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Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc. Appellant's Reply Brief Dckt. 34797

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IN THE SUPREME COURT OF THE STATE OF IDAHO

GOODMAN OIL COMPANY,
Appellant,

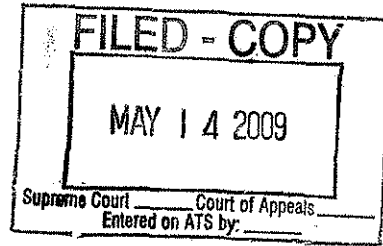
vs.

SCOTTY'S DURO-BILT GENERATOR,
INC., an Idaho corporation; BART and
ALANE MCKNIGHT, husband and wife;
and DOES I through V.

Respondents.

)
)
)
) Supreme Court No. 34797

) **APPELLANT'S REPLY BRIEF**



APPELLANT'S REPLY BRIEF

Appeal from *Goodman v. Duro-Bilt* in the
Third Judicial District of the State of Idaho, in and for the County of Canyon
Case No. CV 05-9800
Honorable Renae J. Hoff, Presiding District Judge

Jon M. Steele, ISB # 1911
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste 400
Boise, ID 83702
Tel (208) 333-8506
Fax (208) 343-3246
e-mail: jmsteele@runftlaw.com
Attorney for Appellants

Susan Buxton, ISB # 4041
Moore Smith Buxton & Turke, Chtd.
950 W. Bannock, Suite 520
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202
Email: seb@msbtlaw.com
Attorney for Respondents

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I.

INTRODUCTION

Goodman Oil Company's Notice of Appeal, under the unique course of proceedings below, is timely.

Goodman Oil Company ("Goodman") requests the Court reverse the dismissal of Goodman's causes of action (Count I, alleging breach of contract, and Count II, tortious interference with contract).

Respondent Scotty's Duro-Bilt Generator, Inc. ("Respondent") raises one additional issue in Respondent's Brief. That is, whether Respondent's are entitled to an award of costs and attorney fees on appeal.

II.

ADDITIONAL ISSUE/COSTS AND ATTORNEY FEES ON APPEAL

Goodman agrees with Respondent that the prevailing party will be entitled to costs and attorney fees pursuant to the terms of the Property Vacation Agreement and Idaho Code § 12-120(3).

III.

ARGUMENT

Neither party treated the district court's "Order" of April 2, 2007 as a final judgment.

On June 1, 2007, (R. pp. 334-344) Respondent filed its Motion for Entry of Judgment. The district court did not rule on this motion and the motion was never withdrawn.

I.R.C.P. 58(a) was adopted to address this unique situation. The requirements of a separate document which triggers the 42 day period provides notice that the time to appeal has commenced to run.

In the district court Respondent did not treat the “Order” as final. As this Court is aware, it is not unusual for a district court to enter both an order and a judgment. The district court entered its order, but not its judgment.

The applicable standards concerning timeliness of an appeal were recently cited by this Court in the companion case of *Goodman Oil Company v. Scotty's Duro-Bilt Generator, Inc.* (February 3, 2009, Docket No. 34284). In that case this Court found Goodman's notice of appeal was untimely.

In light of the unique course of proceedings below, Goodman's notice of appeal in this case is timely.

The district court erred in dismissing Goodman's complaint against Respondent and its owners, Bart and Alane McKnight.

The district court's dismissal of Bart and Alane McKnight finds no support in the record. Goodman's complaint alleges tortious interference against Bart and Alane McKnight in their individual capacity, not as the “alter ego” cited by the district court.

Finally issues of fact concerning causation preclude the entry of summary judgment as to both Duro-Bilt and McKnights.

IV.


CONCLUSION

This Court should reverse the dismissal of Goodman's causes of action (Count I, breach of contract, and Count II, tortious interference with contract) and award Goodman costs and attorney fees as the result of this appeal.

The case should be remanded to the district court for trial.

DATED this 14th day of May 2009.

RUNFT & STEELE LAW OFFICES, PLLC

By: 

JON M. STEELE
Attorney for Plaintiff

CERTIFICATE OF SERVICE


The undersigned hereby certified that on this 14th day of May 2009, a true and correct copy of the **APPELLANT'S REPLY BRIEF** was served upon opposing counsel as follows:

Susan Buxton
Moore Smith Buxton & Turke, Chtd.
950 W. Bannock, Suite 520
Boise, ID 83702

US Mail
 Personal Delivery
 Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JON M. STEELE
Attorney for Plaintiff