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Chandler v. Hayden Appellant's Reply Brief Dckt. 33695

Nos. 33659 and 33695

In the Supreme Court of the State of Idaho

Michael L. Chandler, *individually and doing business as* Loomis Construction Company,
Plaintiff and Respondent,

vs.

David Hayden and Storey Jones Hayden, etc., et al.,
Defendants.

Robertson Stephens, Inc.,
Defendant, Counterclaimant, Cross-Complainant, and Appellant,

vs.

Michael L. Chandler, individually and doing business as Loomis Construction,
Counter-Defendant and Respondent.

and

David Hayden, etc., et al.,
Cross-Defendants and Respondents.

APPELLANT ROBERTSON STEPHENS' REPLY BRIEF

From an Appeal of a Judgment of the
Fifth Judicial District of the State of Idaho, in and for the County of Blaine,
No. CV 2004-464, The Honorable Robert J. Elgee, District Judge

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INTRODUCTION

Chandler urges affirmance of the district court's order and judgment on three grounds. First, he says the Court should interpret Idaho Code section 45-508 to give his mechanics' liens priority because Idaho's mechanic's lien statutes create two lien classes—mechanics' liens and "all other types of liens"—and are intended to give the former priority over the latter. (Respondent's Brief (RB) 19-25.) Second, Chandler contends that Idaho and Utah case law supports this two-class interpretation. (RB 25-29.) And third, Chandler says he purportedly withdrew his lien claim over Lot 2 such that the claim was no longer over "two or more buildings" within the meaning of section 45-508. Thus, according to Chandler, the statute no longer applied and he was excused from failing to designate the amounts owed on each building. (RB 29-33.) None of these arguments hits the mark.

Chandler attempts to justify his claim that section 45-508 creates two classes of liens by repeating the district court's reasoning. But as Robertson Stephens explained at length in its opening brief, that reasoning fell short in several fundamental respects. (Appellant's Opening Brief (AOB) 21-32.) Under Chandler's view, a mechanic's lien that, as required, fails to designate the amounts owed on two or more properties should be enforced at the expense of unsuspecting third parties who are entitled to know the amount the lien claims against each property. Not only does such a reading run afoul of section 45-508's plain language, it also upsets the policy balance the statute embodies—a balance that protects *both* mechanics' lien claimants and unsuspecting third parties by postponing rather than invalidating deficient

mechanics' liens. And as Robertson Stephens also explained [AOB 28-32], none of the Idaho or Utah cases Chandler cites supports his view because the cases do not address section 45-508 or the policies behind that statute.

Nor could Chandler escape the consequences of section 45-508 by purporting to withdraw his lien on Lot 2, which Chandler claims, "due to [his] inadvertence," included work not properly subject to a mechanic's lien. (RB 29-33.) The time to amend Chandler's lien claims expired a year and a half before he purported to withdraw the claim, however, and Idaho law does not permit belated attempts to amend—much less amendments like Chandler's, sought while the parties were deep in litigation over the lien. Further, Chandler has cited no legal support for his "inadvertence" excuse—an excuse the record refutes—and on that ground alone the Court should reject it. Plus, if the Court were to accept that excuse, a laborer owed money on several properties could record any number of liens against the properties, wait to see which ones will provide the greatest recovery, and then simply withdraw those that don't work to his or her advantage. To countenance such a rule would frustrate the goal of providing the public with accurate notice of liens. It would also invite the recording of overbroad, deficient, or even fraudulent liens to maximize a lien claimant's chances of recovery.

In the end, Chandler asks this Court to uphold his lien even though he indisputably failed to meet the designation requirement of section 45-508. He makes that request, of course, at the expense of Robertson Stephens, which complied with its lien recording obligations in all respects. It is hardly equitable to punish Robertson Stephens for Chandler's mistake, particularly since Robertson Stephens has recouped only $270,000 of the $28.7 million it is owed, while

Chandler has received $5.2 million of the $6.7 million he is owed. For these reasons, this Court should reverse the judgment.

II

ARGUMENT

A. Chandler's Reading Of Section 45-508 Advances A One-Sided View Of The Legislative Intent Behind The Statute.

Like the district court, Chandler posits that this Court should read section 45-508 in light of the Legislature's purported intent to create two classes of liens—mechanics' liens and all other liens—and to give mechanics' liens priority. Thus, Chandler concludes, the fact that his lien did not designate the amounts owed to him on each of the Haydens' properties makes his lien subordinate only to other mechanics' liens—but still superior to Robertson Stephens' lien. Moreover, Chandler contends that Robertson Stephens' contrary interpretation is "absurd" because it means "the legislature intended to punish laborers only in one very specific situation in which third parties are given inaccurate notice of the amount of the lien claim." (RB 22.) Chandler is wrong on all counts.

For starters, Chandler takes a lopsided view of the legislative purpose behind the mechanic's lien statutes. Granted, as Chandler notes, one such purpose is to protect a laborer whose work improves a property's value. The statutes do so by placing mechanics' liens on equal footing with each other as far as priorities go and by generally giving the mechanics' liens preferred status over other liens. *See* § 45-506 (mechanics' liens "shall be on equal footing with those liens within the same class of liens, without reference to the date of the filing of the lien

claim or claims and are preferred to any lien, mortgage or other encumbrance, which may have attached subsequent" to when the laborer's work commenced). But at the same time, section 45-508 balances the goal of protecting a mechanic's lien claimant with the equally important goal of protecting third parties whose interests in liened properties would be affected by a mechanic's lien. (*See* AOB 24-27 and authorities cited.) When a mechanic's lien fails to designate between properties, the statute strikes this balance by postponing the lien rather than invalidating it altogether. (*See id.*)

Viewed in this light, Robertson Stephens' interpretation of section 45-508 is more sensible than Chandler's because it harmonizes the interests of unsuspecting third parties who properly perfect their liens and laborers who improperly fail to apprise those third parties about amounts owed on each of two or more properties. Conversely, Chandler's interpretation goes too far because it gives a deficient mechanic's lien superiority at the expense of interested third parties who are entitled to proper lien notice. Chandler's one-sided view does nothing to further the purpose of the lien statutes or "to promote justice"—the overarching principle that governs all statutes. *See Phillips v. Salmon River Min. & Dev. Co.*, 72 P. 886 (1903) ("All of the provisions of our mechanic's and laborer's lien law, as well as all other statutes, must be liberally construed with a view to effect their objects and to promote justice.").

Even if the Legislature intended to distinguish between two lien classes in *other* mechanics' lien statutes, a straightforward reading of section 45-508 shows that the two-class notion did not carry over to that statute. (*See* AOB 22-24 and authorities cited.) Section 45-508 states that lien claimants who fail to "designate the amount due" on each of two or more

buildings owned by the same person will have their liens "postponed to other liens." The statute does not qualify the phrase "other liens," does not define that phrase to mean "liens of the same class," and does not suggest that the phrase is limited to mechanics' liens. Indeed, if a two-class lien structure applied in the circumstances that section 45-508 contemplates, why doesn't the statute make the same distinction between lien classes as section 45-506 purportedly does?[1] The answer is that section 45-508 draws no such distinction, but instead broadly gives "other liens" superiority over mechanics' liens in one discrete situation: when a laborer records a single lien against two or more properties and fails to designate the amounts owed on each. And the statute gives other liens such superiority while not invalidating the mechanics' liens. This balances the rights of third parties and laborers.

Chandler claims Robertson Stephens' interpretation "makes no sense because Idaho law does not punish a laborer that works on several different properties and records separate liens against each of the properties for the total amount due." (RB 22.) He also contends that Idaho law does not "punish a laborer that records a single lien against multiple properties," but instead "sets forth an incorrect designation of the amount owed on each." (*Id.*) Thus, he concludes, Robertson Stephens' interpretation is "absurd" because it "punish[es] laborers in only one very specific situation in which third parties are given inaccurate notice of the amount of the lien claim." (*Id.*)

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[1] As noted, section 45-406 states: "The liens provided for in this chapter shall be on equal footing with those liens within the same class of liens, without reference to the date of the filing of the lien claim or claims and are preferred to any lien, mortgage or other encumbrance . . . ."

Chandler misses the point. For starters, Chandler's lien did not suffer from mere "inaccurate notice." Rather, his lien gave *no* notice about the extent to which his lien claims covered each Lot, as section 45-508 required. Thus, there is nothing "absurd" about enforcing section 45-508's penalty provision in the face of Chandler's failure to comply with the statute. By the same token, there is nothing absurd about "not punishing" a laborer who either (a) records individual liens against multiple properties or (b) designates the incorrect amount owed on two or more properties under the statute. That is because—unlike Chandler—the laborer has provided at least a *minimum* level of notice about the extent of the lien claim over each property.

Finally, Chandler's attempts to distinguish Robertson Stephens' cited legal authorities can quickly be dispatched. For instance, Chandler claims *Board v. Freedman* 131 A. 913 (N.J. Err. & App. 1926), is inapplicable because under New Jersey Statute 2A:44A-21(a), "New Jersey prefers the ability to transfer real estate over the rights of laborers." (RB 23.) But that statute is irrelevant, since it took effect in 1994—almost 70 years after *Board* was decided. The fact remains that *Board* supports Robertson Stephens' position because it held a mortgage to be superior over a mechanic's lien that failed to designate between amounts owed on several properties, under a rule nearly identical to section 45-508. *Id.* at 914.[2]

Chandler also broadly asserts that Robertson Stephens' other cited cases do not assist in interpreting section 45-508, because none held a mechanic's lien that failed to designate the

[2] At the time, New Jersey's postponement provision was apparently a product of case law, not statute. It read: "[A] claim filed upon separate buildings and upon distinct lots of land, without apportioning the claim and designating specifically the amount claimed upon each must be postponed to the claim of other incumbrances." *Board*, 131 A. at 914.

amounts owed on two properties is postponed to non-mechanics' liens. (RB 23-24.) Ignoring that *Board* did hold exactly that [*see* AOB 23-24], Chandler misses the point of the other cases. They show that in choosing to postpone mechanics' liens that fail to designate the amounts owed on two or more properties, Idaho has not followed the same absolutist approach that other states, which invalidate such liens, have taken. Thus, the cases provide helpful context in explaining how, in enacting section 45-508, the Idaho Legislature, unlike other states, intended to balance between protecting a mechanic's lien claimant who improves the property and protecting unsuspecting third parties who are entitled to notice about the extent of any mechanic's lien on the property. (*Id.*) Those cases cannot, therefore, be so casually dismissed, as Chandler urges.

B. The Idaho and Utah Cases Chandler Cites Do Not Factor Into The Court's Calculus.

Like the district court, Chandler contends that *White v. Constitution Mining Co.*, 56 Idaho 403, 55 P.2d 152 (1936), and *Eccles Lumber Co. v. Martin*, 87 P. 713 (Utah 1906), and its progeny support his reading of section 45-508. But as Robertson Stephens explained at length [AOB 28-32], none of those cases bears on the analysis here.

Robertson Stephens will not repeat the entirety of its discussion here. Suffice it to say that in *White*, the Court was confronted with multiple mining claims that were "all in one unit" [55 P.2d at 159] such that the mechanics' liens were not against "two or more" mines or mining claims, which would otherwise have triggered the designation obligation in section 45-508. It is wrong to claim, as Chandler does, that *White* is of some assistance here when it never discussed—or even had reason to discuss—section 45-508 or the policies behind that statute.

Consequently, *White* at most stands for the proposition that an overly broad lien description does not automatically invalidate a mechanic's lien. (*See* AOB 29-30.)

Neither *Eccles* nor its progeny bear on this Court's analysis either. Although those cases used the phrase "lien claimants of the same class" while discussing Utah's postponement provision, the courts' use of that phrase does not justify Chandler's "two-class" construction of section 45-508 because the meaning of that phrase is far from clear. None of the cases explain what "lien claimants of the same class" means nor was that language germane to the holding in those cases—that the failure to designate did not invalidate the mechanic's lien. (*See* AOB 30-32.)

In short, none of Chandler's cited cases factors into the interpretation of section 45-508, much less supports Chandler's interpretation.

C. Chandler's Attempt To Escape The Consequences Of Section 45-508 By Having Purported To "Withdraw" His Lien Against Lot 2 Draws No Support From The Record, The Law, Or The Equities.

Chandler is wrong to argue that he could avoid postponement of his deficient lien under section 45-508 simply by withdrawing his claim against Lot 2. (RB 29-33.)

To begin with, the record refutes Chandler's contention that this was a case where Chandler's mere "inadvertence" led to the inclusion of "too much land" and "$20,000 too much" in his lien. (RB 30-32.) In fact, between November 2003 and April 2004, Chandler recorded three separate liens against Lots 1 and 2—all three of which covered Lot 2. (R., Ex. 9, at Exs. 19-21.) Chandler's final (Second Amended) lien—recorded by a different set of lawyers than his

first two liens—even *increased* the amount of money he sought to recover against Lot 2, from $20,451.80 to $23,770.70. He then sued to foreclose his liens against both Lots. (R., Vol I., 57-66.) Under the circumstances, it is hard to see anything "inadvertent" about Chandler's inclusion of Lot 2 debt in his liens.

Further, while Chandler admits that the Lot 2 amount consisted of non-lienable work [RB 29-30], he does so only to avoid the consequences of section 45-508. Chandler cites no authority that permits such a drastic and belated revision to his lien claims, much less a revision that allows him to escape the consequences of his undisputed failure to designate under section 45-508. This is not surprising, since under Idaho law, "a defective claim of lien may not be amended after the statutory period for filing the claim [i.e., 90 days] has expired." *Ross v. Olson*, 95 Idaho 915, 918 (1974) (contractor precluded from amending mechanics' lien during trial to correct the fact the property description contained no portion of the improvement the contractor had built); *cf. Harrogate Constr. Co. v. Joseph Haas Co.*, 250 A.2d 376, 379 (Del. Super. Ct. 1969) (under similar Delaware mechanic's lien statute, contractor was time-barred from amending lien to designate amounts due on each structure).

To permit Chandler to withdraw his lien under the circumstances would set an unwise precedent and be unfair. Under Chandler's reasoning, a laborer owed money on several properties could record any number of liens against the properties, wait until the parties are in litigation to see which lien or liens assure the most recovery, and then simply withdraw those that do not work to his or her advantage. At best, such a result would deprive interested third parties of accurate notice of the extent of any mechanics' liens that encumber the subject

properties. At worst, that result would invite the recording of fraudulent mechanics' liens—such as a lien that includes amounts for work unrecoverable under the mechanic's lien scheme—with the goal of maximizing the mechanic's lien claimant's chances of recovery. And in all events, permitting mechanics' liens to maintain priority over all other liens under these circumstances would inject additional unease into an already tightening credit market. That, in turn, would make it more difficult and expensive, if not impossible, for consumers to obtain bank credit for the purchase or construction of homes.

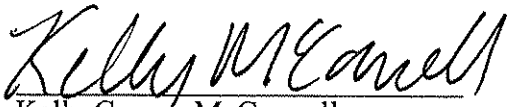
Finally, the equities do not favor permitting Chandler to withdraw his Lot 2 lien. It is undisputed that Robertson Stephens did everything required to protect its position under the lien recording statutes. It is likewise undisputed that Chandler's liens failed to comply with the designation requirements under section 45-508. Under the circumstances, it would be unfair to allow Chandler to withdraw his lien claim in the middle of litigation, thus excepting his liens from section 45-508's requirements and excusing his noncompliance, yet leave Robertson Stephens—which did nothing wrong—to suffer the consequences. And to the extent Chandler tries to portray himself as David against Robertson Stephens' Goliath [*see* RB 2], recall that Chandler was paid $5.2 million of the $6.7 million the Haydens originally owed him. By contrast, Robertson Stephens is owed $28.7 million but has recouped only around $270,000—an amount Robertson Stephens was able to obtain only through protracted litigation with the Haydens. Thus, the equities hardly tip decidedly in Chandler's favor.

III

CONCLUSION

The arguments in Chandler's respondent's brief are unpersuasive and lack support. They present no barrier to this Court's enforcement of section 45-508's plain language. Accordingly, the Court should reverse the judgment.

DATED: October 9, 2007.



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I hereby certify that on this 9th day of October, 2007, I caused to be served two (2) true and correct copies of the foregoing by the method indicated below, and addressed to the following:

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