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

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ALLIED GENERAL FIRE AND SECURITY, INC.,

Plaintiff,

vs.

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,

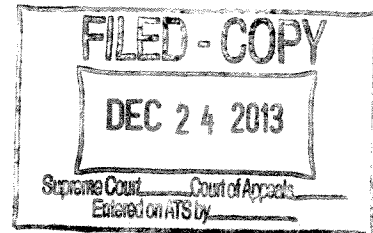
vs.

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.

Interpleader Respondents.

Supreme Court Case No. 41045

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



DEBEST FIRE, INC'S APPELLANT REPLY BRIEF

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

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I. RESPONDENT IGNORES BINDING PRECEDENT

Allied General Fire and Security, Inc. (hereinafter “Respondent”), in its brief, simply ignores and makes no reference whatsoever to the most controlling case law on the issue at hand. Not once in the Respondent’s brief does it attempt to distinguish the case which is pivotal to this appeal, namely *First Federal Savings Bank of Twin Falls v. Riedesel Engineering, Inc.* 154 Idaho 626, (2012). The two cases cited by Respondent add nothing to the application of the law at issue. In fact, both cases cited by Respondent, *BMC West Corp. v. Horkely*, 144 Idaho 890 (2007) and *Parkwest Homes, LLC v. Barnson*, 149 Idaho 603 (2010) were decided prior to the *Riedesel* case, and the very quotes offered by Respondent were cited word for word in the *Riedesel* case. The language cited by Respondent does not lessen or undermine the law in *Riedesel*.

A review of the precedence set in the *Riedesel* case makes it obvious why it was ignored by Respondent. It is impossible to make a factual distinction between the lien language in *Riedesel* and Respondent’s lien language currently at issue before the Court. Neither are verifications as required by Idaho Code § 45-507. Both are merely acknowledgements wherein the notary acknowledged who signed the document. Just as the *Riedesel* lien failed, so must Respondent’s.

II. RESPONDENT’S CIRCULAR ARGUMENT FAILS

The only argument advanced by Respondent is that an oath is not required because Idaho Code § 45-507 uses the word “verification” and not “notary.” Respondent’s own application illustrates why such circular logic fails. Respondent cites to the “verification” language of 45-507, then uses a Black’s Law Dictionary to define verification as “Confirmation of correctness, truth, or authenticity, by affidavit, oath, or deposition...” *Respondent’s Brief* p. 3, ¶ 2. *Emphasis*

added. It is here that the circular argument of Respondent becomes apparent, as all three of the cited examples in fact require an oath. In addition to the obvious “oath” example, an “affidavit”, without an oath is simply an unsworn statement, a “deposition” without an oath is simply a recorded conversation. It is the administration of an oath that creates the verification.

One does not need to turn to secondary sources in order to ascertain the clear distinction between an acknowledgement and an oath. Idaho Code § 51-109 establishes exactly what constitutes a written acknowledgement and exactly what constitutes a written oath:

Certificate of Acknowledgement: “State of Idaho, County of, SS. On this. . . . day of. . . ., in the year of. . . . before me (here insert the name and quality of the officer), personally appeared. . . ., known or identified to me (or proved to me on the oath of. . . .), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.” *Idaho Code § 51-109(1) via cross-reference to Idaho Code § 55-710.*

An oath: “State of Idaho. . . . County of. . . . SS. Subscribed and sworn (or affirmed) before me this. . . . day of. . . ., (official signature and seal).” *Idaho Code §51-109(2).*

An examination of the document signed by Respondent, in this case clearly and plainly reveals it is an acknowledgement and no oath was administered.

III. RESPONDENT IS INACCURATE IN ITS FACTUAL CITATIONS

Respondent in its brief states a concurrence with the facts cited by DeBest Fire, Inc. but then adds a “factual” statement which is inaccurate. Respondent states “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 [sic] 75.” *Respondent’s Brief p. 1, ¶ 1.* A review of page 75 of the record, the lien in question, reveals that Mr. Webster never gave a written oath to Ms. Pauley.

Regardless, Respondent confuses the issue of how an oath is created. Idaho Law states who may administer oaths:

WHO MAY ADMINISTER OATHS. Every court, every judge or clerk of any court, every justice and every notary public, the secretary of state, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations. *Idaho Code § 9-1401.*


An oath is created when an individual with the statutory authority administers the oath using proper language. In using the word administer in the statute above, Idaho has made it clear that an oath is created when an individual with statutory authority takes an affirmative action to swear-in the individual making the statement. Respondent attempts to rewrite the law arguing that an oath is created when it is received by a particular individual. Respondent's argument has no basis in law.

IV. CONCLUSION

Appellant respectfully requests this Court find that Respondent's claim of lien fails, as no oath was administered, therefore no verification existed to satisfy the requirements of Idaho Code § 45-507(4).

Respectfully submitted this 24th day of December, 2013.

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Attorneys for Appellant, DeBest Fire, Inc.



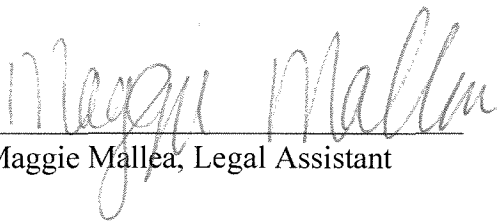
JASON S. RISCH

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of December, 2013, I caused to be served a true and correct copy of the foregoing **APPELLANT REPLY BRIEF** as follows:

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