4-9-2009

Triad Leasing & Financial, Inc. v. Rocky Mountain Rogues, Inc. Respondent's Brief Dckt. 35659

IN THE SUPREME COURT OF THE STATE OF IDAHO

TRIAD LEASING & FINANCIAL, INC.,

Plaintiff/Counter-Defendant/Respondent,

vs.

ROCKY MOUNTAIN ROGUES, INC., a Wyoming Corporation; JAMES BLITTERSDORF, an individual; and GLENNA BLITTERSDORF-CHRISTOFFERSON, an individual,

Defendants/Counter-claimants/Appellants,

ROCKY MOUNTAIN ROGUES, INC., a Wyoming Corporation; JAMES BLITTERSDORF, an individual; and GLENNA BLITTERSDORF-CHRISTOFFERSON, an individual,

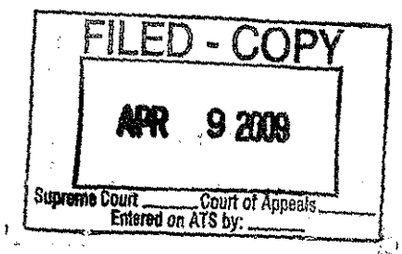
Third Party Plaintiffs/Appellants,

vs.

G. ALAN MCRAE, personally, d/b/a LUND MACHINERY, an administratively dissolved Idaho and Utah corporation,

Third Party Defendant/Respondent.

Supreme Court Docket No. 35659



RESPONDENT'S BRIEF

Appealed from the District Court of the Fourth Judicial District for Ada County
Honorable, Kathryn A. Sticklen, District Judge, Presiding

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COMES NOW, Respondent Triad Leasing and Financial, Inc. (hereinafter referred to as "Triad"), by and through its attorneys of record, Ringert Law Chartered, and submits this Respondent's Brief in the above-titled matter.

I. STATEMENT OF THE CASE

A. NATURE OF THE CASE.

This appeal involves the breach of a lease agreement between Triad, the lessor, and the Appellants, the lessees. The equipment lease agreement, involving a forklift, bucket and jib, was breached shortly after the agreement was funded because the deposit check was returned for insufficient funds and because the required insurance on the equipment was also cancelled because of a check returned for insufficient funds. Appellants have made a number of unsupported assertions that the deposit check was not to be negotiated, that all of the equipment had not been delivered and that the vendor, Lund Machinery, committed fraud. However, following a two day court trial before the district court, the Honorable Kathryn A. Sticklen presiding, the district court rejected Appellants defenses and entered judgment in favor of Triad.

The Appellants attempted to blame their default of the lease agreement on the vendor, Lund Machinery, and brought a third party action against Lund Machinery. However, prior to the trial, the district court granted summary judgment in favor of Lund Machinery. Appellants filed a number of post-trial motions, including a motion for reconsideration of the summary judgment decision and a motion for a mistrial, which were all rejected by the district court. In addition, the district court awarded attorney fees and costs to both Triad and Lund Machinery. Appellants now appeal these judgments.

B. COURSE OF PROCEEDINGS AND DISPOSITION.

Appellants did not provide a course of proceedings section in their opening brief and therefore Triad submits this course of proceedings section. On August 8, 2006, Triad filed a Verified Complaint alleging that the Appellants were in breach of an equipment lease agreement involving a forklift, bucket and jib. (R. pg. 9). Appellants subsequently filed an Answer, Counterclaim and Cross-claim alleging that Triad and the vendor for the equipment, Lund Machinery, committed breach of the lease agreement, fraud and violated the Idaho Consumer Protection Act. (R. pg. 20). Appellants later filed an Amended Answer, Counterclaim and Third Party Claim for the purpose of clarifying that Appellants' claim against Lund Machinery was a Third Party Claim and not a Cross-claim. (R. pg. 52). The Third Party Claim against Lund Machinery also alleged breach of contract, fraud and violation of the Idaho Consumer Protection Act.

Lund Machinery subsequently filed a motion for summary judgment requesting that the Third Party Claim by Appellants be dismissed. On November 7, 2007, the district court granted Lund Machinery's motion for summary judgment and issued a Memorandum Decision and Order. (R. pg. 74). The Memorandum Decision and Order dismissed all claims by Appellants against Lund Machinery on the basis that Lund Machinery was not a party to the lease agreement, the alleged fraudulent statements were for promises of future events and there was no agency relationship between Triad and Lund Machinery. (R. pgs. 79-81).

A two-day court trial was held on November 26-27, 2007. Having already granted summary judgment in favor of Lund Machinery and dismissing all third party claims against Lund Machinery, neither Lund Machinery nor its counsel appeared at the trial. On February 14, 2008, the district court issued Findings of Fact, Conclusions of Law and Order which found that Appellants had

breached the lease agreement and awarded Triad $58,754.80 in damages. The district court also found that there was no evidence to support Appellants' counterclaim. (R. Pg. 92). Thereafter, the district court entered judgment in favor of Triad, and against the Appellants, on February 27, 2008 in the amount of $72,334.40. (R. pg. 94). The district court later entered a supplemental judgment in favor of Triad for attorney fees and costs in the amount of $12,967.24. (R. pg. 102).[1]

The district court also entered judgment in favor of Lund Machinery based upon its prior summary judgment decision on March 31, 2008. (R. pg. 98). Appellants then filed a number of motions including a motion for reconsideration of the prior decision on Lund Machinery's motion for summary judgment, a motion for a mistrial, a motion to set aside the judgment entered in favor of Lund Machinery and an objection to Lund Machinery's request for costs and attorney fees. On July 30, 2008, the district court issued a Memorandum Decision and Order denying all of Appellants' motions (R. pg. 104). The district court subsequently entered an amended judgment in favor of Lund Machinery, and against the Appellants, for attorney fees and costs in the amount of $17,131.82. (R. pg. 111). Appellants thereafter filed this appeal.

C. STATEMENT OF FACTS.

Triad disagrees with the majority of the statement of facts submitted by Appellants, and therefore, submits its own statement of facts. Furthermore, Triad would point the Court to the findings of fact by the district court which also summarize the facts and evidence presented to the district court during the two day court trial (*See* R. pg. 88-93).

Triad and Appellants executed lease agreement for the lease of certain equipment for

[1] Appellants have not challenged the amount of the judgments or the award of attorney fees and costs to Triad.

business purposes. The lease agreement is with Rocky Mountain Rogues, Inc., however, both James Blittersdorf and his wife, Glenna Juline Blittersdorf Christofferson personally guaranteed the terms and conditions of the lease, including all payments due and owing to Triad. Appellants do not dispute that they all signed the lease agreement and Mr. and Mrs. Blittersdorf personally guaranteed the terms on March 15, 2006. (Tr. pg. 309, lns. 5-21). Appellants do not disagree that they signed each of the documents, addendum, corporate resolution and personal property taxes included in the lease agreement package. (Exhibit A). Appellants accepted and signed lease agreement, along with a check in the amount of $5,600.00, was then returned to Triad. The check was not post dated and there was no indication on the check that the check was not to be negotiated. (Tr. pg. 313-15, lns. 15-22). On March 17, 2006, Vicki Turner, an employee of Triad, accepted and signed the lease agreement on behalf of Triad. (Tr. pg. 196, lns. 15-20).

The lease agreement provides that Triad's obligation to pay the vendor, Lund Machinery, for the equipment did not arise until an oral acceptance was taken. This provision of the lease agreement relates to Triad's obligation to pay Lund Machinery. Vicki Turner testified as to Triad's practice and policies of booking the lease agreement. Ms. Turner testified that once she receives the lease agreement back from lessee/Appellants, she then goes through a documentation checklist (Exhibit E). (Tr. pg. 197-198, lns. 10-10). She then goes through and verifies that the required information or documentation has been received. In this case, Ms. Turner verified, among other things, the equipment inspection, insurance verification and certificate and the deposit check had all been received. (Tr. pg. 198-200, lns. 15-25). In addition, Ms. Turner verified the acknowledgment and acceptance of the equipment by the lessee. *Id.* Ms. Turner testified that it is Triad's practice to complete this checklist with every lease and that Triad would not release funds to the vendor until

all of the items on the checklist were completed. (Tr. pg. 205, lns. 4-21).

With regard to the acknowledgment and acceptance by the Appellants, Triad received a cover letter from the lease broker, Joe Leslie with FCI Financial, when Triad received the lease agreement and check from the Appellants. The cover letter (Exhibit G, page 3) stated that "When you are ready to do the telephone confirmation, call me and I will locate Mr. Blitterdorf." (Tr. pg. 102-103, lns. 24-10; pg. 201-202, lns. 25-15). Ms. Turner testified that she received a phone call from Mr. Blittersdorf on March 20, 2006 sometime in the morning. Ms. Turner testified that the person identified themselves as Mr. Blittersdorf and she recalls the discussion because Mr. Blitterdorf mentioned his business and website. (Tr. pg. 203, lns. 6-19). Ms. Turner also testified that Mr. Blittersdorf acknowledged and confirmed acceptance of the lease equipment and that it was acceptable to Triad to release the funds to Lund Machinery. (Tr. pg. 203-204, lns. 6-21). Ms. Turner then contemporaneously signed the lease agreement and the delivery and acceptance on March 20, 2006.

On March 20, 2006, Triad released funds to the lease broker (Joe Leslie) for this lease agreement in the amount of $2,500.00 and to the vendor (Lund Machinery) in the amount of $56,465.68 (Exhibit I). (Tr. pg. 111, lns. 1-23). The wire transfer to the vendor, Lund Machinery, was for the amount included on the invoice from Lund Machinery (Exhibit I, page 3). The invoice was for a forklift, bucket and jib. (Tr. pg. 111, lns. 24-22).

From the period of March 20 to March 30, 2006, there was no contact between Triad and Appellants. Appellants did not notify Triad that they believed that the equipment was not all delivered and did not notify Triad that they believed that the deposit check should not be negotiated. (Tr. pg. 108, lns. 6-10). Triad did in fact negotiate the deposit check. On March 20, 2006, Ms.

Turner testified that she booked the lease agreement (Exhibit D) and the check from Appellants was negotiated. The check included the $5,000.00 deposit, $350.00 origination fee and $250.00 in sales tax. (Tr. pg. 100-101, lns. 3-5). The check was returned for insufficient funds on March 23, 2006 and again on March 29, 2006 (Exhibit C). (Tr. pg. 108-109, lns. 11-25). Appellants do not dispute that the check was returned for insufficient funds and they made no attempt to cure the default.

On April 11, 2006, Triad mailed a demand to the Appellants which notified them of the default (Exhibit F, page 2). Appellants do not dispute that they received the demand. The demand provided that Triad had exercised its right to accelerate the amount due according to paragraph 17(b) of the lease agreement. Appellants raised an issue of whether the default occurred on March 17, 2006 or March 20, 2006, but the issue is moot because regardless there is no question that the check was returned for insufficient funds after both dates.

Triad also attempted to give Appellants an opportunity to cure the default by sending a fax to Mr. Blittersdorf on March 31, 2006, informing him that Triad would need a cashier's check immediately (Exhibit L, last page). On April 21, 2006, Triad received notification that the insurance had been cancelled due to another NSF check. Appellants do not dispute that the lease agreement required them to maintain insurance and required Triad to be listed as an additional insured (Exhibit A, paragraph 12). Appellants also do not dispute that the insurance certificate that they provided to Triad had been cancelled due to another NSF check. Appellants contend that business insurance would cover the equipment. However, Appellants did not provide their business insurance coverage or any indication that the insurance listed the equipment and Triad as an additional insured as required by the lease agreement. (Tr. pg. 324-325; lns. 5-21). Appellants also acknowledge that they never notified Triad of this alleged business insurance or attempted to cure the fact that the insurance

certificate provided by them had been cancelled. *Id.*

On April 19, 2006, Triad assigned the account to States Recovery. On April 27, 2006, States Recovery repossessed the equipment. The equipment was then later sold at an equipment auction later that summer, July of 2006, to the highest bidder. After expenses, Triad received a check from US Auction in the amount of $34,199.20 (Exhibit L). Triad then deducted the amount recovered from the sale of the equipment and sent Appellants another demand requesting the deficiency balance due and owing which was $58,754.80 (Exhibit F, page 3). Appellants do not dispute that they have failed to pay any amount to Triad for the deficiency due and owing under the terms of the lease agreement and they have provided no evidence that the amount due and owing as a result of their default is anything other than $58,754.80.

II. ISSUES PRESENTED ON APPEAL

The issues on appeal can be summarized as follows:

1. Whether the district court's decision following a court trial is supported by substantial evidence?
2. Whether Respondent is entitled to its attorney fees and costs incurred as a result of this appeal?

III. STANDARD OF REVIEW

When reviewing the district court's decision following a court trial, the appellate court's:

> decision is limited to ascertaining whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law. A district court's findings of fact in a bench trial will be liberally construed on appeal in favor of the judgment entered, in view of the district court's role as trier of fact. It is the province of the district judge acting as trier of fact to weigh conflicting evidence and testimony and to judge the credibility of the witnesses. [The appellate court] will not substitute [its] view of the facts for the view of the district court. Instead, where findings of

> fact are based on substantial evidence, even if the evidence is conflicting, those findings will not be overturned on appeal.

Nampa & Meridian Irrigation District v. Washington Federal Savings, 135 Idaho 518, 521, 20 P.3d 702, 705 (2001) (citations omitted) (emphasis added). With respect to the "trial court's conclusions of law, however, a different standard applies: this Court is not bound by the legal conclusions of the trial court, but may draw its own conclusions." *Griffith v. Clear Lakes Trout Co., Inc.*, 143 Idaho 733, 152 P.3d 604 (2007) (quoting *Indep. Lead Mines Co. v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006)).

IV. ARGUMENT

A. The District Court's Decision Was Supported by Substantial and Competent Evidence.

1. The District Court Did Not Err in Holding that Appellant was in Breach of the Lease Agreement.

Appellants argue that the district court incorrectly found that the Appellants had breached the terms of the lease agreement. However, Appellants have not provided any citations to the record/transcript which would demonstrate that the district court's findings were erroneous. The appellate court will not search the record for error. *Langley v. State Indus. Indem. Fund*, 126 Idaho 781, 890 P.2d 735 (1995). Moreover, assertions of error which are not supported by argument or authorities cannot be considered on appeal. *State v. Zichko*, 129 Idaho 259, 923 P.2d 966 (1996). Here, Appellants have done nothing more than attempt to re-argue their version of the facts and have not pointed to any findings by the district court which are not supported by substantial and competent evidence. If the district court's findings are supported by substantial evidence they will not be overturned on appeal even if Appellants have conflicting versions of the evidence.

While not entirely clear, Appellants suggest the district court erred in finding Appellants in

breach of the lease agreement "for not paying the security deposit." *Appellants' Brief*, pg. 24. However, the district court addressed this argument and found that lease agreement called for a $5,000.00 security deposit and that Appellants' delivered the deposit check at the time the agreement was signed. The district court stated that "Rocky Mountain claims that this check was not to be cashed, but was held as security as had been done in an earlier transaction with Lund. There is no evidence that Triad agreed to such an arrangement. $600.00 of the check was for payment of taxes and document fees, so it is unlikely that Triad would have agreed not to cash this check." (R. pg. 90). Thus, the district court considered Appellants' argument but dismissed it because there was no evidence to support the claim. On appeal, Appellants have not provided any basis for suggesting that the district court's finding was in error.

Appellants then argue that the there could be no breach because there had been no delivery of the equipment. Once again, these assertions were addressed by the district court in its findings of fact and Appellants have not demonstrated that the district court's findings are not supported by substantial and competent evidence. The district court first, as the trier of fact, weighed the evidence as to whether the equipment had been delivered. The district court noted that even though the Appellants deny that a conversation verifying delivery of the equipment ever took place, Mr. Blittersdorf's deposition testimony was that he did not recall a conversation. (Tr. pg. 319-321, lns. 2-15). The district court then found that Ms. "Turner's testimony was the most credible because of her recollection of detail and because she released $56,465.68 to Lund at the time." (R. pg. 91) (Tr. pg. 203-204, lns. 6-21).

In addition to concluding that the evidence supported the finding that the equipment had been delivered, the district court also noted that paragraph 8 of the lease agreement provided that Triad

is not responsible for the delivery of the equipment. Thus, the district court found that Triad was not responsible for the delivery of the equipment, and Ms. Turner's testimony that she verified that the equipment had been delivered prior to releasing any funds to the vendor was the most credible evidence. These findings cannot be reversed on appeal unless they are clearly erroneous, and Appellants have done nothing more than assert that the district court should not have relied on the testimony of Ms. Turner.

Appellants also contend that the district court erred in finding that any payment had become due. It is not exactly clear from Appellants' Brief, but apparently Appellants again assert that no payment was due because there was no $5,000.00 security deposit due. Appellants have suggested that the security deposit was to be a bucket and the check they returned with the lease agreement in the amount of $5,600.00 was not to be negotiated. However, both Mr. and Mrs. Blittersdorf confirmed that there was no mention in the lease agreement that the bucket was owned by them or was to be the security deposit. (Tr. pg. 311-312, lns. 22-1; pg. 355, lns. 3-11). Also, the check was not post dated and there was no mention on the check that it was not to be negotiated. (Tr. 312-315, lns. 24-18). As previously noted, *supra*, the district court considered Appellants' argument but found that the evidence, including the terms of the lease agreement itself, supported the finding that there was no arrangement that the check would be held (R. pg. 90). Accordingly, the district court found that when the check in the amount of $5,600.00 was returned for insufficient funds, twice, and the problem was never cured or remedied, Appellants were in breach of the lease agreement (R. pg. 91). Once again, other than suggesting that the district court did not agree with their version of the evidence, Appellants have not pointed to any evidence to demonstrate that the district court's findings were not supported by substantial evidence.

2. The District Court's Determination of the Parties Intent was Not Erroneous.

Appellants argue that the district court erred because "[a]s a basis for several rulings, the District Court determined the contract between Triad and Rocky Mountain to be clear and unambiguous." *Appellants' Brief*, pg. 13. It is not entirely clear what rulings Appellants are referencing, but Appellants then asserts that there are numerous ambiguities in the terms of the lease agreement and argue that "[t]hese ambiguities and interpretations clearly require additional, outside information to determine this meaning." *Appellants' Brief*, pg. 15. First of all, the terms of the lease agreement which Appellants complain about are clear and unambiguous. Indeed, the terms of the lease agreement are clear that the vendor, Lund Machinery, was not the agent of Triad. The terms are also clear that the bucket was part of the leased equipment and there is no mention that the bucket was already owned and was supposed to be considered a deposit. Along those same lines, the lease agreement is clear that a deposit of $5,000.00 was due, that the bucket was not the deposit, and that the deposit was not to be in the form of a check to be held and not negotiated.

Furthermore, Appellants' argument is flawed because a court trial was held, testimony was presented by the Appellants as to the lease agreement, and extrinsic evidence was considered to resolve any ambiguous terms of the lease agreement. In fact, in support of their argument Appellants cite to *International Engineering Co., Inc. v. Daum Industries, Inc.*, 102 Idaho 363, 630 P.2d 155 (1981) and *Roeder Mining, Inc. v. Robert E. Johnson et al.*, 118 Idaho 96, 794 P.2d 1152 (Ct.App. 1990) for the proposition that if a contract is deemed ambiguous then the trier of fact may look to extrinsic evidence to determine the parties' intent. *Appellants' Brief*, pg. 13. The cases cited by Appellants also provide that "[w]here interpretation of the parties agreement becomes a question of fact, this Court will not set aside the trial court's finding unless it is clearly erroneous." *Id.* (quoting

International Engineering Co., Inc. v. Daum Industries, Inc., 102 Idaho 363, 365, 630 P.2d 155, 157 (1981)). Thus, even if a particular term of the lease agreement could be deemed ambiguous, it becomes a question of fact that the district court, as the trier of fact, determines the intent of the parties.

In this case, there was a court trial held with respect to the claims of Triad. The district court as the trier of fact considered and weighed the evidence and found in favor of Triad. The district court considered the testimony of the Appellants, including their arguments that the deposit was to be a bucket rather than the $5,000.00 called for in the lease agreement, and rejected the arguments. In other words, the ambiguity that Appellants now complain of was addressed by the district court during the court trial and the district court considered extrinsic evidence. Because the district court did consider extrinsic evidence and testimony during the court trial the issue is not whether the terms of the lease agreement were ambiguous, but rather whether the district court's findings were clearly erroneous.

Appellants once again assert that the district court erred by finding that a $5,000.00 security deposit was due. The district court, after the court trial and after hearing the testimony and evidence of Appellants, found that the lease "agreement unequivocally called for a $5,000.00 security deposit." (R. pg. 90). As previously addressed, *supra*, the district court's findings that the security deposit was not be a bucket, and that the deposit check was not to be simply held, were supported by substantial and competent evidence. Other than asserting that the district court's interpretation of the evidence was wrong, Appellants have not demonstrated that the findings were in error.

B. The District Court Did Not Err in Finding that Lund Machinery was Not the Agent of Triad.

Appellants contend that the district court erred in finding that Lund Machinery was not the agent of Triad. Appellants arguments appear to be related to the district court's summary judgment decision in favor of Lund Machinery and the district court's decision denying Appellants' motion for reconsideration of the summary judgment decision. For that reason, Triad will leave it to Lund Machinery to respond to the majority of these arguments.

However, to the extent Appellants are challenging any decision as it relates to Triad, Triad will address the findings following the court trial that Lund Machinery and its employees were not the agents of Triad. The district court's findings referenced its prior decision which held that the facts demonstrated that Lund Machinery was not the agent of Triad and paragraph 4(b) of the lease agreement itself provided that neither the vendors, nor anyone else, would be considered the agents of Triad. (R. pg. 91-92).

In *Hausam v. Schnabl*, 126 Idaho 569, 887 P.2d 1076 (Ct.App. 1994), the court explained the standard of review for an agency relationship as follows:

> The existence of an agency relationship is a question for the trier of fact to resolve from the evidence. This Court will not disturb a district court's finding of fact unless it is clearly erroneous. The burden of proving the existence or extent of an agency rests on the party alleging it.

Id. at 572, 887 P.2d at 1079 (citations omitted) (emphasis added).

In this case, there is no evidence of an express or implied agency. To the contrary, the lease agreement specifically denies any agency relationship between Triad, its vendors or anyone else.

To establish apparent authority, "the apparent power of the agent is to be determined by the acts of the principal, not the acts of the agent." *Id.* at 573, 887 P.2d at 1080. The purported

principal must do something to lead the third party to believe that the alleged agent has authority, and "the declaration of the alleged agent, standing alone, are insufficient to prove the grant of power exercised by the agent and to bind the principal to third parties." *Id.* Moreover, one must use reasonable diligence to ascertain the agent's authority which "encompasses a duty to inquire with the principal about the agent's authority." *Id.*

The district court properly found that there was no evidence of any actions by Triad which would create an agency with Lund Machinery and there is no evidence that Appellants exercised reasonable diligence by inquiring to Triad about the alleged agent's authority. In fact, Mr. Blittersdorf testified that prior to March 15, 2006, the day he signed the lease agreements, he had never heard of Triad and he had not had any conversations with Triad. (Tr. pg. 326, lns. 15-18; pg. 327, lns. 18-21). Once again, Appellants arguments are unsupported by the evidence, Appellants have not met there burden and there has been no showing that the district court's findings were clearly erroneous.

The district court also rejected Appellants' argument that the lease broker, Joe Leslie, was the agent of Triad and found that:

> Rocky Mountain asserted at trial that Leslie, the broker, also made misrepresentations as an agent of Triad. There was no evidence that Leslie was an agent of Triad, and no evidence that Triad engaged in any deceptive acts or practices with regard to the lease; in fact, there was no contact between Rocky Mountain and Triad prior to Rocky Mountain's closing on the lease.

(R. pg. 92).

In fact, Mr. Blittersdorf testified that he understood that Mr. Leslie was associated with FCI Financial. (Tr. pg. 327, lns. 18-21). Thus, the district court made the findings that there was no evidence Lund Machinery or Joe Leslie were the agents of Triad, there was no evidence that Triad

engaged in deceptive acts or practices and in fact there was no evidence that Triad even had contact with Appellants prior to the closing of the lease. Appellants have not presented any references to the record or transcript which would demonstrate that these findings are not supported by substantial and competent evidence.

C. **Respondent is Entitled to Attorney Fees on Appeal.**

Pursuant to Idaho Appellate Rules 40 and 41, Respondent requests its costs and attorney fees be awarded to it on appeal. In this case, judgment was entered against the Appellants due to their breach of a Lease Agreement. Paragraph 17(b) of the Lease Agreement provides that upon default Triad may recover reasonable costs and reasonable attorney fees. Thus, the parties have a specific agreement/contract which allows the recovery of attorney fees and costs by Triad.

Moreover, the causes of action in this matter, specifically the breach of the lease agreement, involved a commercial transaction as defined by I.C. § 12-120(3). Idaho Code § 12-120(3) specifically references "guaranty." Thus, in addition to the lease agreement specifically providing for the recovery of attorney fees and costs, this is a civil action in which attorney fees are also recoverable under I.C. § 12-120(3).

Based upon these above-mentioned facts and law, the district court awarded attorney fees to the Triad based upon the terms of the Lease Agreement, I.C. § 12-120(3) and I.R.C.P. 54. (R. pgs. 100-102). The district court's award of attorney fees to Triad is not an issue in this appeal, however, the basis for awarding fees before the district court also applies on appeal. *Erickson v. Flynn*, 138 Idaho 430, 64 P.3d 959 (Ct.App. 2002). Accordingly, Respondent/Triad is entitled to an award of attorney fees and costs on appeal for the same reasons as relied upon by the district court.

V. CONCLUSION

For the foregoing reasons, Triad respectfully request that the district court's decisions and judgments be affirmed. Appellants have done nothing more than ask this Court to second guess the findings of the district court without providing any citations or authority to challenge the district court's decision. Appellants have not provided any basis that the district court's decision was not supported by substantial evidence. Lastly, this Court should award Triad its costs and attorney fees on appeal pursuant to Idaho Appellate Rules 40 and 41.

DATED this 9th day of April, 2009.

RINGERT LAW CHARTERED

By _____
S. Bryce Farris
Attorneys for Respondent/Triad Leasing and Financial, Inc.

CERTIFICATE OF MAILING

I certify that two copies of the foregoing document, were mailed on April 9th, 2009, to the following via U.S. mail.

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