legal Description

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to Wadsworth Golf Construction Company of the Southwest, the claimant named in the mechanic's lien, under the conditions prescribed by sections 45-518 through 45-524, Idaho Code, inclusive, in the sum of Three Million Four Hundred Ninety Four Thousand One Hundred Fifty Nine and 58/100 Dollars (\$3,494,159.58), from which sum they will pay the claimant such amount as a court of competent jurisdiction may adjudge to have been secured by his lien, with interest, costs and attorney's fees.

R Vol. 4, p. 848.

4. On April 14, 2010, pursuant to Idaho Code Section 45-518, *et seq.* ("Idaho's Lien Bond Statute"), American Bank petitioned the district court for the release of Wadsworth's mechanic's lien against the Property upon the posting of the Lien Release Bond with the district court. R Vol. 4, pp. 0670-0762.

5. Wadsworth never filed any written objections to American Bank's petition for release of Wadsworth's claim of lien upon the posting of the Lien Release Bond. *See* Reporter's Transcript on Appeal ("Tr.") at 7:17 – 11:15. Rather, Wadsworth stipulated to the entry of the order that released its lien against the Property upon the posting of the Lien Release Bond. *Id.* Such stipulated order, entered by the court on April 27, 2010 (R Vol. 4, pp. 0774-76), provides:

- "Petitioner American Bank having presented satisfactory proof as required by Idaho Code Section 45-521 that a bond complying with the form prescribed by Idaho Code Section 45-519 was procured and paid for . . . ." *Id.*, p. 774, ¶ (b).
- "IT IS HEREBY ORDERED, and this does order, that the: (a) Notice of Claim of Lien filed by Wadsworth on January 6, 2009, and recorded as Instrument No. 2191381000, in the records of the Kootenai County Recorder, against and the Real Property . . . [is] hereby released of record for all purposes, but only as to the real property described in Exhibit D, to the same extent as if such liens had been released of record by Wadsworth . . . , and if such claims are asserted by motion pursuant to Idaho Code Section 45-523 or in an independent action pursuant to Idaho Code Section 45-522, the bond filed herein shall be subject to the claims that would otherwise constitute liens against the above-described property." *Id.*, pp. 775-76.

6. On July 21, 2010, American Bank moved for summary judgment, claiming there was no genuine issue of material fact regarding the priority of American Bank's mortgage over Wadsworth's claim of lien. R Vol. 8, pp. 1703-34.

7. On November 12, 2010, Wadsworth responded to American Bank's motion for summary judgment and cross-moved for summary judgment against American Bank. R Vol. 8, pp. 1803-37. In Wadsworth's cross-motion, Wadsworth argued for the first time that

American Bank waived its priority defense to Wadsworth's claim of lien by posting the Lien Release Bond. *Id.*, pp. 1828-29.

8. On February 2, 2011, the district court denied American Bank's motion for summary judgment on the priority issue and granted Wadsworth's cross-motion for summary judgment, concluding as a matter of law "that by American Bank posting the lien release bond and this Court entering its order releasing of record in its entirety and for all purposes Wadsworth's mechanic's lien, the issue of lien priority is not relevant." R Vol. 11, p. 2742. Then, after finding that American Bank waived its priority defense by posting the Lien Release Bond, the district court ordered the parties to trial for all remaining factual disputes, but only for those issues relating to the validity and amount of Wadsworth's claim of lien. *Id.*, p. 2743.

9. On February 16, 2011, American Bank filed a motion for reconsideration of the district court's February 2, 2011, order that mooted the issue of lien priority. R Vol. 11, pp. 2746-67.

10. On April 13, 2011, the district court denied American Bank's motion for reconsideration, reflecting at oral argument on such motion that:

So to me there is a distinction between simply the cash bond that certainly will assure that someone will get paid and the leverage that, I guess, is attenuated to the real estate that, in fact, would secure the indebtedness.

That seems, while it's not directly discussed in a lot of these cases, seems to be one of the overall principles of the materialman's lien that goes to the very nature of the effectiveness of those liens in our business and legal system.

So that's just the overall concept that I've struggled with and looked at in terms of drawing that distinction between just the bond sitting there and the lien on the real property.

See Tr. at 119:8-23.

11. On May 2 and 3, 2011, the district court held a two day bench trial on issues regarding the validity and amount of Wadsworth's claim of lien. See Tr. at 143:1 – 376:5.

12. On August 22, 2011, the district court issued its findings of fact and conclusions of law regarding the validity and amount of Wadsworth's claim of lien, ultimately concluding that Wadsworth's lien was valid and allowing Wadsworth to collect the principal amount of \$1,845,697.78 from the Lien Release Bond posted by American Bank. R Vol. 13, pp. 3207-46. In such memorandum, the district court found:

- that “Wadsworth was not exempt from registering under the Contractor [Registration] Act.” (*Id.*, p. 3222.);
- that “Wadsworth was not registered ‘at all times during the period that it furnished work or labor or supplied materials in constructing [the golf course]’ as required by Idaho Code Section 54-5217(2) . . . .” (*Id.*, p. 3225 (emphasis in original.);
- that “Wadsworth engaged in unlawful activity by failing to obtain ‘satisfactory proof’ of Precision’s, Colorado Lining’s, and Concrete Finishing’s [Wadsworth’s subcontractors] registration under the [Contractor Registration] Act.” (*Id.*, p. 3229.);
- that “under Idaho’s mechanic lien statutes and mortgage foreclosure statute, American Bank has standing to enforce the terms of the Wadsworth Contract [with BRN] including the Golden Releases [lien waivers required by Wadsworth’s contract with BRN].” (*Id.*, p. 3237.);
- that pursuant to the language contained in the Golden Releases: **“Wadsworth agreed to subordinate its lien priority date to other third party liens that attached to the property prior to the date inserted in the Golden Release”**; that “the Golden Release by its express terms

included such subordination and waiver terms for the express benefit of ‘any liens or encumbrances attaching to the subject property prior to said date,’ **including American Bank’s mortgage lien**”; and that “under Idaho’s mechanic lien statutes and mortgage foreclosure statute, American Bank has standing to enforce the terms of the Wadsworth Contract including the Golden Releases”, or “[a]lternatively, American Bank qualifies as a third party beneficiary of Wadsworth’s contract with BRN Development.” (*Id.*, pp. 3236-37 (emphasis added).);

- that “Wadsworth may have judgment for said sums [\$1,845,697.78] as against the bond posted in this matter by American Bank (see February 2, 2011, Memorandum Decision and Order).” (*Id.*, p. 3243, ¶ 4.).

13. On October 6, 2011, the district court awarded Wadsworth prejudgment interest, attorney fees, and costs and entered a judgment in favor of Wadsworth for the principal sum of \$1,845,697.78, prejudgment interest in the amount of \$371,368.82, attorney fees and costs in the amount of \$208,417.47, for a total judgment of \$2,425,484.07, with the total judgment accruing postjudgment interest at the statutory rate of 5.25%. R. Vol. 13, pp. 3331-52. Further, the judgment states: “Wadsworth Golf Construction Company of the Southwest shall have said sums in this Judgment as against the bond posted in this matter by American Bank given Bond No. 0525542.” *Id.*, p. 3352, ¶ 1. Finally, the district court certified the judgment as final pursuant to Rule 54(b) of the Idaho Rules of Civil Procedure. *Id.*, p. 3352.

14. On November 14, 2011, American Bank filed a notice of appeal of the district court’s Rule 54(b) judgment and the underlying orders supporting such judgment. R Vol. 13, pp. 3368-79.<sup>3</sup>

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<sup>3</sup> Wadsworth has agreed to stay execution on the Lien Release Bond during the pendency of this appeal and in exchange American Bank has agreed to keep the Lien Release Bond in effect during the pendency of this appeal.



**B. Proceedings Relating to the Foreclosure of American Bank's Mortgage.**

15. On July 21, 2010, American Bank moved for summary judgment regarding the amount that BRN owed to American Bank and seeking an order to judicially foreclose its mortgage against all other parties claiming an interest in the Property, which remaining parties were not contesting the priority of American Bank's Mortgage. R Vol. 8, pp. 1703-34.

16. By February 24, 2011, no party had filed an opposition to American Bank's motion for summary judgment regarding either the amount that BRN owed to American Bank or the foreclosure of American Bank's mortgage. As a result, on February 24, 2011, the district court entered an order establishing the amount that BRN owed to American Bank and decreeing that the Property be offered for sale for purposes of recovering the sums owed to American Bank and foreclosing out all junior interests in the Property. R Vol. 11, pp. 2789-2809.

17. On February 24, 2011, the district court entered a Judgment and Decree of Foreclosure of American Bank's Mortgage ("Foreclosure Decree"). R Vol. 11, pp. 2810-28. In such Foreclosure Decree, the district court ordered the Property to be sold by sheriff's sale, with the proceeds from such sale to first cover the expenses of the sale, then to pay the receiver's fees, then to pay the balance BRN owed to American Bank, with any remaining proceeds to "be deposited with the court for payment to the junior creditors in order of their priority as adjudged by this court pursuant to Idaho Code Section 45-512 and 45-1302." *Id.*, p. 2814, ¶ 5. The same

Foreclosure Decree states: “American Bank has the right to credit bid and purchase at the Sheriff’s Sale.” *Id.*, ¶ 6.

18. On May 19, 2011, the Property was sold at a foreclosure sale. *See* Sheriff’s Certificate of Sale, R Vol. 13, p. 3153. At the sale, American Bank made a credit bid for the Property in the amount of \$18,682,767.78, the amount owing for the costs of sale, sheriff’s fees, receiver’s fees, and the balance BRN owed to American Bank. *Id.* Because no one beat American Bank’s credit bid, the Property was sold to American Bank, and there were no surplus proceeds to pay junior lienholders. *Id.* at pp. 3153-54.

### III. STATEMENT OF FACTS

1. The underlying action relates to multiple parties involved in the design, construction and financing of a golf course and residential project in Kootenai County, Idaho, commonly referred to as the Black Rock North Project (“Project”). BRN was the owner of the subject real property and the Project developer. The Project consisted of approximately one thousand (1,000) acres. The golf course traverses through the Project and consists of approximately two hundred (200) acres of the one thousand (1,000) acre parcel. *See* R Vol. 12, pp. 3005-06, ¶ 1; R Vol. 13, p. 3211, ¶ 1.

2. On October 10, 2006, BRN entered into a letter of intent with Wadsworth, whereby Wadsworth was selected as the de facto general contractor for the golf course. Between October 2006 and January 2007, BRN and Wadsworth negotiated the terms of a written contract culminating in execution of a final contract on or about January 27, 2007 (hereinafter the final contract between Wadsworth and BRN shall be referred to as the “Wadsworth Contract”). The

Wadsworth Contract required Wadsworth to perform certain obligations in exchange for payments from BRN. R Vol. 12, pp. 3006-07, ¶ 4; R Vol. 13, p. 3212, ¶ 4.

3. Wadsworth commenced work in October of 2006, and continued through December of 2006. The work performed in that initial period included shaping of two of the proposed eighteen holes. R Vol. 12, p. 3007, ¶ 5; R Vol. 13, p. 3212, ¶ 5.

4. Wadsworth did not obtain a contractor registration license from the Idaho Bureau of Occupational Licenses until January 9, 2007, after it commenced work on the Project. R Vol. 12, p. 3007, ¶ 6; R Vol. 13, p. 3213, ¶ 6.

5. On February 2, 2007, BRN and American Bank executed loan documents whereby American Bank agreed to lend \$15 million on a revolving line of credit to BRN for use in constructing the golf course and surrounding residential community. The loan documents consist of a Revolving Credit Agreement (“Credit Agreement”), a Revolving Credit Note (“Note”) and a Mortgage, Security Agreement and Fixture Filing (“Mortgage”) (hereinafter the Credit Agreement, Note and Mortgage shall be collectively referred to as the “Loan Documents”). American Bank recorded its Mortgage with the Kootenai County Recorder’s Office on February 6, 2007. R Vol. 12, p. 3007, ¶ 7; R Vol. 13, p. 3213, ¶ 7.

6. The Loan Documents granted American Bank a first priority mortgage lien against the Property. Further, the Loan Documents required BRN to submit loan requests on a form prescribed by American Bank (“Loan Requests”). In those Loan Requests, BRN certified to American Bank that lien waivers had been obtained from any person who delivered labor, services, material or equipment to the Property prior to the date of the Loan Requests. Over the

period March 9, 2007, up through September 9, 2007, BRN submitted seven (7) Loan Requests to American Bank, wherein BRN certified to American Bank in each of those seven Loan Requests that BRN had obtained lien waivers from any person who supplied labor, services, material or equipment to the Property prior to the date of the Loan Requests. R Vol. 12, pp. 3007-08, ¶ 8; R Vol. 13, pp. 3213-14, ¶ 8.

7. Wadsworth submitted twenty-five (25) payment applications to BRN for Wadsworth's work on the Project, which labor, services and material Wadsworth provided to the Project up through November 21, 2008. BRN did not submit any payments to Wadsworth until Wadsworth submitted a lien waiver to BRN. On certain occasions, Wadsworth submitted a release on a form that was attached as Exhibit "B" and incorporated by reference into the Wadsworth Contract ("Golden Lien Release"). On other occasions, Wadsworth submitted its own lien waiver that it had used on other construction projects ("Arizona Release"). R Vol. 12, pp. 3008-09, ¶ 9; R Vol. 13, p. 3214, ¶ 9.

8. The Golden Lien Releases that Wadsworth executed and submitted to BRN and the Golden Lien Release form incorporated by reference into the Wadsworth Contract all state:

Upon receipt of payment of the sum of \$\_\_\_\_\_, the undersigned waives any and all right to any lien whatever and releases all rights to lien or claim any lien against the real property associated with the above Project by the undersigned in connection with any and all work or labor performed, materials, equipment, goods, or things supplied or furnished, or any other claims or obligations owed through the date shown above, on the above-named Project.

\* \* \*

In addition, upon receipt of the payment stated above, the undersigned agrees that any lien that may be filed for work performed after said date will only have lien priority from and after the date stated above and will be subordinate to any liens or encumbrances attaching to the subject property prior to said date.

See Trial Exs. 1, and 29-34. Wadsworth submitted six (6) Golden Lien Releases to BRN. For each of the six Golden Lien Releases that Wadsworth submitted to BRN, BRN paid Wadsworth the dollar sum that is referenced in each of those six Golden Lien Releases. The date of the last Golden Lien Release is March 19, 2008. R Vol. 12, p. 3009, ¶ 10; R Vol. 13, p. 3214, ¶ 11.

9. Wadsworth subcontracted out a portion of the work that it was obligated to perform as per the Wadsworth Contract. On October 15, 2006, Wadsworth and Precision Irrigation, Inc. (“Precision”) entered into a written subcontract agreement (the “Precision Agreement”). The Precision Agreement obligated Precision to construct an irrigation system for the golf course. Precision billed Wadsworth for over \$2 million worth of work on the Project. Precision never obtained a contractor registration license with the Idaho Bureau of Occupational Licenses at any time. R Vol. 12, pp. 3010-11, ¶ 17; R Vol. 13, p. 3217, ¶ 18.

10. Wadsworth entered into a subcontract agreement with Concrete Finishing, Inc. (“Concrete Finishing”) to install concrete golf cart paths (the “Concrete Finishing Agreement”). Concrete Finishing obtained its contractor registration license from the Idaho Bureau of Occupational Licenses on September 11, 2007, 15 days after it began work on the Project. R Vol. 12, p. 3011, ¶ 18; R Vol. 13, p. 3217, ¶ 19.

11. Wadsworth also contracted with Colorado Lining Construction, Inc. (“Colorado Lining”), which never obtained a contractor registration license. Tr. at 297:9 – 298:6; R Vol. 13, p. 3217, ¶ 19.

#### **IV. STATEMENT OF ISSUES ON APPEAL**

1. Did the district court err by refusing to consider the priority of American Bank’s Mortgage over Wadsworth’s claim of lien and thereby allowing Wadsworth to recover \$2.4 million from the Lien Release Bond when Wadsworth would have recovered nothing by foreclosing its claim of lien against the Property?

2. Given that Wadsworth breached the ICRA by failing to register under the Act at all times it performed work on the Project, did the district court err by allowing Wadsworth to recover on its claim of lien?

3. Given that Wadsworth breached the ICRA by engaging subcontractors who failed to register under the Act, did the district court err by allowing Wadsworth to recover on its claim of lien?

4. Did the district court err in awarding Wadsworth prejudgment interest, costs and attorney fees?

#### **V. STANDARD OF REVIEW**

American Bank does not contest any of the factual findings of the district court. Rather, American Bank contests certain legal conclusions of the district court, including the district court’s interpretation of the Lien Bond Statute and the ICRA. As such, this Court

exercises *de novo* review of the issues raised on appeal by American Bank. *Stonebrook Constr., LLC v. Chase Home Fin., LLC*, 277 P.3d 374 (Idaho 2012).

This Court reviews appeals from an order of summary judgment *de novo*, and the “standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment.” . . . Where “the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review.” This Court exercises “free review over interpreting a statute’s meaning and applying the facts to the law.”

*Id.* at 376 (quoting *Curlee v. Kootenai County Fire & Rescue*, 148 Idaho 391, 394, 224 P.3d 458, 461 (2008), *Lockheed Martin Corp. v. Idaho State Tax Comm’n*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006), and *VFP VC v. Dakota Co.*, 141 Idaho 326, 331, 109 P.3d 714, 719 (2005)).

## VI. ARGUMENT

### A. **The District Court Erred by Refusing to Consider the Priority of American Bank’s Mortgage Over Wadsworth’s Claim of Lien, Thereby Allowing Wadsworth to Collect Over \$2.4 Million From the Lien Bond When Wadsworth Would Have Recovered Nothing by Foreclosing Its Claim of Lien Against the Property.**

The district court allowed Wadsworth to recover \$2.4 million from the Lien Release Bond posted by American Bank even though Wadsworth would have recovered nothing by foreclosing its claim of lien against the Property. *See* Course of Proceedings (“COP”) at ¶¶ 12-13 and 15-18. More specifically, when granting Wadsworth’s motion for partial summary judgment, the district court held “that by American Bank posting the lien release bond and this Court entering its order releasing of record in its entirety and for all purposes Wadsworth’s mechanic’s lien, the issue of lien priority is not relevant.” R Vol. 11, p. 2742. In so holding, the district court stated that nothing in Idaho’s Lien Bond Statute preserved American Bank’s right

to assert the priority of its Mortgage over Wadsworth's claim of lien once Wadsworth's lien was removed from the Property. R. Vol. 11, p. 2740.

The legal effect of the district court's ruling was that American Bank waived its priority defense by posting the lien bond. The practical effect of the district court's ruling was that American Bank gratuitously made itself liable for the \$2,425,483.50 judgment entered in favor of Wadsworth because, had American Bank never posted the lien bond, Wadsworth's claim of lien would have been foreclosed out by American Bank's Mortgage and thereby rendered worthless. *See* COP at ¶¶ 15-18.

The question presented in this appeal is whether the district court erred in holding American Bank and the bond surety liable for a mechanic's lien that would have been foreclosed out by American Bank's Mortgage had Wadsworth's claim of lien remained attached to the Property.

**1. The district court erred by failing to give effect to all parts of Idaho's Lien Bond Statute.**

Statutory interpretation begins with the literal language of the statute. *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 312, 109 P.3d 161, 166 (2005). If the statutory language is unambiguous, this Court need not engage in statutory construction and should apply the statute's plain meaning. *Id.* In other words, "[a]n unambiguous statute must be given its plain, usual, and ordinary meaning." *Flying Elk Inv., LLC v. Cornwall*, 149 Idaho 9, 15, 232 P.3d 330, 336 (2010). Further, when interpreting an unambiguous act, this Court must give



effect to the “whole act and every word therein, lending substance and meaning to the provisions.” *State v. Payne*, 146 Idaho 548, 575, 199 P.3d 123, 150 (2008).

The district court’s interpretation of Idaho’s Lien Bond Statute is that by posting the lien bond, American Bank could only contest the validity and amount of Wadsworth’s claim of lien, but not lien priority. R Vol. 11, pp. 2741-42 (“The judgment referred to in I.C. § 45-523(2), is a product of I.C. § 45-522, of which this Court has determined only validity and the amount found due are relevant issues, not lien priority.”). But in doing so, the district court erred by not considering other provisions of Idaho’s Lien Bond Statute that limit Wadsworth’s recovery to the amount that Wadsworth’s lien had been secured by the Property.

- a. **Idaho’s Lien Bond Statute limits Wadsworth’s recovery to the amount determined “to have been secured by his lien,” a past tense phrase that limits Wadsworth’s recovery to the amount Wadsworth would have recovered by foreclosing its lien against the Property.**

When interpreting Idaho’s Lien Bond Statute the district court held that “there is no mention in I.C. § 45-518, *et seq.* of any determination of lien priority.” R. Vol. 11, p. 2740. In so ruling, the district court focused on Idaho Code Section 45-522. *Id.* (“ . . . I.C. § 45-522 provides that Wadsworth’s rights include and this Court may award to Wadsworth the amount found due to Wadsworth, including costs and fees.”). But the district court failed to consider other language in Idaho’s Lien Bond Statute that limits Wadsworth’s recovery, and American Bank’s liability, to “such amount as a court of competent jurisdiction may adjudge to have been secured by his lien, with interest costs and attorney’s fees.” *See* IDAHO CODE § 45-519. By failing to give effect to Section 45-519, the district court failed to follow Idaho’s long-standing

rules of statutory construction that required the district court to give effect to all parts of Idaho's Lien Bond Statute. *Univ. of Utah Hosp. & Med. Ctr. v. Bethke*, 101 Idaho 245, 248, 611 P.2d 1030, 1033 (1980) (“[t]his Court is required to give effect to [e]very word, clause and sentence of [the] statute, where possible. . . .”); *State v. Alkire*, 79 Idaho 334, 338, 317 P.2d 341, 344 (1957) (“ . . . all parts of the statute must be given effect if it can be done.”).

Construing Idaho Code Section 45-522 consistently with the other qualifying language of Idaho Code Section 45-519, and applying the plain meaning of the past tense phrase “to have been secured by his lien” found in 45-519, the district court’s error becomes clear. The past tense phrase “to have been secured” refers to Wadsworth’s prior security interest in the Property, as opposed to Wadsworth’s present security interest in the lien bond. And in this case, Wadsworth had no security in the Property because there was not sufficient equity in the Property to pay any lien creditors that fell behind American Bank’s Mortgage. *See* Course of Proceeding, *supra* (“COP”) at ¶¶ 15-18. Thus, because Wadsworth had no security in the Property and would have recovered nothing by foreclosing its lien against the Property, Wadsworth should not recover anything from the lien bond that was intended to put Wadsworth in the same position it would have been by foreclosing its lien against the Property. At best for Wadsworth, the matter should be remanded to give Wadsworth an opportunity to prove that there was sufficient equity in the Property to pay Wadsworth’s claim of lien, after giving consideration to the priority of American Bank’s Mortgage.

As noted by the district court, “the issue raised [lien priority in an action to recover against a lien bond] is one of first impression [in Idaho]” and “I.C. §§ 45-518 through

45-524 have not previously been interpreted.” R Vol. 12, p. 2928. However, numerous cases outside of Idaho support American Bank’s argument that Wadsworth’s recovery from the lien bond should be limited to the same amount it would have recovered by foreclosing its lien against the Property.

. . . [T]he bonding off statute merely releases the real estate from the mechanic’s lien claim by requiring that payment of the bond be “conditioned for the payment of such judgment adjudicating the lien or liens to be valid and determining the amount for which the same would have been enforceable against the real estate.”

*York Fed. Sav. & Loan Ass’n v. Hazel*, 256 Va. 598, 602, 506 S.E.2d 315, 317 (1998) (quoting VA. CODE § 43-70).

The General Assembly accomplished that purpose by authorizing the courts to permit any party who could be adversely affected by the enforcement of a mechanic’s lien, i.e. “the owner of the property affected thereby, the general contractor or other parties in interest,” to file a bond securing payment of whatever claim otherwise could be enforced by judicial sale of the property.

*George W. Kane, Inc. v. Nuscope, Inc.*, 243 Va. 503, 508-09, 416 S.E.2d 701, 704 (1992) (quoting VA. CODE § 43-71).

The purpose of Section 49-37 is carried out when the lien can be attacked both to declare it entirely invalid or to declare it invalid only as to a party who is adversely affected by it. Consequently, United Bank had the power under Section 49-37, if it filed a bond, to assert the priority of its mortgage over the PDS lien.

*PDS Eng’g & Constr., Inc. v. Double RS*, 42 Conn. Supp. 460, 465, 627 A.2d 959, 963 (1992).

Because recovery on the bond is part of the process for enforcing the mechanic’s lien, authorities from other jurisdictions have concluded that a cause of action to foreclose a mechanic’s lien is substantially the same whether relief is sought against the liened

property or against the bond which has been substituted for the property.

*Hutnick v. United States Fid. & Guar. Co.*, 47 Cal. 3d 456, 463, 763 P.2d 1326, 1330, 253 Cal. Rptr. 236 (Cal. 1988).

[E]ven though a claimant proves the lien is enforceable, its recovery may be limited because of prior existing mortgages and/or lien claimants competing for the same money. . . . Again, the bond only replaces the property that was subject to the lien, and the recovery against the bond should be the same as the recovery against the property.

Kevin J. Russell, *Mechanics Lien Discharge Bonds*, FOR THE DEFENSE, 46 No. 9 DRIFTD 58 (Sept. 2004); *accord May Constr. Co. v. Town Creek Constr. & Dev., LLC*, \_\_\_ S.W.3d \_\_\_, 2011 Ark. 281, 2011 WL 2477185, \*4-5 (2011) (affirming district court's consideration of priority when assessing a mechanic's lien claimant's ability to collect from a lien bond, but reversing and remanding with instructions to apply proper legal standard for determining priority).

In sum, the plain meaning of the phrase "to have been secured by his lien" found in Idaho Code Section 45-519 refers to the amount that Wadsworth's lien was secured by the Property, thus limiting Wadsworth's recovery to the amount that it would have recovered by foreclosing its lien against the Property. To hold otherwise, as the district court did, is inconsistent with Idaho's rules of statutory interpretation because it ignores the language of Idaho Code Section 45-519.

- b. **Wadsworth’s interpretation of the phrase “to have been secured by his lien” is unreasonable, leads to an absurd and unreasonably harsh result, and defeats the purpose of Idaho’s Lien Bond Statute.**

Wadsworth argues that the phrase “to have been secured by his lien” only requires Wadsworth to prove that its lien attached to the Property and not that Wadsworth’s lien was “secured” in the sense that there was sufficient equity in the Property to pay Wadsworth’s claim of lien after satisfying all senior lien claimants. *See* Tr. at 130:12 - 131:18.

The mere fact that Wadsworth offers up its own interpretation of Idaho’s Lien Bond Statute does not make the statute ambiguous. *Stonebrook Constr.*, 277 P.3d at 378 (“... ambiguity is not established merely because the parties present differing interpretations to the court.”). Rather, Wadsworth must offer an alternative reasonable interpretation. *State v. Doe*, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). In determining whether Wadsworth’s alternative interpretation is reasonable, this Court should consider the public policy behind the statute, its legislative history, the context in which the language is used, the evils to be remedied, and the objects in view. *Id.*, *Hayden Lake Fire Prot. Dist.*, 141 Idaho at 312, 109 P.3d at 166. Additionally, this Court has stated that statutory “interpretations that could lead to absurd or unreasonably harsh results are disfavored.” *Id.*

In this action, nobody disputes that Idaho’s Lien Bond Statute allowed American Bank to bond around Wadsworth’s claim of lien. R Vol. 11, p. 2740 (“... American Bank, as a ‘party in interest in the premises subject to the lien’ obtained a surety bond executed by

American Bank, and therefore complied with the requirements of I.C. § 45-519.”). Rather, the parties dispute the legal effect of American Bank bonding around Wadsworth’s junior lien.

As asserted in the previous section, American Bank argues that the Lien Release Bond simply replaced the Property as the collateral securing Wadsworth’s lien, entitling Wadsworth to recover from the Lien Release Bond every penny it would have recovered by foreclosing its lien against the Property. American Bank’s interpretation is consistent with the legislative history of Idaho’s Lien Bond Statute and the Idaho title industry’s customs and practices. Minutes, House State Affairs Committee, Feb. 16, 1993 (HB 305)<sup>4</sup> (“It allows someone who is grieved by a lien to post a bond and bond around the lien” and “the lien creditor is adequately protected by putting the bond as security instead of a lien on the [property].”); Affidavit of Jeffrey Bo Davies (“Davies Aff.”), R Vol. 11, pp. 2784-87, ¶¶ 5-8 (“In the case of a bond to release a mechanic’s lien, it was commonly understood in Idaho’s title industry that the bonding company was only obligating itself to pay that amount that the lien claimant could recover through a foreclosure of its lien against the property. Thus, the bond was simply replacing the property as the security for the mechanic’s lien, but reserving all defenses to attack the lien, including a defense that there is not sufficient equity in the property to pay a subordinated lien.”).

American Bank’s interpretation of Idaho’s Lien Bond Statute comports with common sense as it allows the affected parties to preserve their legal rights, while at the same

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<sup>4</sup> The published legislative history of Idaho’s Lien Bond Statute is attached to this Brief as Addendum C.

time expediting the process of obtaining marketable title and preventing waste to the property during the pendency of the litigation between the competing lien claimants. *Hutnick*, 47 Cal. 3d at 462, 763 P.2d at 1330 (“The purpose of the release bond procedure is to provide a means by which, before a final determination of the lien claimant’s rights and without prejudice to those rights, the property may be freed of the lien, so that it may be sold, developed, or used as security for the loan.”).

The wisdom of the legislative purpose is readily apparent. A mechanic’s lien on a building in the course of construction, unless promptly removed, can entail loss of credit, work stoppage, and financial collapse. The time element may make imperative the use of the deposit method of discharge to avert disaster. The remedy of deposit, therefore, may quite properly be used as a stopgap pending the employment of a more leisurely remedy under any of the appropriate provisions of Section 19.

*Application of Tumac Realty Corp.*, 203 Misc. 649, 652, 123 N.Y.S.2d 642, 645 (1952).

Wadsworth argues that Idaho’s Lien Bond Statute made American Bank and the bond surety a guarantor of Wadsworth’s claim of lien, regardless of whether Wadsworth would have recovered anything had Wadsworth’s lien remained attached to the Property. The district court accepted Wadsworth’s interpretation largely based upon the district court’s *ipse dixit* conclusion that Wadsworth’s claim of lien against the Property was more valuable than the security provided by the Lien Release Bond. *See* COP at ¶ 10.

Wadsworth’s and the district court’s interpretation of Idaho’s Lien Bond Statute is inconsistent with Idaho’s rules of statutory construction. First, the district court’s conclusion that a lien against real estate is more valuable than the security provided by a lien bond is contrary to

the Idaho Lien Bond Statute legislative history. *See* Minutes, House State Affairs Committee, Feb. 16, 1993 (HB 305) (“the lien creditor is adequately protected by putting the bond as security instead of a lien on the [property].”). Second, accepting this alternative interpretation leads to an absurd and unreasonably harsh result because it makes American Bank liable for a mechanic’s lien that would have been foreclosed out by American Bank’s Mortgage had it remained attached to the Property. *See* COP at ¶¶ 15-18.

Giving Wadsworth a \$2.4 million windfall recovery and imposing a corresponding liability upon American Bank simply because American Bank posted the Lien Release Bond is also inconsistent with numerous reported decisions interpreting similar lien bond statutes. These decisions uniformly hold that a lien claimant should not be given additional rights simply because a lien bond is substituted as the collateral for the property. *Camputaro v. Stuart Hardwood Corp.*, 180 Conn. 545, 549, 429 A.2d 796, 798 (1980) (“Obviously, the plaintiff’s rights on the bond can rise no higher than those acquired under the underlying mechanic’s lien for which the bond is merely a substitute.”); *North v. Waffle House, Inc.*, 177 Ga. App. 162, 163, 338 S.E.2d 750, 752 (1985) (“The lien release bond . . . serves as a replacement for the lien to which it refers, and does not authorize a new and different procedure limited to the bond or result in additional rights.”); *Royster Constr. Co. v. Urban W. Cmty.*, 40 Cal. App. 4th 1158, 1166, 47 Cal. Rptr. 2d 684, 688-89 (1995) (quoting *Ohio Plate Glass Co. v. Paskin*, 4 Ohio Misc. 136, 209 N.E.2d 640, 642 (1965)) (“ . . . an action against a release bond surety ‘does not change the cause of action [to foreclose the mechanic’s lien] in any way’.”).



In no uncertain terms, if the district court's interpretation stands, the provisions of Idaho's Lien Bond Statute that allow one lienholder to bond around another lienholder will become meaningless as no senior lienholder will ever bond around a junior lienholder if by doing so it waives its priority defense. *Six Carpenters, Inc. v. Beach Carpenters Corp.*, 172 Conn. 1, 7, 372 A.2d 123, 127 (1976) ("The construction urged by the defendant would discourage the substitution of bonds by agreement because of fear of waiving defenses to the underlying lien."); *Davies Aff.*, R Vol. 11, pp. 2786-87, ¶ 8 ("In sum, the Court's order mooted the priority issue because of the posting of the lien bond will disrupt a long standing practice in the Idaho real estate industry, wherein senior lienholders often use Idaho's Lien Bond Statute as a mechanism for bonding around a junior lienholder and thereby preserving the maximum value of the real estate collateralizing the senior lien, while at the same time preserving the junior lienholder's security by providing an adequate alternative source of collateral should there be sufficient equity in the property to satisfy both the senior lienholder and the junior lienholder.").

In sum, even if Idaho's Lien Bond Statute is ambiguous, American Bank offers a more reasonable interpretation: namely, Wadsworth should be entitled to recover the same amount from the lien bond that it would have recovered by foreclosing its lien against the Property, resulting in no prejudice to Wadsworth and allowing American Bank to mitigate its losses by expediting the marketability of the collateral securing its loan to BRN.

2. **Any order releasing a mechanic's lien upon the posting of a lien bond does not remove the lien for all purposes, but rather the bond replaces the property as the collateral securing the mechanic's lien.**

The district court's February 2, 2011, order mooted the lien priority issue was primarily based upon the district court's erroneous belief that its prior April 27, 2010, order, which order was entered upon stipulation of American Bank and Wadsworth, released Wadsworth's lien "in its entirety and **for all purposes**" and as a result "[i]t is difficult to prioritize a lien that no longer exists of record." R Vol. 11, p. 2740 (emphasis in original). By concluding that its order entered on April 27, 2010, released Wadsworth's mechanic's lien for all purposes, the district court again failed to give effect to the entirety of Idaho's Lien Bond Statute.

Upon the posting of American Bank's lien bond and proof of payment of the premium, Idaho's Lien Bond Statute required the district court to enter an order that recited "that the lien is released of record for all purposes to the same extent as if released of record by the lienor." *See* IDAHO CODE § 45-521(2). Further, Idaho's Lien Bond Statute recites that "[u]pon entry of the order, the lien is released of record in its entirety and for all purposes and the real property, the subject of the lien, is released from the encumbrances of the lien." *See* IDAHO CODE § 45-512(3).

But other provisions of Idaho's Lien Bond Statute reflect that the lien is not released for all purposes, but rather just released against the property and then attached to the lien bond as an adequate alternative form of security. *See* IDAHO CODE §§ 45-519 and 45-522(1). The stipulated order entered by the Court on April 27, 2010, recites likewise, "the

bond filed herein shall be subject to the claims that would otherwise constitute liens against the above-described property.” See COP at ¶ 5.

Additionally, the legislative history for Idaho’s Lien Bond Statute provides that the lien is not released for all purposes but rather simply changes the collateral to which the lien attaches. See Minutes, House State Affairs Committee, Feb. 16, 1993 (HB 305) (“the lien creditor is adequately protected by putting the bond as security instead of a lien on the [property].”).

Again, no Idaho appellate court has interpreted Idaho’s Lien Bond Statute. However, numerous other jurisdictions have concluded that a lien bond simply replaces the property as the collateral securing the mechanic’s lien and, as such, does not extinguish the mechanic’s lien for all purposes as the district court erroneously concluded in this matter.

DBM also argues that it would have been impossible to foreclose on the lien once the bond had released it from the property because there was no longer any lien to foreclose upon, but his argument is simply incorrect. A lien bond does not eliminate a lien entirely. A lien bond releases the property from the lien, but the lien is then secured by the bond.

*DBM Consulting Eng’rs, Inc. v. United States Fid. & Guar. Co.*, 142 Wash. App. 35, 41-42, 170 P.3d 592, 596 (2007).

The surety bond will not extinguish API’s lien or affect its priority. It will only substitute the bond for the land as the object to which the lien attaches.

*T.O. IX v. Super. Ct. of Ventura County*, 165 Cal. App. 4th 140, 148, 80 Cal. Rptr. 3d 602, 608 (2008).

The release bond procedure thus protects the lien claimant by providing an alternate source of recovery on the claim of lien. The release bond procedure “does not deprive the [lien claimant] of its constitutional right to a lien” but “[o]n the contrary, it provides for the speedy and efficient *enforcement* of such lien. . . .”

*Hutnick*, 47 Cal. 3d at 463, 763 P.2d at 1330 (citation omitted) (emphasis in original).

If a lien release bond is properly obtained and recorded under OCGA Section 44-14-264, “the bond stands in the place of the real property as security for the lien claimant.”

*Cent. Atlanta Tractor Sales, Inc. v. Athena Dev., LLC*, 289 Ga. App. 355, 356, 657 S.E.2d 290, 292 (2008) (citation omitted).

Obviously, the plaintiff’s rights on the bond can rise no higher than those acquired under the underlying mechanic’s lien for which the bond is merely a substitute.

*Camputaro v. Stuart Hardwood Corp.*, 180 Conn. 545, 549, 429 A.2d 796, 798 (1980).

Once Kane posted the bond, NuScope’s security for the claim underlying its mechanic’s lien became the bond . . . and not the real estate.

*Kane*, 243 Va. at 509, 416 S.E.2d at 705.

**3. The district court erroneously concluded that Virginia’s lien bond statute is distinguishable from Idaho’s Lien Bond Statute.**

*York Federal Savings & Loan Ass’n v. Hazel, Inc.*, 256 Va. 598, 506 S.E.2d 315 (1998), is procedurally and factually nearly identical to the matter at hand. In *York*, a lender bonded around a mechanic’s lien after the contractor filed an action to foreclose its mechanic’s lien. After the lender and contractor stipulated to the validity and amount of the contractor’s lien, the contractor moved for summary judgment, therein seeking an order that allowed the contractor to collect the stipulated amount from the lien bond. The lender contested the

contractor's motion for summary judgment, arguing that Virginia's lien bond statute limited the contractor's recovery to that amount it would have collected from the property. The district court rejected the lender's argument and granted the contractor's motion for summary judgment, ruling that the contractor could collect the stipulated amount from the lien bond without having to prove that its mechanic's lien was prior to the lender's deed of trust.

The Virginia Supreme Court reversed the district court and remanded the matter for factual findings regarding the amount the contractor would have recovered by foreclosing its lien against the property after considering the priority between the contractor's claim of lien and the lender's deed of trust. *Id.* at 602, 506 S.E.2d at 317.

In this action, the district court distinguished *York* on the basis that:

The two statutes that the *York* court analyzed and applied to the facts of that case, Virginia Code §§ 43-21 and 43-70, are sufficiently different than I.C. § 45-518, *et seq.* Notably absent from the Virginia statutes is any mention of the lien being released of record in its entirety and for all purposes.

R Vol. 11, pp. 2740-41. However, upon close comparison, Idaho's Lien Bond Statute and Virginia's lien bond statute both limit a claimant's recovery on the lien bond to the amount they would have recovered by foreclosing their mechanic's lien against the property.

More specifically, Virginia's lien bond statute recites that "... [a] part[y] in interest may ... apply to the court in which such suit shall be pending ... for permission to file a bond in the penalty of double the amount of such lien ... and costs ... conditioned for the payment of such judgment adjudicating the lien ... to be valid and determining the amount for

which the same would have been enforceable against the real estate as may be rendered by the court upon the hearing of the case on its merits. . . .” See VA. CODE § 43-70.

Idaho’s Lien Bond Statute similarly limits American Bank’s and the bond surety’s liability to “such amount as a court of competent jurisdiction may adjudge to have been secured by [Wadsworth’s] lien, with interest, costs and attorney’s fees.” See IDAHO CODE § 45-519.

Simply put, there is no meaningful difference between the past tense phrase “the amount for which the same would have been enforceable against the real estate as may be rendered by the court” used in Virginia Code Section 43-70 and the past tense phrase “such amount as a court of competent jurisdiction may adjudge to have been secured by his lien” as used in Idaho Code Section 45-519. Both phrases refer to the prior security interest in the property, and both limit recovery on the lien bond to the amount that the lien claimant would have recovered by foreclosing its lien against the property.

**4. The legal citations adopted by the district court do not support the district court’s holding that the issue of lien priority was waived or mooted as a result of American Bank posting the lien bond.**

The district court did not cite any case that held a lien priority is waived or mooted by the posting of a lien bond. Rather, the district court simply stated that “. . . Wadsworth provides that there is no Idaho case law on this matter and cites this Court to numerous non-Idaho authority for the proposition that the only remaining issues remaining post-bond are validity and the amount of the lien.” R Vol. 11, pp. 2737-38. Then the district court cited *Corpus Juris Secundum* for the proposition that “[t]he giving of a bond to discharge property from a mechanic’s lien is not an acknowledgement of the validity of the lien, and does

not change the lien claimant's burden to prove he or she is entitled to payment under the mechanic's lien law. In connection the owner [debtor, principal and/or surety] may still contest the lien's existence, amount, and validity." *Id.*, p. 2741 (quoting 56 C.J.S. *Mechanics' Liens* § 299 (2010)). Additionally, the district court cited to a Washington Court of Appeals decision for the proposition that "a lien bond in lieu of a mechanic's lien does not eliminate a lien entirely; rather, a lien bond releases the property from the lien, but the lien is then secured by the bond. Further, a judgment adjudicating the validity of the lien is required to foreclose on the lien." *Id.* (citing *DBM Consulting Eng'rs, Inc. v. United States Fid. & Guar. Co.*, 142 Wash. App. 35, 170 P.3d 592 (2007)).

Neither the *DBM Consulting* decision nor the CJS citation support the district court's ultimate holding that the issue of lien priority was mooted by American Bank posting the lien bond. Rather, those citations support American Bank's argument that the posting of the lien bond did nothing other than to change the form of the collateral securing Wadsworth's lien, from the Property to the lien bond, thus requiring Wadsworth to prove its lien foreclosure action in the same manner as it would have done by foreclosing its lien against the Property. For example, in *DBM Consulting Engineers, Inc.*, the Washington Court of Appeals held that the contractor could not collect from the lien bond until it obtained a judgment foreclosing its claim of lien. *DBM Consulting Eng'rs, Inc.*, 142 Wash. App. 35, 41-42, 170 P.3d 592, 596 (Ct. App. 2007).

While the applicable foreclosure process depends on whether the lien is secured by property (which can then be sold) or by a bond, in either situation, the lien must be foreclosed upon before the lienholder is entitled to recover on the lien. *Mountain Ranch [Corp. v. Amalgam Enters., Inc.]*, 143 P.3d [1065,] 1068-69

[(Colo. Ct. App. 2005), *cert. denied*, 2006 WL 2864900, 2006 Colo. LEXIS 834 (Colo. Oct. 10, 2006)]. So in order to be entitled to payment on the bond, DBM needed to foreclose its lien. Because DBM did not obtain a judgment foreclosing its lien, Travelers is not obligated to pay on the lien bond.

*Id.*

The Washington Court of Appeals' adoption of the holdings of *Hutnick* and *Mountain Ranch* is also instructive because in both of those cases the California Supreme Court and the Colorado Court of Appeals held respectively that "[b]ecause recovery on the bond is part of the process for enforcing the mechanic's lien, authorities from other jurisdictions have concluded that a cause of action to foreclose a mechanic's lien is substantially the same whether relief is sought against the lien property or against a bond which has been substituted for the property." *Hutnick*, 47 Cal. 3d at 463, 763 P.2d at 1330, 253 Cal. Rptr. at 239-40; *Mountain Ranch Corp. v. Amalgam Enters., Inc.*, 143 P.3d 1065, 1068 (Colo. App. 2005).

But in this action the district court concluded that Wadsworth's claim to foreclose its mechanic's lien against the Lien Release Bond is not substantially the same as an action to foreclose its mechanic's lien against the Property, as the district court concluded that the issue of priority is relevant in the latter action but not the former. R Vol. 11, p. 2737 ("Wadsworth argues that American Bank had two choices. It could have chosen to litigate lien priority in the foreclosure action, or American Bank could have obtained a lien release bond thereby releasing Wadsworth's lien on the Project. American Bank chose to undertake the lat[t]er option, which makes lien priority no longer an issue between American Bank and Wadsworth.").



The CJS citation likewise does not state that lien priority is mooted by the posting of a lien bond. Rather, it simply attempts to summarize various cases addressing the legal significance of the posting of a lien bond. And while the CJS citation notes that “it has also been held that a mechanics’ lien claimant whose lien has been discharged by a bond may . . . bring an action in equity against the debtor and the surety on the bond and obtain therein a judgment establishing the validity and amount of the lien and a personal judgment against the judgment debtor and the surety on the bond,” it also noted that “[t]here is authority that a surety is not liable to a subcontractor on the surety’s mechanic’s lien substitution bond where the subcontractor has not pursued the *in rem* remedy of foreclosure on the bond for which the surety agreed to act as surety. . . .” See 56 C.J.S. *Mechanic’s Liens* § 304 (2010) (citing the Colorado Court of Appeals decision in *Mountain Ranch* for the latter proposition).

In sum, even the legal authorities cited by the district court support American Bank’s argument that Wadsworth’s recovery on the lien bond should be limited to the amount it would have recovered by foreclosing its lien against the Property.

**B. Because Wadsworth Was Not Registered Under the ICRA at All Times It Performed Work on the Project, the District Court Erred in Allowing Wadsworth to Recover on Its Claim of Lien.**

The ICRA states that “[n]o person engaged in the business or acting in the capacity of a contractor, unless otherwise exempt, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which registration is required by this chapter without alleging and proving that he was a duly

registered contractor, or that he was otherwise exempt as provided for in this chapter, at all times during the performance of such act or contract.” IDAHO CODE § 54-5217(2).

The district court determined that Wadsworth was not exempt from the ICRA and that “Wadsworth was not registered ‘at all times during the period that it furnished work or labor or supplied materials in constructing [the golf course]’ as required by Idaho Code § 54-5217(2) . . . .” R Vol. 13, p. 3225 (emphasis in original). Notwithstanding, the district court still allowed Wadsworth to recover on its claim of lien. *Id.*, p. 3227.

The question raised in this appeal is whether the district court erred by not enforcing the plain language of Idaho Code Section 54-5217(2), which bars a contractor from bringing any action for unpaid compensation if it was not registered under the ICRA “at all times during the performance of such act or contract.” *See* IDAHO CODE § 54-5217(2). American Bank asserts that the district court erred for the following reasons.

First, the district court erred by engaging in rules of statutory construction. The district court did so in reliance of Judge Tingey’s opinion in *MWSH Idaho Falls, LLC v. Lupton*, Bonneville County Case No. CV-09-224, that the penalty provisions of the ICRA are ambiguous. R Vol. 13, pp. 3225-27. Subsequent to the district court’s ruling, this Court held in *Stonebrook Construction, LLC v. Chase Home Finance, LLC*, that the penalty provisions of the ICRA are unambiguous.

When the Legislature enacted the ICRA, it took the extraordinary step of expressly stripping the economic protections typically extended to contractors. First, the Act’s penalty section prohibits unregistered contractors from bringing or maintaining “any action in any court of this state for the collection of compensation for”

any contracting work done. I.C. § 54-5217(2). Second, the Act contains a separate provision expressly denying unregistered contractors the right to place a lien. I.C. § 54-5208. The Act contains no language limiting the circumstances under which these penalties apply. In view of the **unambiguous language** specifying the significant penalties imposed upon unregistered contractors, the issue to be resolved is not whether Chase is entitled to invoke the Act for its benefit, but whether Stonebrook complied with the Act's registration requirements.

*Stonebrook Constr., LLC v. Chase Home Fin., LLC*, 277 P.3d 374, 377-78 (Idaho 2012)

(emphasis added).

Because this Court has found the penalty provision of Section 54-5217(2) to be unambiguous, the district court erred by applying the rules of statutory construction rather than enforcing the penalty provisions of Idaho Code Section 54-5217(2) according to the plain, usual and ordinary meaning of the words used in that statute. *Stonebrook*, 277 P.3d 374 at 378 (quoting *Curlee v. Kootenai County. Fire & Rescue*, 148 Idaho 391, 398, 224 P.3d 458, 465 (2008)) (“Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction.”).

More specifically, because the district court determined as a factual and legal matter that “Wadsworth was not registered ‘at all times during the period that it furnished work or labor or supplied materials in constructing [the golf course]’ as required by Idaho Code § 54-5217(2) . . .,” (R Vol. 13, p. 3225 (emphasis in original)), the district court should have ended the analysis and dismissed Wadsworth’s counterclaim, as the other language of Idaho Code Section 54-5217(2) mandates that: “[n]o person . . . may bring or maintain any action in

any court in this state for the collection of compensation for the performance of any act or contract for which registration is required by this chapter . . . .”

Second, the district court erroneously relied upon this Court’s decision in *ParkWest Homes, LLC v. Barnson*, 149 Idaho 603, 238 P.3d 203 (2010). The district court cited *ParkWest* for the proposition that a contractor can recover for work performed during periods of time the contractor was registered under the ICRA, even though it performed work on the same project during other periods when it was not registered. R. Vol. 13, pp. 3224-25.

In *ParkWest*, this Court addressed whether a contractor’s lien was invalidated because of its failure to register at the time it entered into a contract to build a residential home. Ultimately this Court determined that the critical question was not whether the contractor was registered at the time it entered into the contract, but rather whether “ParkWest was registered under the Contractor Act at all times during the period that it furnished work or labor or supplied materials in constructing Barnson’s house.” *ParkWest*, 149 Idaho at 609, 238 P.3d at 209. Because “the uncontroverted evidence was that ParkWest was registered under the Contractor Act at all times during the period that it furnished work or labor or supplied materials in constructing Barnson’s house,” the Idaho Supreme Court held that ParkWest’s lien was valid and enforceable. *Id.*

Previously in the *ParkWest* decision, this Court stated that:

. . . ParkWest is entitled to a lien for work or labor it provided and materials it supplied during the time that it was duly registered. To hold otherwise would mean that a contractor who violated the Act would be forever barred from obtaining a mechanic’s lien.

*Id.* at 608, 238 P.3d at 208. These comments are dicta because there was no evidence that the contractor in *ParkWest* was unregistered at any time that it furnished work or labor or supplied materials in constructing the residential home. Rather, the “uncontroverted evidence” in *ParkWest* established that the contractor “was registered under the Contractor Act at all times during the period that it furnished work or labor or supplied materials in constructing Barnson’s house.” *Id.* at 609, 238 P.2d at 209.

Because there was no finding in *ParkWest* that the contractor was unregistered at times it furnished work or labor or supplied materials in constructing the residential home, *ParkWest* is distinguishable from the matter at hand. Thus, the district court erred in relying on dicta statements in *ParkWest* for the proposition that a contractor can recover for its work performed during periods of time that it was registered under the ICRA, even though it was unregistered during other periods of time that it performed work on the same project.

In sum, because the penalty provision of Section 54-5217(2) of the ICRA is unambiguous, the district court erred by not enforcing the Act according to the plain meaning of the words used in the statute. Applying the plain meaning of Section 54-5217(2), this Court should reverse the district court with instructions on remand to dismiss Wadsworth’s counterclaim because of Wadsworth’s failure to register under the ICRA “at all times during the performance of such act or contract.”

**C. Alternatively, Because Wadsworth Violated the ICRA by Engaging Unregistered Subcontractors, the District Court Erred in Allowing Wadsworth to Recover on Its Claim of Lien.**

Wadsworth used three subcontractors on the job that were not registered under the ICRA. *See* Statement of Facts, ¶¶ 9-11. Two of the subcontractors, Precision and Colorado Lining, never registered under the Act at any time they performed work on the Project. *Id.* at ¶¶ 9 and 11. The third subcontractor, Concrete Finishing, performed work on the Project for 15 days before it registered under the Act. *Id.* at ¶ 10. The district court concluded that Wadsworth violated the ICRA by “failing to ‘obtain satisfactory proof’ of Precision’s, Colorado Lining’s, and Concrete Finishing’s registration under the Act.” R Vol. 13, p. 3229. Notwithstanding that Wadsworth violated the Act, the district court did not invalidate Wadsworth’s claim of lien in its entirety, but rather “reduce[d] the lien by the amount of unpaid invoices owing to the unregistered subcontractors.” *Id.*

The question raised on appeal is whether the district court erred by allowing Wadsworth to recover on its claim of lien even though it violated the ICRA by engaging unregistered subcontractors. American Bank asserts that the district court erred by failing to enforce the penalty provisions of the Act.

In the Ada County case of *Prowall Drywall & Insulation, Inc. v. Plainridge*, Ada County Case No. CV-09-1225, District Judge Michael Wetherell addressed the same issue now before this Court, i.e., what is the penalty for a general contractor’s use of an unregistered subcontractor. But unlike the district court’s legal conclusion in this case, Judge Wetherell interpreted the penalty provisions of the ICRA (Idaho Code Sections 54-5208 and 54-5217)

consistent with the statement in Section 54-5204(2) that it is unlawful to engage unregistered contractors. In so doing, Judge Wetherell invalidated the general contractor's lien in that case in its entirety.

Whether Sections 5208 and 5217 apply to the hiring of unregistered subcontractors is an issue of first impression.

\* \* \*

As to the issue of whether Sections 5208 and 5217 apply to registered contractors that engage unregistered subcontractors, this Court finds that they do apply. The first sentence of Section 5208, if read in a vacuum, would apparently operate to deny lien rights only to unregistered contractors, and thus all registered contractors would have lien rights. However, that interpretation would render meaningless other parts of the statute. The most glaring is the first clause of the second sentence in the statute, which states that the statute will not operate to deny the rights of registered contractors operating at the direction of unregistered contractors. If the first sentence were to strictly apply only to unregistered contractors themselves, that clause would be utterly without meaning, as it only guarantees that lien rights will not be denied to a subset of registered contractors, which would not have their rights denied anyway.

The second part of Chapter 52 that would be rendered virtually meaningless would be proscription of hiring unregistered contractors. Section 5204 specifically makes it unlawful to engage a subcontractor without receiving proof that the subcontractor was registered. If there were no penalties applied for violating that provision, it would render "unlawful" virtually meaningless. This Court must apply the law in such a way as to give effect to all statutory provisions. If this Court were to decline to apply the penalty provision to registered contractors who hire unregistered contractors, it would render several provisions of this statute meaningless. Thus, this Court finds that penalties of Sections 5208 and 5217 apply to registered contractors that engage unregistered contractors.

\* \* \*

Since the penalties of Chapter 52 apply to registered contractors that hire unregistered subcontractors, any lien claims arising while the unregistered subcontractor is employed are conclusively waived, and no action may be brought for collection of debts owed on the labor. Since there is no disagreement that Rancho was unregistered throughout all the work performed by Prowall on the Plainridge Place Condominiums, Prowall's lien claims and action to collect are barred.

*See* Memorandum Decision and Order Re: Wells Fargo's Motion for Summary Judgment Against Prowall Drywall & Insulation, Inc., dated Feb. 2, 2011, pp. 5-7, attached to this Brief as Addendum D.

American Bank respectfully requests this Court to adopt the better-reasoned analysis of Judge Wetherell in the *Prowall* case and hold that Wadsworth's use of unregistered subcontractors violated the ICRA and as a consequence bars Wadsworth from bringing any action to foreclose its claim of lien, or any other collection action for that matter, as it relates to any unpaid work on the Project. For this separate alternative reason, this Court should remand the matter back to the district court with instructions to dismiss Wadsworth's counterclaim.

**D. The District Court's Award of Prejudgment Interest, Attorney Fees and Costs Should Be Reversed.**

The district court awarded Wadsworth prejudgment interest, costs and attorney fees pursuant to various provisions of Idaho's mechanic's lien statute and Idaho's Lien Bond Statute. R Vol. 13, pp. 3340-41 (citing IDAHO CODE §§ 45-513 and 45-522). More specifically, the district court awarded prejudgment interest, costs and attorney fees as an *in rem* award, meaning the district court allowed Wadsworth to increase the amount of its lien by the award of costs and attorney fees and collect the same from the Lien Release Bond posted by American



Bank. *Id.* (quoting *Elec. Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 823-24, 41 P.3d 242, 251-52 (2001)).

For all of the arguments previously asserted, the district court erred by allowing Wadsworth to collect prejudgment interest, costs and attorney fees from the Lien Release Bond. First, had Wadsworth foreclosed its claim of lien against the Property, Wadsworth's lien would have been foreclosed out by American Bank's prior mortgage lien and Wadsworth would have recovered none of the principal amount of its claim of lien, let alone any award of prejudgment interest, costs or attorney fees.

Second, the district court should have invalidated Wadsworth's lien in its entirety because of Wadsworth's failure to register under the ICRA or, alternatively, because of Wadsworth's violation of the ICRA by engaging unregistered subcontractors.

For these reasons, this Court should reverse the district court's order and judgment that allows Wadsworth to collect prejudgment interest of \$371,368.82 and costs and attorney fees in the amount of \$208,417.47 from the Lien Release Bond.

## VII. CONCLUSION

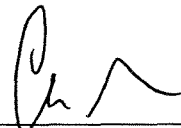
The district court erred by refusing to consider the priority of American Bank's Mortgage over Wadsworth's claim of lien when determining the amount that Wadsworth could collect from the Lien Release Bond. This matter should be remanded to the district court for a factual determination of the amount that Wadsworth's claim of lien was secured by the Property, after considering its subordination to American Bank's Mortgage, as that is the amount Wadsworth should recover from the Lien Release Bond.

Alternatively, because of Wadsworth's failure to maintain registration under the ICRA at all times it worked on the Project, or because of Wadsworth's additional violation of the ICRA by using unregistered subcontractors, this Court should invalidate Wadsworth's claim of lien in its entirety and remand the matter back to the district court with instructions to dismiss Wadsworth's counterclaim.

Finally, the district court's award of prejudgment interest, costs and attorney fees should be reversed because Wadsworth would not have recovered those sums had it foreclosed its lien against the Property, or alternatively Wadsworth's lien is invalid in its entirety because of Wadsworth's multiple violations of the ICRA.

DATED this 10<sup>th</sup> day of July, 2012.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By  \_\_\_\_\_  
C. Clayton Gill – Of the Firm  
Attorneys for American Bank

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of July, 2012, I caused a true and correct copy of the foregoing **APPELLANT AMERICAN BANK'S OPENING BRIEF** to be served by the method indicated below, and addressed to the following:

Edward J. Anson  
WITHERSPOON, KELLEY, DAVENPORT  
& TOOLE, P.S.  
608 Northwest Blvd. #300  
Coeur d'Alene, ID 83814-2146  
Facsimile (208) 667-8470

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



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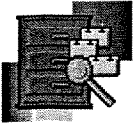
C. Clayton Gill



# **Addendum A to American Bank's Opening Brief**

## **Idaho's Lien Bond Statute**

**Idaho Code Sections 45-518  
through 45-524**



# Idaho Statutes

## TITLE 45 LIENS, MORTGAGES AND PLEDGES

### CHAPTER 5 LIENS OF MECHANICS AND MATERIALMEN

45-518. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- MANNER. A mechanic's lien of record upon real property may be released upon the posting of a surety bond in the manner provided in sections 45-519 through 45-524, Idaho Code.

**History:**

[45-518, added 1993, ch. 378, sec. 3, p. 1388.]

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# Idaho Statutes

## TITLE 45 LIENS, MORTGAGES AND PLEDGES

### CHAPTER 5 LIENS OF MECHANICS AND MATERIALMEN

45-519. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- FORM OF BOND. The debtor of the lien claimant or a party in interest in the premises subject to the lien must obtain a surety bond executed by the debtor of the lien claimant or a party in interest in the premises subject to the lien, as principal, and executed by a corporation authorized to transact surety business in this state, as surety, in substantially the following form:

(Title of court and cause, if action has been commenced)

WHEREAS, ..... (name of owner, contractor, or other person disputing the lien) desires to give a bond for releasing the following described real property from that certain claim of mechanic's lien in the sum of \$ ....., recorded ....., ...., in the office of the recorder in ..... (name of county where the real property is situated):

(legal description)

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to ....., (name of claimant) the claimant named in the mechanic's lien, under the conditions prescribed by sections 45-518 through 45-524, Idaho Code, inclusive, in the sum of \$ ..... (1-1/2 x claim), from which sum they will pay the claimant such amount as a court of competent jurisdiction may adjudge to have been secured by his lien, with interest, costs and attorney's fees.

IN WITNESS WHEREOF, the principal and surety have executed this bond at ....., Idaho, on the ..... day of ....., .....

.....  
(Signature of Principal)

(SURETY CORPORATION)

BY .....

(Its Attorney in Fact)

State of Idaho )  
 ) ss.  
County of ..... )

On ....., ....., before me, the undersigned, a notary public of this county and state, personally appeared ..... who acknowledged that he executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared ..... known (or satisfactorily proved) to me to be the attorney in fact of the corporation that executed the foregoing instrument and known to me to be the person who executed that instrument on behalf of the corporation therein named, and he acknowledged to me that that corporation executed the foregoing instrument.

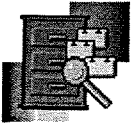
.....  
(Notary Public in and for the  
County and State)

**History:**

[45-519, added 1993, ch. 378, sec. 4, p. 1388; am. 2002, ch. 32, sec. 18, p. 56.]

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# Idaho Statutes

## TITLE 45 LIENS, MORTGAGES AND PLEDGES

### CHAPTER 5 LIENS OF MECHANICS AND MATERIALMEN

45-520. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- PETITION FOR RELEASE -- SERVICE OF COPY OF PETITION. (1) A petition for the release of a mechanic's lien by posting a surety bond must be filed in the district court of the county wherein the property is located and shall set forth:

(a) The title of the cause, thus: "In the matter of the petition of ..... (name of petitioner) for release of mechanic's lien of ..... (name of mechanic's lien claimant) upon posting surety bond."

(b) An allegation of the purchase of and payment of the premium for the bond, and the dates of purchase and payment.

(c) An allegation incorporating by reference a true copy of the bond, which copy must be attached to the petition.

(d) The name or names of the owner or reputed owners of the land subject to the lien.

(e) A description of the real property subject to the lien, and the instrument number of the lien as given by the recorder's office.

(f) A prayer for an order releasing the lien.

(2) The petitioner shall obtain an order from the district court setting forth the time and date of the hearing on the petition, which time and date must be at least five (5) days after the date of the order and not more than ten (10) days after the date of the order.

(3) A copy of the petition and a copy of the order must be served on the lien claimant at least two (2) days before the date set for the hearing and served in the manner provided by law for service of summons.

#### **History:**

[45-520, added 1993, ch. 378, sec. 5, p. 1389.]

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# Idaho Statutes

## TITLE 45 LIENS, MORTGAGES AND PLEDGES

### CHAPTER 5 LIENS OF MECHANICS AND MATERIALMEN

45-521. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- HEARING ON PETITION -- CONTENTS AND EFFECT OF ORDER RELEASING LIEN. (1) Upon the hearing, the court shall enter its order releasing the mechanic's lien upon the petitioner's filing in open court the original bond, and introducing into evidence a receipt for payment of the premium.

(2) The entry of the order by the court must refer to the property which is the subject of the lien and the lien itself, by instrument number, and must recite that the lien is released of record for all purposes to the same extent as if released of record by the lienor.

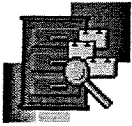
(3) Upon entry of the order, the lien is released of record in its entirety and for all purposes and the real property, the subject of the lien, is released from the encumbrances of the lien.

(4) There is no appeal from the entry of an order pursuant to the provisions of this section and upon entry the order is final for all purposes.

**History:**

[45-521, added 1993, ch. 378, sec. 6, p. 1390.]

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# Idaho Statutes

## TITLE 45 LIENS, MORTGAGES AND PLEDGES

### CHAPTER 5 LIENS OF MECHANICS AND MATERIALMEN

45-522. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- ACTION AGAINST DEBTOR AND SURETY -- PREFERENTIAL SETTINGS. (1) The lien claimant is entitled to bring an action against the lien claimant's debtor and to join therein the surety on the bond. The rights of the lien claimant include and the court may award to him in that action:

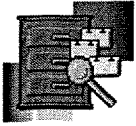
- (a) The amount found due to the lien claimant by the court;
- (b) The cost of preparing and filing the lien claim, including attorney's fees, if any;
- (c) The costs of the proceedings;
- (d) Attorney's fees for representation of the lien claimant in the proceedings; and
- (e) Interest at the rate of seven percent (7%) per annum on the amount found due to the lien claimant and from the date found by the court that the sum was due and payable.

(2) Proceedings under subsection (1) of this section are entitled to priority of hearing second only to criminal hearings. The plaintiff in the action may serve upon the adverse party a "demand for thirty (30) day setting" in the proper form, and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before Friday next, vacate a case or cases as necessary and set the lien claimant's case for hearing, on a day or days certain, to be heard within thirty (30) days of the filing of the "demand for thirty (30) day setting." Only one (1) such preferential setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the plaintiff in writing. If the hearing date is vacated without that stipulation, upon service and filing of a "demand for thirty (30) day setting," a new preferential setting must be given.

#### **History:**

[45-522, added 1993, ch. 378, sec. 7, p. 1390.]

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# Idaho Statutes

TITLE 45  
LIENS, MORTGAGES AND PLEDGES

CHAPTER 5  
LIENS OF MECHANICS AND MATERIALMEN

45-523. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- MOTION TO ENFORCE LIABILITY OF SURETY. (1) By entering into a bond given pursuant to section 45-519, Idaho Code, the surety submits himself to the jurisdiction of the court in which the bond is filed in the proceeding for release of the lien, and the surety irrevocably appoints the clerk of that court as its agent upon whom any papers affecting its liability on the bond may be served. Its liability may be enforced on motion without the necessity of an independent action. The motion and such notice of motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the surety if his address is known.

(2) The motion described in subsection (1) of this section must not be instituted until the lapse of thirty (30) days following the giving of notice of entry of judgment in the action against the lien claimant's debtor, if no notice of appeal from the judgment is filed, nor may the motion be instituted until the lapse of thirty (30) days following the filing of the remittitur from the court of appeals or the supreme court, if an appeal has been taken from the judgment.

**History:**

[45-523, added 1993, ch. 378, sec. 8, p. 1391.]

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# Idaho Statutes

## TITLE 45 LIENS, MORTGAGES AND PLEDGES

### CHAPTER 5 LIENS OF MECHANICS AND MATERIALMEN

45-524. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- EXCEPTION TO SUFFICIENCY OF SURETY. (1) The lien claimant may, within two (2) days after the service of a copy of the petition for release of the lien with a copy of the bond attached thereto pursuant to section 45-520, Idaho Code, file with the clerk of the court in the action a notice excepting to the sufficiency of the surety on the bond, and shall, at the same time and together with that notice, file an affidavit setting forth the grounds and basis of the exceptions to the surety, and shall serve a copy of the notice and a copy of the affidavit upon the attorney or the petitioner on the same date as the date of filing of the notice and affidavit. A hearing must be had upon the justification of the surety at the same time as that set for the hearing on the petition for an order to release the lien.

(2) If the lien claimant fails to file and serve the notice and affidavit within two (2) days after the service of the petition for release of the lien, he shall be deemed to have waived all objection to the justification and sufficiency of the surety.

#### **History:**

[45-524, added 1993, ch. 378, sec. 9, p. 1391.]

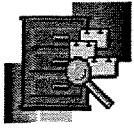
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# **Addendum B to American Bank's Opening Brief**

## **Idaho's Contractor Registration Act**

**Idaho Code Sections 54-5201  
through 54-5219**



# Idaho Statutes

TITLE 54  
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 52  
IDAHO CONTRACTOR REGISTRATION ACT

54-5201. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Contractor Registration Act."

**History:**

[54-5201, added 2005, ch. 153, sec. 1, p. 471.]

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# Idaho Statutes

TITLE 54  
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 52  
IDAHO CONTRACTOR REGISTRATION ACT

54-5202. DECLARATION OF POLICY. The legislature finds and declares that the practice of construction in the state of Idaho affects the public health, safety and welfare of its citizens. The legislature further finds that it is in the public interest to provide a mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners of construction. To aid in fulfilling these purposes, this chapter provides for the registration of construction contractors within the state of Idaho.

**History:**

[54-5202, added 2005, ch. 153, sec. 1, p. 471.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5203. DEFINITIONS. As used in this chapter:

(1) "Board" means the Idaho contractors board as created in section 54-5206, Idaho Code.

(2) "Bureau chief" means the chief of the bureau of occupational licenses.

(3) "Construction" means the performance of building, altering, repairing, adding to, subtracting from, improving, reconstructing, moving, excavating, wrecking or demolishing any building, highway, road, bridge, or other structure, project, development or improvement to real property, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

(4) "Contractor" means:

(a) Any person who in any capacity undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to, or does himself or by or through others, perform construction; or

(b) A construction manager who performs construction management services.

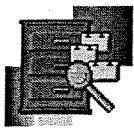
(5) "Department" means the department of self-governing agencies of the state of Idaho.

(6) "Person" means any individual, firm, partnership, limited liability company, limited liability partnership, corporation, trust, association or other entity or organization capable of conducting business, or any combination thereof acting as a unit.

#### **History:**

[54-5203, added 2005, ch. 153, sec. 1, p. 471.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5204. REGISTRATION REQUIRED. (1) On and after January 1, 2006, it shall be unlawful for any person to engage in the business of, or hold himself out as, a contractor within this state without being registered as required in this chapter.

(2) It shall be unlawful for a contractor to engage any other contractor who is required by this chapter to be registered as a contractor unless such other contractor furnishes satisfactory proof to the contractor that he is duly registered under the provisions of this chapter.

(3) Any person who engages in the business or acts in the capacity of a contractor, whether or not duly registered, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho contractors board, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

#### **History:**

[54-5204, added 2005, ch. 153, sec. 1, p. 472.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5205. EXEMPTIONS FROM REGISTRATION. (1) Nothing in this chapter shall be construed to restrict any person licensed, registered, or otherwise regulated by the state of Idaho from engaging in the profession or practice for which they are licensed, registered or otherwise regulated by the state of Idaho including, but not limited to, persons licensed pursuant to chapters 3, 10, 12, 19, 26, 45 and 50, title 54, Idaho Code, nor shall this chapter require such persons otherwise licensed, registered or regulated to obtain such registration as required by this chapter, so long as such person is not acting with the intent to evade this chapter. No such person exempt hereunder may hold himself out as a registered contractor.

(2) In addition to the exemption set forth in subsection (1) of this section, registration as provided for in this chapter shall not be required for the following, so long as such person is not acting with the intent to evade this chapter and so long as such person does not hold himself out as a registered contractor:

(a) A person who only performs labor or services for wages or a salary as an employee of a contractor, or as an employee of a person otherwise exempt by the provisions set forth in this chapter, or strictly as a volunteer or as part of a bona fide educational curriculum or nonprofit charitable activity for which no wages or salary shall be paid; provided however, that such exemption shall not apply to any subcontractor or other independent contractor who is not otherwise exempt;

(b) An authorized representative of the United States government, the state of Idaho, or any incorporated municipality, county, alternative form of local government, highway district, reclamation district, or other municipal or political corporation or subdivision of this state;

(c) A public utility operating under the regulation of the Idaho public utility commission as set forth in title 61, Idaho Code, in the construction, maintenance, or development work incidental to its own business;

(d) A person who performs repair or operation incidental to the discovery or production of oil, gas or minerals or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit;

(e) A person who only furnishes materials, supplies or equipment without that person installing or fabricating them into or consuming them in the performance of the work of the construction contractor;

(f) A person performing work on one (1) undertaking or project considered casual, minor, or inconsequential, whether by one (1) or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than two thousand dollars (\$2,000). The exemptions prescribed in this paragraph (f) shall not apply when the work or construction is part of a larger construction

project, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than two thousand dollars (\$2,000) for the purpose of evasion of this chapter or otherwise;

(g) A farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

(h) A person who engages in the construction of an agriculture building which is exempt from the Idaho building code act as set forth in section 39-4116, Idaho Code;

(i) An irrigation district, canal company, reservoir district, ground water district, water district, water measurement district, recharge district, flood control district, drainage district, or other water delivery or water management entity, or an operating agent of irrigation districts whose board consists of directors of its member districts;

(j) An operation related to clearing or other work upon land in rural districts for fire prevention purposes;

(k) An owner who contracts for work to be performed by a registered contractor on his own property, provided however, this exemption shall not apply to an owner who, with the intent to evade this chapter, constructs a building, residence or other improvement on the owner's property with the intention and for the purpose of selling the improved property at any time during the construction or within twelve (12) months of completion of such construction;

(l) An owner performing construction on the owner's personal residential real property, whether or not occupied by the owner, provided however, this exemption shall not apply to an owner who is otherwise regulated by this chapter who constructs a building, residence or other improvement on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for not less than twelve (12) months prior to the sale of such property;

(m) Owners of commercial properties, or lessees of commercial properties with the consent of the owner, who, whether themselves or with their own employees, perform maintenance, repair, alteration or construction work in or upon the properties;

(n) A real estate licensee acting within the scope of his license pursuant to chapter 20, title 54, Idaho Code, who, incident to a regulated real estate transaction, assists his clients in scheduling or performing nominal maintenance and repairs upon such properties being transferred; provided however, nothing in this section shall otherwise authorize a real estate licensee or a property manager to act in the capacity of a contractor unless registered with the board;

(o) A contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(p) A person working on the person's own residence, if the residence is owned by a person other than the resident;

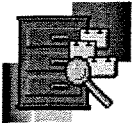
(q) A person who engages in the construction of buildings to be used primarily for industrial chemical process purposes as set forth in section 39-4103, Idaho Code; or

(r) A person who engages in the construction of a modular building as defined in section 39-4301, Idaho Code, that is constructed in the state of Idaho for installation on a building site outside the state.

**History:**

[54-5205, added 2005, ch. 153, sec. 1, p. 472; am. 2007, ch. 252, sec. 13, p. 748.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5206. IDAHO CONTRACTORS BOARD. (1) The Idaho contractors board is hereby created and made a part of the bureau of occupational licenses. It shall be the responsibility and duty of the bureau chief to administer this chapter, and the bureau chief shall exercise such powers and duties as are reasonably necessary to enforce the provisions of this chapter. The board may promulgate such rules as may be necessary to carry out the provisions of this chapter in order to effectuate the purposes herein and for the orderly and efficient administration thereof, except as may be limited or prohibited by law and the provisions of this chapter.

(2) The board shall consist of four (4) members who are contractors, and one (1) member of the public at large, all of whom shall be appointed by the governor as follows: one (1) contractor from the northern district consisting of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner counties; one (1) contractor from the southeastern district consisting of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock counties; one (1) contractor from the southwestern district consisting of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley counties; one (1) contractor from the south central district consisting of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties; and one (1) member of the public at large who resides in the state of Idaho and is a person of integrity and good reputation who has lived in this state for at least five (5) years immediately preceding appointment, who has never been registered as a contractor in this or another state, and who has never had a substantial personal, business, professional or pecuniary connection with a contractor except as a purchaser or owner of real property.

(3) Each member of the board who is a contractor shall serve a term of four (4) years and such terms shall be staggered. The initial board shall have one (1) member whose term expires July 1, 2007; one (1) member whose term expires July 1, 2008; one (1) member whose term expires July 1, 2009; and one (1) member whose term shall expire July 1, 2010. The member of the board who is a member of the public at large shall serve a four (4) year term, which initial term shall expire on July 1, 2008. No member of the board may be appointed to more than two (2) consecutive terms.

(4) The board shall meet within thirty (30) days after the appointment of all its members and thereafter at such other times as may be expedient and necessary for the proper performance of its duties, but not less than once during each calendar quarter. At the board's first meeting, the members shall elect one (1) of their number to be chairman. The chairman may serve in such capacity for a one (1) year term and may not serve in such capacity for more than two (2) consecutive terms. A majority of the board shall constitute a quorum for the transaction of business.

(5) The board may delegate to the bureau chief:

(a) The power to perform ministerial functions, investigate and discipline, hold hearings, appoint hearing officers, summon witnesses to appear, administer oaths and take affirmations of witnesses at any formal proceeding or before a duly appointed hearing officer;

(b) The power to appoint competent persons to issue subpoenas, administer oaths and take testimony; and

(c) The power to enforce orders of the board.

(6) Each member of the board shall be compensated as provided by section 59-509(n), Idaho Code.

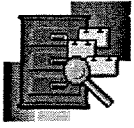
(7) On and after January 1, 2006, each member of the board who is a contractor shall be registered in accordance with this chapter and shall be in good standing.

**History:**

[54-5206, added 2005, ch. 153, sec. 1, p. 474; am. 2008, ch. 107, sec. 1, p. 304.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5207. GENERAL POWERS AND DUTIES OF THE BOARD. The board shall enforce the minimum standards and requirements therefor as provided by this chapter and by rule adopted by the board. The board may exercise such powers and duties as are reasonably necessary to carry out the provisions of this chapter and it may, among other things:

(1) Accept or reject applications for registration and establish the fees to be charged for application, registration and renewal, subject to the provisions of this chapter;

(2) Hold public meetings and attend or be represented at such meetings, within or without the state, prepare and publish rules pertaining to this chapter and such other information as may be necessary, and furnish copies thereof to those engaged in the business, trade, practice or work of contracting and to the public upon request;

(3) Furnish standards and procedures and prescribe reasonable rules for applications, qualifications and registration of contractors, including proration of registration fees and staggering initial annual registration; and

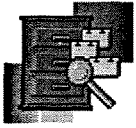
(4) Under such rules as it may adopt, investigate, classify and determine the qualifications of applicants for registration pursuant to this chapter; and

(5) Contract with the bureau of occupational licenses to provide administrative services.

**History:**

[54-5207, added 2005, ch. 153, sec. 1, p. 475.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

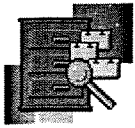
### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5208. DENIAL OF LIEN RIGHTS. A contractor who is not registered as set forth in this chapter, unless otherwise exempt, shall be denied and shall be deemed to have conclusively waived any right to place a lien upon real property as provided for in chapter 5, title 45, Idaho Code. This section shall not operate as a denial of lien rights for any subcontractor or independent contractor who is duly registered in accordance with this chapter and who is performing services at the direction of another contractor, nor shall it operate as a denial of lien rights for any employee of any contractor who is not duly registered, or for any supplier of materials to such unregistered contractor, so long as such subcontractor, independent contractor, employee or supplier did not have actual knowledge that such contractor was not duly registered, or who reasonably believed that such contractor was duly registered.

**History:**

[54-5208, added 2005, ch. 153, sec. 1, p. 476.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5209. BUILDING PERMITS AND CONTRACTOR REGISTRATION NUMBER -- POSTING AT SITE. (1) On and after January 1, 2006, no building inspector or such other authority of any county, municipality or district charged with the duty of issuing building permits or other permits for construction of any type shall issue any permit without first requesting presentment of an Idaho contractor's registration number. Such registration number presented shall be conspicuously entered on the face of a permit so issued; provided however, a permit may be issued to a person otherwise exempt from the provisions of this chapter provided such permit shall conspicuously contain the phrase "no contractor registration provided" on the face of such permit. No authority charged with the duty of issuing such permit shall be required to verify that the person applying for such permit is exempt as provided in this chapter.

(2) All building permits or other permits for construction of any type shall be posted at the construction site in such a manner that the conspicuous statements set forth in subsection (1) of this section are visible.

(3) No person engaged in construction activities who is otherwise exempt as set forth in section 54-5205, Idaho Code, shall be required to have a contractor registration number.

#### **History:**

[54-5209, added 2005, ch. 153, sec. 1, p. 476.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5210. APPLICATION FOR REGISTRATION. (1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the board and which shall include the following information pertaining to the applicant:

(a) Social security number for natural persons or employer tax identification number for other persons;

(b) The name and address under which the applicant conducts business;

(c) The name and address of each principal, member, partner, shareholder, or any other person claiming an ownership interest in the business entity for which registration is being applied for;

(d) A certificate issued by an insurance company authorized to do business in the state of Idaho or other satisfactory proof that the applicant has procured and has in effect worker's compensation insurance or a statement by the contractor as to why such certificate or coverage is not required for the applicant;

(e) A certificate issued by an insurance company authorized to do business in the state of Idaho that the applicant has procured and has in effect a general liability policy, including products and completed operations insurance covering the applicant's construction operations in the sum of not less than three hundred thousand dollars (\$300,000) single limit. The name of the insurance company, the insured and policy number shall be made available only to persons or their insurers stating that they possess a claim against the contractor;

(f) A statement of the type of construction to be undertaken by the applicant, or such other information as may be required by the board pursuant to administrative rules adopted by the board; and

(g) A statement that the applicant and each principal, member, partner, shareholder or any other person claiming an ownership interest in the business entity for which registration is being applied for herein has never been denied, surrendered or had revoked a contractor's license or registration privilege in this or any other state or, if a license or registration privilege has been denied, surrendered or revoked in this or any other state, an explanation of any such denial, surrender or revocation.

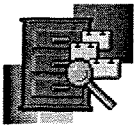
(2) Along with such application, the applicant shall submit a registration fee as may be set by the board to cover its administrative and enforcement costs, not to exceed one hundred fifty dollars (\$150) per year.

(3) An application for registration that has been denied by the board shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and shall be subject to the provisions of that chapter as well as the administrative rules adopted by the board governing contested cases.

#### History:

[54-5210, added 2005, ch. 153, sec. 1, p. 476; am. 2009, ch. 89, sec. 1, p. 258.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5211. REGISTRATION -- RENEWAL. A registration shall be issued for a period of not less than one (1) year nor more than five (5) years, as determined by the board. Each registration shall set forth its expiration date on the face of the certificate. No less than thirty (30) days prior to the expiration of such registration, the board shall notify a registered contractor that such registration is set to expire. Reinstatement of a lapsed registration shall require the payment of a renewal fee and reinstatement fee in accordance with the administrative rules adopted by the board. The failure of any registered contractor to renew his registration as required herein and by the administrative rules of the board shall not deprive such person of the right to renewal upon subsequent application for registration and payment of the required board fees.

**History:**

[54-5211, added 2005, ch. 153, sec. 1, p. 477.]

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# Idaho Statutes

TITLE 54  
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 52  
IDAHO CONTRACTOR REGISTRATION ACT

54-5212. DISPOSITION OF RECEIPTS -- EXPENSES. All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund.

**History:**

[54-5212, added 2005, ch. 153, sec. 1, p. 477.]

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# Idaho Statutes

TITLE 54  
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 52  
IDAHO CONTRACTOR REGISTRATION ACT

54-5213. RECIPROCAL REGISTRATION. (1) On and after January 1, 2007, no incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this state shall implement its own program for the registration or licensure of construction contractors.

(2) A contractor may provide a verified copy of any current and unrestricted license, registration, or other type of certification granted to the contractor by any incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this state issued pursuant to a duly adopted and enacted ordinance prior to January 1, 2007, to the board for review, along with a reciprocal registration fee not to exceed fifty dollars (\$50.00), as determined by board rule, which is necessary for the administration and processing of such application. If the review indicates that the license, registration or certification was granted under provisions that were not less stringent than those provided by this chapter, the applicant shall be issued a registration based upon reciprocal registration.

**History:**

[54-5213, added 2005, ch. 153, sec. 1, p. 478; am. 2007, ch. 183, sec. 1, p. 531.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5214. REGISTRATION CERTIFICATE -- DISPLAY . (1) Upon receipt of a duly completed application, together with the registration fee, and after such verification process as the board may from time to time deem appropriate by rule, a certificate of registration and a wallet-sized card showing the registrant's name and showing a registration number shall be issued, commencing on the date of issue and continuing in effect for a period of not less than one (1) year nor more than five (5) years, as determined by the board. Application for renewal of registration shall be filed on or before thirty (30) days prior to the expiration date. The board shall issue a certificate of registration to an applicant upon the applicant's compliance with the registration requirements of this chapter. Certificates shall not be assignable nor transferable. Upon any change of ownership or a change of address of a registered contractor entity, the board shall be notified by such entity within thirty (30) days. A certificate of registration, without the payment of a registration fee, shall be issued to any person who is granted a public works contractor license or a construction manager license, so long as those requirements for licensure in Idaho are met.

(2) A contractor registered pursuant to this chapter shall prominently display his contractor registration number for public view in his place of business, on advertising, contracts, permits, company or business letterheads, and purchase orders and subcontracts within sixty (60) days of issue of registration.

#### **History:**

[54-5214, added 2005, ch. 153, sec. 1, p. 478.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5215. AUTHORITY TO INVESTIGATE AND DISCIPLINE -- SUSPENSION OR REVOCATION OF REGISTRATION. (1) The board may investigate any person engaged in contracting within the state of Idaho, or any person believed to have acted as a contractor without being duly registered as required by this chapter. Upon receipt of a written complaint from a person who claims to have been injured or defrauded by such person, or upon information received by the board, the board shall perform an investigation of the facts alleged against such person. If the board investigation reveals that the facts alleged or received are sufficient to proceed with a formal action, the board may authorize the filing of an administrative complaint against such person and may seek injunctive relief prohibiting such person from engaging in construction.

(2) The board shall have the authority to issue informal letters of reprimand, suspend or revoke a registration, impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000), recover the costs and fees incurred in an investigation and prosecution, or to issue a formal reprimand against any registered contractor if, after an opportunity for a hearing, the board determines that:

(a) A contractor has violated any of the provisions of this chapter including, but not limited to, failure to keep current or provide insurance coverage as required by this chapter;

(b) A contractor has violated any of the provisions of chapter 6, title 48, Idaho Code, relating to consumer protection including, but not limited to, making fraudulent misrepresentations to consumers;

(c) A contractor employed fraud or deception, made a misrepresentation or misstatement, or employed any unlawful means in applying for or securing registration as a contractor;

(d) A contractor employed fraud or deception, made a misrepresentation or misstatement, or employed any unlawful means in applying for or securing a building permit or other permits for construction of any type;

(e) A contractor failed to pay the required fee for registration as provided in this chapter;

(f) A contractor has been convicted of or has engaged in conduct constituting a violation of public laws, ordinances or rules of this state, or any subdivision thereof, relevant to contracting, reflecting on the registered contractor's ability or qualifications to continue contracting for other persons, and making the registered contractor a threat to the public safety, health or well-being;

(g) A contractor has engaged in any other conduct whether of the same or a different character than hereinabove specified which constitutes dishonest or dishonorable dealings;

(h) A contractor was grossly negligent or reckless in his conduct in the performance of construction. For purposes of this chapter, conduct is grossly negligent or reckless if, when taken as a whole, it is

conduct which substantially fails to meet the generally accepted standard of care in the practice of construction in Idaho;

(i) A contractor had a license, registration or certification revoked, suspended or refused by this or another state, territory, incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this or another state, or omitted such information from any application to the board, or failed to divulge such information when requested by the board;

(j) A contractor has been adjudged mentally incompetent by a court of competent jurisdiction; or

(k) A contractor interfered with an investigation or disciplinary proceeding by a willful misrepresentation of facts or by the use of threats or harassment against any person to prevent such person from providing evidence in a disciplinary proceeding, investigation or other legal action instituted in accordance with this chapter.

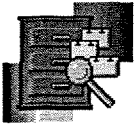
(3) A contractor whose registration has been revoked or suspended shall be required to return his certificate of registration within the time determined by the board or, upon a failure to do so, shall be liable for civil penalties as set by the board but not to exceed fifty dollars (\$50.00) per day for each day the certificate is not returned after the expiration of the period allowed.

(4) The suspension or revocation of a registration shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and shall be subject to the provisions of that chapter as well as the administrative rules adopted by the board governing contested cases.

**History:**

[54-5215, added 2005, ch. 153, sec. 1, p. 478.]

*The Idaho Code is the property of the state of Idaho and is made available on the Internet as a public service. Any person who reproduces or distributes the Idaho Code for commercial purposes is in violation of the provisions of Idaho law and shall be deemed to be an infringer of the state of Idaho's copyright.*



# Idaho Statutes

TITLE 54  
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 52  
IDAHO CONTRACTOR REGISTRATION ACT

54-5216. REINSTATEMENT OF REGISTRATION AFTER DISCIPLINE. The board may reinstate a suspended or revoked registration upon a showing that:

- (1) The grounds for such suspension or revocation have been eliminated;
- (2) Such a violation is not likely to reoccur in the future; and
- (3) The public interest is not jeopardized by reinstating the registration.

**History:**

[54-5216, added 2005, ch. 153, sec. 1, p. 480.]

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# Idaho Statutes

## TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES

### CHAPTER 52 IDAHO CONTRACTOR REGISTRATION ACT

54-5217. PENALTIES. (1) Any person acting in the capacity of a contractor within the meaning of this chapter without a current registration as herein required shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(2) No person engaged in the business or acting in the capacity of a contractor, unless otherwise exempt, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which registration is required by this chapter without alleging and proving that he was a duly registered contractor, or that he was otherwise exempt as provided for in this chapter, at all times during the performance of such act or contract.

**History:**

[54-5217, added 2005, ch. 153, sec. 1, p. 480.]

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# Idaho Statutes

TITLE 54  
PROFESSIONS, VOCATIONS, AND BUSINESSES

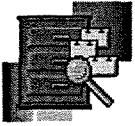
CHAPTER 52  
IDAHO CONTRACTOR REGISTRATION ACT

54-5218. ATTORNEY GENERAL -- PROSECUTING ATTORNEY. It shall be the right and duty of the attorney general or the prosecuting attorneys of the various counties to represent and appear for the people of the state of Idaho and the department in all actions and proceedings involving any question under this chapter or under any order or act of the board and to perform such other services as are required.

**History:**

[54-5218, added 2005, ch. 153, sec. 1, p. 480.]

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# Idaho Statutes

TITLE 54  
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 52  
IDAHO CONTRACTOR REGISTRATION ACT

54-5219. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

**History:**

[54-5219, added 2005, ch. 153, sec. 1, p. 480.]

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# **Addendum C to American Bank's Opening Brief**

## **Published Legislative History of Idaho's Lien Bond Statute**

STATEMENT OF PURPOSE

RS 02529

This legislation extends the deadline for filing a lien for subcontractors and material suppliers to 90 days from 60 days previously, making it consistent with general contractors.

Further, it adds a procedure whereby a mechanics lien can be released by the posting of a bond and filing a petition with the district court.

Procedures are established to contest the sufficiency of the bond, to resolve the claim and to collect on the bond including interest and attorneys fees.

FISCAL NOTE

None

HOUSE STATE AFFAIRS COMMITTEE

DATE: February 16, 1993  
TIME: 8:30 A.M.  
PLACE: Statehouse, Room 412  
PRESENT: Chairman Ahrens, Vice Chairman Deal, Representatives Alexander, Berain, Crane, Danielson, Judd, King, Lance, Loertscher, Newcomb, Stennett, Stoicheff, Stone, Sutton, Tippetts, Vandenberg and Wood  
ABSENT/  
EXCUSED: None  
GUESTS: See Attached List

The Chairman called to meeting to order at 8:40 A.M.

MOTION: Rep. Wood moved, seconded by Rep. Danielson, to approve the minutes from the meeting held on February 15, 1993 as written. Motion carries.

RS 02341 Rep. Max Black asked the committee to print RS 02341.

MOTION: Rep. Crane moved, seconded by Rep. Deal, to send to print, RS 02341 with the recommendation that it be sent to the Business Committee. Motion carries.

RS 02503 Rep. Stennett said this was brought to his attention for the lack of a mechanism to title watercraft. It is protection for the consumer and lender. It will provide clear knowledge of ownership.

MOTION: Rep. Deal moved, seconded by Rep. Danielson, to send to print RS 02503 with the recommendation that it be sent to Mr. Speaker. Motion carries.

RS 02510 Rep. Stennett said there is no provision for titling truck campers. The same argument applies, no way of establishing a clear trail of ownership to those campers.

MOTION: Rep. Wood moved, seconded by Rep. Judd, to send to print RS 02510 with the recommendation that it be sent to Transportation Committee. Motion carries.

RS 02529 Rep. Stubbs said the first part of the bill is simple. If you are a contractor or supplier, you have 60 days in which to file a lien after the last day you render service. If you are a general contractor, you have 90 days. Usually a lien is only filed if compensation for materials and service is in jeopardy. The second half is one that eliminates the possibility for lawsuits. It allows someone who is grieved by a lien to post a bond and bond around the lien. In essence you start an action, you go into court because you have to have somebody look at the bond to make sure it is a legitimate bond, that the lien creditor is adequately protected by putting the bond as security instead of a lien on the house.

A brief discussion ensued after which a motion was made.

MOTION: Rep. Crane moved, seconded by Rep. King, to send to print RS 02529 with the recommendation to send it to Business Committee. Motion carries.

BUSINESS COMMITTEE MINUTES

March 5, 1993

Page 3

8, the sub-committee will review the advisory committee. It is the intent of the chair to address a recommendation of Tuesday, March 9.

HB 63: Kay Manweiler, Occupational Licensing Board, addressed the committee regarding protective orders and subpoena powers addressed in HB 63, dealing with the Accountancy Act. Ms. Manweiler addressed these concerns out of order of the listed bills, as she would not be available to address the sub-committee later in the day. Ms. Manweiler explained the protective order seeks to clothe a witness from disclosure when necessary.

HB 305: Bob Corbell, Idaho Association of Contractors, spoke to the committee on HB 305. Mr. Corbell explained HB 305 extends the deadline for filing a lien for subcontractors and material suppliers to 90 days from 60 days previously, making it consistent with general contractors. This will allow all parties 90 days, instead of having some at 60 days and others at 90.

MOTION: Representative Deal made a motion to send HB 305 to the floor with a do pass recommendation. Motion seconded by Representation Taylor. Motion passed unanimously. Representatives Stubbs and Deal will sponsor the bill.

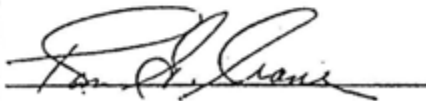
HB 195: Representatives Stubbs presented HB 195 with amendments that have been drafted to accompany the bill. HB 195 deals with employee leasing companies that operate in Idaho.

MOTION: Representative Deal made a motion to send HB 195 to General Orders for amendment. Motion seconded by Representative Jones. Motion passed unanimously. Representative Stubbs will sponsor HB 195.

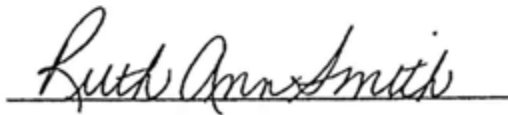
HB 239: Bob Corbell, Idaho Association of Contractors, presented HB 239. HB 239 will help generate business for in-state vendors who supply goods or services to state institutions by giving them an advantage over out-of-state vendors equal to two percent of the bid value or to the amount of a similar preference given to the in-state vendors of another state, whichever is greater. The question arose as to the retaliatory action surrounding states might take.

Alan Fitzgerald, Executive Director of Buy Idaho, encouraged passage of the bill to keep the economy flowing in-state. Motion seconded by Representative Flandro. Motion passed with Representative Stennett voting nay.

There being no further business before the committee, meeting was adjourned at 3:45 p.m.



RON CRANE, CHAIRMAN



RUTH ANN SMITH, SECRETARY



# **Addendum D to American Bank's Opening Brief**

***Prowall Drywall v. Plainridge, LLC***

**Memorandum Decision and Order Re:  
Wells Fargo's Motion for Summary  
Judgment Against Prowall Drywall &  
Insulation, Inc.**

RECEIVED

NO. \_\_\_\_\_ FILED  
A.M. 11:20 P.M. \_\_\_\_\_

FEB 03 2011

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

FEB 02 2011

MONFALC, THOMAS, BARRETT,  
WICK & FIELDS, CHTD.

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk  
By DIANE CATMAN  
Deputy

PROWALL DRYWALL &  
INSULATION, INC., an Idaho  
corporation

Plaintiff,

vs.

PLAINRIDGE, LLC, an Idaho limited  
liability company, et al.,

Defendants.

Case No. CV-OC-2009-01225

MEMORANDUM DECISION  
AND ORDER RE: WELLS  
FARGO'S MOTION FOR  
SUMMARY JUDGMENT  
AGAINST PROWALL DRYWALL  
& INSULATION, INC.

BUCHANAN CONSTRUCTION IDAHO,  
LLC, an Idaho limited liability company,

Plaintiff,

vs.

RED CLIFF DEVELOPMENT, INC., an  
Idaho corporation, et al.,

Defendants.

Case No. CV-OC-2009-02055

TERRA-WEST, INC., an Idaho corporation,

Plaintiff,

vs.

MICHAEL R. REILY, an individual, et al.,

Defendants.

Case No. CV-OC-2009-07052

WESTERN NEVADA SUPPLY CO., a  
Nevada corporation

Plaintiff,

Case No. CV-OC-2009-03777

vs. )  
 )  
 BRIAN SMITH, an individual, d/b/a APEX; )  
 PLAINRIDGE SUBDIVISION, LLC, an Idaho )  
 limited liability company, et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

LLOYD LUMBER COMPANY, INC., an )  
 Idaho corporation, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 Lori SWAIN, an individual, et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. CV-OC-2009-04590

I. BACKGROUND

Presently pending before the Court is a motion filed on behalf of Wells Fargo Bank, NA (Wells Fargo) seeking summary judgment against Prowall Drywall & Insulation, Inc. (Prowall). In support of its motion, Wells Fargo makes three claims: (1) that Prowall was precluded from filing liens on the lots that are the subject of this litigation because it hired unregistered contractors to perform work on the lots; (2) that Prowall is jurisdictionally barred from making a claim to one of the lots because it failed to list Wells Fargo's predecessor-in-interest's interest in one of the lots in Prowall's complaint; and (3) that Prowall is barred from raising new facts that would create an issue of fact because it relies on information that was untimely disclosed to Wells Fargo.

This action arises out of a contract dispute between Prowall and Plainridge, LLC. Plainridge hired Prowall to provide labor and materials in the construction of several condominiums at Plainridge Place, including Lots 9 and 10. In April 2008, Prowall, with the



assistance of two subcontractors, Rancho Drywall, a then-unregistered contractor, and B&J Drywall & Cleaning, LLC, commenced work by “pre-rocking” the condominiums. Following framing inspections in June 2008, Prowall began hanging sheet rock, taping, and mudding. By June 17, 2008, Prowall and its subcontractors had completed their work on Lots 9 and 10. Claiming it was still owed money for labor and material supplied under its contract with Plainridge, subsequently Prowall filed liens against Lots 9 and 10 on July 21, 2008. On May 21, 2008, after the pre-rocking, but before the hanging of sheetrock, Wells Fargo’s predecessor-in-interest recorded deeds of trust to Lots 9 and 10.

On July 21, 2008, Prowall filed lien claims to Lots 9 and 10 with the statutorily required contents. Approximately six months later, it commenced this action, naming, among others, Wells Fargo’s predecessor-in-interest in its complaint. In its complaint, Prowall provided the legal description of the two lots it was seeking to foreclose and attached the lien claims to the complaint. However, the complaint failed to name Wells Fargo’s interest in Lot 9, naming only its interest in Lot 10.

## II. ANALYSIS

Summary judgment may be entered when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c); *see also Kelso v. Lance*, 134 Idaho 373, 375, 3 P.3d 51, 53 (2000). In a summary judgment context, the moving party has the burden of showing that there is no genuine issue of material fact. *BMC West Corp. v. Horkley*, 144 Idaho 890, 893, 174 P.3d 399, 402 (2007). However, the non-moving party “cannot rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact.” *McCoy v. Lyons*, 120 Idaho 765, 820

P.2d 360, 364 (1991). The non-moving party may not rely on bare allegations or denials; it must set forth specific facts that show a genuine issue of material fact. *Vebillis v. Dependable Appliance Co.*, 107 Idaho 335, 689 P.2d 227 (Ct. App. 1984). However, the disputed facts are construed liberally in favor of the non-moving party, and all reasonable inferences drawn from those facts are drawn in favor of the non-moving party. *BMC West*, 144 Idaho at 893, 174 P.3d at 402.

#### A. Statutory Penalties for Hiring Unregistered Contractors

In Idaho, it is “unlawful for any person to engage in the business of . . . a contractor . . . without being registered . . .” with the Idaho Contractors Board. I.C. § 54-5204(1). Idaho law also makes it “unlawful for a contractor to engage any other contractor who is required . . . to be registered as a contractor unless such other contractor furnishes satisfactory proof to the contractor that he is duly registered . . .” I.C. § 54-5204(2). A contractor that does not register as required is “deemed to have conclusively waived any right to place a lien upon real property” under the mechanic’s lien statute. I.C. § 54-5208. Oddly, section 5208 makes clear that it does not deny the rights of a registered “subcontractor or independent contractor . . . who is performing services at the direction of another contractor who is not duly registered . . . so long as such subcontractor [or] independent contractor . . . did not have actual knowledge that such contractor was not duly registered.” *Id.* Furthermore, a contractor that fails to register may not “bring or maintain any action in any court of this state for the collection of compensation for the performance of any contract for which registration is required . . .” I.C. § 54-5217(2).

Prowall argues that these statutes, read together, do not deny the rights of a registered contractor that unknowingly hires an unregistered contractor. Its first contention is that the

statute denying lien rights applies only to contractors who are unregistered, and thus cannot be applied to registered contractors on the basis of their hiring unregistered subcontractors. It argues that because Prowall was a registered contractor at all times during the construction, it is entitled to a lien. Prowall further argues that even if the statute applies to contractors who hire unregistered subcontractors, a claim is permissible once the previously unregistered subcontractor registers. Prowall cites a recent Idaho case to support the proposition that the statute only bars recovery by contractors that are unlicensed at the time of commencing an action. This court is not persuaded by either of Prowall's arguments.

Whether Sections 5208 and 5217 apply to the hiring of unregistered subcontractors is an issue of first impression. When engaging in statutory interpretation, this Court must attempt to give meaning and effect to all the provisions of a statute. *Bradbury v. Idaho Judicial Counsel*, 149 Idaho 107, 116, 233 P.3d 38, 47 (2009). The Court will not presume that the legislature enacted superfluous statutes, and the Court will not make surplusage of provisions of the statute. *Id.* At the outset, it is worth noting that whether Prowall knew Rancho was unregistered is irrelevant. The statute requires that a contractor not engage a subcontractor unless the subcontractor provides satisfactory proof that it was registered. Thus, the statute creates an affirmative duty on the part of the contractor to verify the registration status of a subcontractor prior to engaging it. Therefore, Prowall's lack of knowledge of Rancho's registration status is a failure of that duty, and it is irrelevant whether Prowall was aware that Rancho was unregistered.

As to the issue of whether Sections 5208 and 5217 apply to registered contractors that engage unregistered subcontractors, this Court finds that they do apply. The first sentence of Section 5208, if read in a vacuum, would apparently operate to deny lien rights only to

unregistered contractors, and thus all registered contractors would have lien rights. However, that interpretation would render meaningless other parts of the statute. The most glaring is the first clause of the second sentence in the statute, which states that the statute will not operate to deny the rights of registered contractors operating at the direction of unregistered contractors. If the first sentence were to strictly apply only to unregistered contractors themselves, that clause would be utterly without meaning, as it only guarantees that lien rights will not be denied to a subset of registered contractors, which would not have their rights denied anyway.

The second part of Chapter 52 that would be rendered virtually meaningless would be proscription of hiring unregistered contractors. Section 5204 specifically makes it unlawful to engage a subcontractor without receiving proof that the subcontractor was registered. If there were no penalties applied for violating that provision, it would render “unlawful” virtually meaningless. This Court must apply the law in such a way as to give effect to all statutory provisions. If this Court were to decline to apply the penalty provision to registered contractors who hire unregistered contractors, it would render several provisions of this statute meaningless. Thus, this Court finds that penalties of Sections 5208 and 5217 apply to registered contractors that engage unregistered contractors.

As previously noted, Prowall argues that even under this interpretation of Chapter 52, it is not barred from filing its lien claims or commencing this action since Ranchero registered Prowall filed its lien claims or commenced this action. Prowall relies on *Parkwest Homes, LLC v. Barnson*, arguing that the case stands for the proposition that Section 5208 only bars lien claims by contractors that are unregistered at the time of the claim. 149 Idaho 603, \_\_\_, 238 P.3d 203, 208 (2010). In that case, a contractor entered into a construction contract prior

to registering. *Id.* Prior to furnishing any labor, the contractor registered. *Id.* There, the court held that a contractor may claim a lien for any work that it performs while registered, and none of the work it performs while it is not. *Id.* Thus, a contractor must be registered at the time labor is furnished to be able to claim a lien for the labor. Since the penalties of Chapter 52 apply to registered contractors that hire unregistered subcontractors, any lien claims arising while the unregistered subcontractor is employed are conclusively waived, and no action may be brought for collection of debts owed on the labor. Since there is no disagreement that Rancho was unregistered throughout all the work performed by Prowall on the Plainridge Place Condominiums, Prowall's lien claims and action to collect are barred.

#### B. Jurisdictional Bar to Prowall's Claim on Lot 9

In Idaho, a mechanic's lien claimant must commence its action to enforce its lien within six months after filing its lien claim. I.C. § 45-510. If an action to enforce a mechanic's lien is not commenced within six months after the lien claim is filed, the lien ceases to exist and the court loses jurisdiction to enforce the lien. *Bradford v. Palmer*, 86 Idaho 395, 401, 388 P.2d 96, 99 (1963). Thus, whether this Court is barred from enforcing Prowall's lien will turn on whether Prowall's complaint was adequate to commence an action to enforce its lien on Lot 9. Wells Fargo argues that Prowall has failed to commence its action on Lot 9 within the required six months because Prowall failed to name Wells Fargo's interest in Lot 9 in its complaint. This Court disagrees with Wells Fargo's contention.

Contrary to Wells Fargo's argument that Idaho law requires the complaint to list each party's interest, "[t]he key issue in determining the validity of a complaint is whether the adverse party is put on notice of the claims brought against it." *Vendlin v. Costco Wholesale Corp.*, 140 Idaho 416, 427, 95 P.3d 34, 45 (2004). Here, Wells Fargo's predecessor-in-interest

was named in the complaint, as well as its deed of trust in Lot 10. Attached to the complaint were Prowall's lien claims to both Lots 9 and 10, which contained what is statutorily required. The complaint contained a legal description of the property Prowall was seeking to foreclose on, and it requested in its prayer for relief a judgment foreclosing its claims of lien on Lots 9 and 10. The complaint was timely filed. This Court finds that Wells Fargo was put on notice, and thus Prowall's action to enforce its lien on Lot 9 was commenced within six months.

C. Lien Priority and Prowall's Discovery Violation

Finally, Wells Fargo argues that there is no genuine issue of material fact as to when Prowall began its work. Prowall claims that it engaged in "pre-rocking" work in April 2008, before Wells Fargo recorded its deeds of trust. Wells Fargo claims that Prowall did not begin work until June 2008 at earliest. Wells Fargo argues that the affidavit of Ken Rich and attached documents, produced December 30, 2010, contradict Mr. Rich's previous testimony, and was produced in violation of I.R.C.P. 26(e) and this Court's scheduling order. Wells Fargo argues that the documents and affidavit should be ignored to the extent that they contradict Mr. Rich's deposition testimony that Prowall began work after framing inspections in June 2008. This Court disagrees.


Whether to exclude testimony or evidence based on a violation of Rule 26(e) is committed to the sound discretion of the trial court. *Schmechel v. Dille*, 148 Idaho 176, 219 P.3d 1192 (2009). This Court is unwilling to exclude evidence disclosed in violation of a scheduling order absent a showing that the late disclosure prejudiced a party. Here, Wells Fargo does not contend that it has been prejudiced in any way by the late disclosure of the documents. Thus, this Court will not exclude the documents or the information contained in the affidavit of Ken Rich.

Since the documents and affidavit contain evidence that Prowall began its work on the Plainridge Place Condominiums in April 2008, and Wells Fargo did not record its deeds of trust until May 2008, there is a genuine issue of material fact as to which interest has priority. Since there is a genuine issue of material fact, this Court will not grant summary judgment on the theory that Wells Fargo's liens have superior priority.

### III. CONCLUSION

The Wells Fargo lien is superior to the Prowall claim since Prowall failed to meet the specific requirements of the statute required to preserve its lien right; it engaged an unregistered contractor to perform the work, thus forfeiting any lien it might otherwise have claimed or possessed. Thus, Wells Fargo's motion for summary judgment is hereby GRANTED. Since Wells Fargo has made no showing of prejudice stemming from Prowall's late disclosure of documents, this Wells Fargo's motion to strike and disregard testimony and documents is hereby DENIED. Wells Fargo shall prepare a judgment for this Court to sign in accordance with this decision and I.R.C.P. 54(a).

SO ORDERED AND DATED THIS 2nd day of February, 2011.

  
\_\_\_\_\_  
Mike Wetherell  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on this 2nd day of February, 2011,  
I mailed(served) a true and correct copy of the within  
instrument to:

J JUSTIN MAY  
ATTORNEY AT LAW  
1419 W. WASHINGTON  
BOISE ID 83702

JED W MANWARING  
ATTORNEY AT LAW  
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BOISE ID 83701-1617

DATE: Feb 2, 2011

CHRISTOPHER D. RICH  
Clerk of the Court

By:   
Deputy Clerk