

12-4-2013

Allied General Fire and Sec., Inc. v. St. Luke's
Regional Medical Center Respondent's Brief Dckt.
41045

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ALLIED GENERAL FIRE AND SECURITY,
INC.,

Plaintiff,

v.

St. LUKE'S REGIONAL MEDICAL CENTER,
and DOES 1-10,

Defendants.

ST. LUKE'S REGIONAL MEDICAL CENTER,
LTD., an Idaho corporation, and ST. LUKE'S
MAGIC VALLEY REGIONAL MEDICAL
CENTER, LTD., an Idaho corporation,

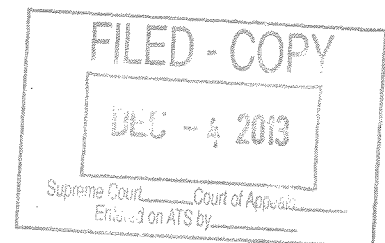
Interpleaders,

vs.

ALLIED GENERAL FIRE AND SECURITY,
INC., an Idaho corporation; DEBEST FIRE, INC.,
an Idaho corporation; and JANE DOES I-X; and
XYZ CORPORATIONS I-XV

Supreme Court Case No.
41045

Fourth Judicial District Court
Case No. CV-OC-12-02812



ALLIED GENERAL FIRE AND SECURITY, INC'S RESPONDENT'S BRIEF

APPEAL FROM THE COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA,
HONORABLE MIKE WHETHERELL, DISTRICT JUDGE, PRESIDING

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STATEMENT OF FACTS

Respondent, Allied General Fire and Security, Inc. (“Allied General”) generally concurs with appellant DeBest Fire, Inc. (“DeBest”)’s ‘Statement of Facts.’ Allied General performed work on property owned by St. Luke’s. Allied General was not paid for a portion of the work it performed on the St. Luke’s project so it recorded a mechanic’s lien and instituted an action to foreclose on the lien. R., pp 75. The Claim of Lien which is the subject matter of this dispute was prepared by a notary public, Alicia Pauley. R., pp 75. Kenneth Webster gave a written oath regarding the veracity of the claim of lien to Alicia Pauley, and Alicia Pauley notarized the claim of lien attesting that it was Mr. Webster who signed the oath. R., pp 75.

ARGUMENT

The Idaho legislature enacted the mechanic’s lien statutes in accordance with article XIII, section six of the Idaho Constitution, which states that “the legislature shall provide by proper legislation for giving mechanics, laborers, and material men an adequate lien on the subject matter of their labor.” Idaho Const. Art XIII, § 6. It is well established that “the mechanic’s lien statutes are liberally construed in favor of those to whom the lien is granted,” and that the lien claimant must “substantially” comply with the statutory requirements. *BMC West Corp v. Horkely*, 144 Idaho 890, 893-94 (2007).

Allied General’s claim of lien *substantially* complies with Idaho’s statutory requirements regarding liens, and a liberal construction of the mechanic lien statute leads to the conclusion that the claim of lien is valid.

The only issue in this case is whether the claim of lien substantially complies with the “verification” requirement of Idaho Code § 45-507 which requires that the claim of lien be “verified by the oath of the claimant [...] to the effect that the affiant believes the same to be just.”

The subject claim of lien is verified. In *Parkwest Homes, LLC v. Barnson*, 149 Idaho 603 (2010), the Court noted that the term “verification” is defined in Black’s Law Dictionary, 8th ed. 2004, as ‘a formal declaration made in the presence of an authorized officer, such as a notary public.’ The Court accepted that definition of verification for purposes of its analysis.

In this case, appellant’s only argument for the invalidation of the subject lien is that the form of the claim of lien does not contain the phrase “sworn to before me,” adjacent to the notary’s seal. There is no dispute that the claimant made an oath. There is no dispute that the oath was made in front of a notary public. Indeed, Mr. Webster’s statement of present action - “I Kenneth Webster, do swear . . .” – can only reasonably be interpreted have occurred at the behest of the below-signed notary, who affirmatively identified Kenneth Webster as the person who signed beneath the oath. R., pp 75.

Appellant is requesting that this court place form over substance by requiring a lien claimant who swears an oath of his own volition, in writing, in the presence of a notary, to first be sworn by the notary. As eloquently stated by the District Court judge in this case “such a hypertechnical construction of the lien claim statutes would be a radical change to existing law, would arguably be at odds with the state constitution, would likely invalidate an extremely large number of heretofore valid liens” and would

create “a broad new standard displacing its prior precedents.” (Memorandum of Actions Taken January 11, 2013, p.4)

Furthermore, the term “verification” does not necessarily include the involvement of a notary. Section 45-507 does not make reference to a notary. It only requires that the claimant verify the claim by oath. There is no requirement that the claimant’s oath be verified, only that the claim be verified by oath.

In Black’s Law Dictionary, 5th ed. 1979, “verification” is defined as ‘Confirmation of correctness, truth, or authenticity, by affidavit, oath, or deposition . . . object of verification is to assure good faith in averments or statements of party.’ There is no reference to a notary, or any other third party, in this definition.

Similarly, section 45-507 only requires that the claim of lien be verified, there is no requirement in the code that the claim of lien be notarized, or that the claimant be put “under oath.” Had the legislature felt it necessary to include a notary in the verification process, they could have specifically mandated the use of a notary, or have specified that the claimant be “put under oath.” A liberal construction of section 45-507 in favor of the material men in whom the statute was designed to protect, would permit the verification of the claim of lien by the oath of the claimant, without being put under oath by a notary, and would comport with the constitutional underpinnings of the mechanics’ lien statute.

ATTORNEY FEES

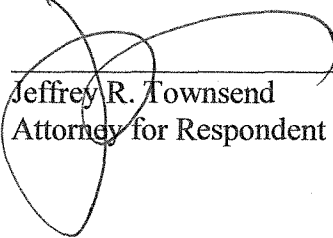
Respondent hereby requests costs and attorney’s fees on appeal pursuant to I.R.C.P. 54(e) and Idaho Code § 12-120(3) as the dispute arose out of a commercial transaction and pertains to the purchase and sale of goods and services.

CONCLUSION

Respondent respectfully requests that his court adhere to the established principles of liberal construction of the mechanic's lien statutes and uphold the District Court's order on appellant's motion for summary judgment.

Respectfully submitted this 4th day of December, 2013.

TOWNSEND LAW, P.C.



Jeffrey R. Townsend
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4^h day of December, 2013, I caused to be served a true and correct copy of the foregoing ALLIED GENERAL FIRE AND SECURITY, INC'S RESPONDANT'S BRIEF, by method indicated below, and addressed to each of the following:

Jason S. Risch RISCH PISCA, PLLC 407 W. Jefferson St. Boise, ID 83702 Fax: (208) 345-9928	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy



Jeffrey R. Townsend