10-10-2013

Urrutia v. Urrutia Appellant's Brief Dckt. 41100

IN THE SUPREME COURT OF THE STATE OF IDAHO

LYNN URRUTIA,

Plaintiff/Respondent
vs

JOHNNY M. URRUTIA, TY (CLIFF) HARRISON, ROBERT SCHUTTE

Defendant/Appellants

SUPREME COURT NO. 41100-2013

APPELLANTS' BRIEF

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls

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Twin Falls County Case CV2012-683

Honorable Randy Stoker, District Judge, presiding.

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STATEMENT OF THE CASE

A. Nature of the Case

Defendants Robert Schutte and Ty Harrison appeal an award of attorney fees to Lynn Urrutia, Plaintiff, under Idaho Code sections 12-120(3), 12-121, 12-123, and sanctions under Idaho Rule of Civil Procedure 11(a)(1).

B. Facts and Procedure

Johnny and Lynn Urrutia were husband and wife, during their marriage they formed Sundance Arena LLC, along with Scott and Lori Jackson and deeded the subject horse arena property to the LLC. (R. Vol. 1, p. 000175; R. Vol. 1, p. 000225; R. Vol. 3, p. Augmentation-317.) Later the Jackson's withdrew from Sundance Arena LLC and still later Johnny and Lynn divorced. Their divorce decree was silent as to Sundance Arena LLC but did award the subject arena property to Johnny. The decree also provided that Johnny would pay Lynn certain sums of money which he apparently did not pay. (R. Vol. 1, p. 00031, 00033-00038, 00040; R. Vol. 1, p. 00124, 00126-00130, 00132; R. Vol. 1, p. Augmentation-284, Augmentation 286-Augmentation 290, Augmentation-292.)

In 2005 Ty Harrison entered into an oral contract with Johnny Urrutia to fix, repair and improve the arena property ("Arena") so it could then be sold, at that time Johnny Urrutia was a licensed real estate agent. (R. Vol. 3, p. Augmentation-358.) Ty Harrison and Robert Schutte were longtime friends and as Robert Schutte lived adjacent to the arena Ty Harrison asked Robert to help with the work on the arena. (R. Vol. 3, p. Augmentation-162.)

Schutte and Harrison spent considerable time and effort cleaning up, repairing, expanding and later running the subject arena. (R. Vol. 3, pp. Augmentation-154, Augmentation-169, Augmentation-181-Augmentation-183.)

Schutte and Harrison learned that Lynn Urrutia was going to file to foreclose on the arena property, so Schutte and Harrison filed a Claim of Lien to protect their labor and materials on December 1, 2011. (R. Vol. 1, p. 00059.)

On February 14, 2012, Lynn Urrutia files her Complaint. (R. Vol. 1, pp. 0014-0049; R. Vol. 1, pp. 00107-00122)

On May 16, 2012 Schutte and Harrison file a second or amended Claim of Lien. (R. Vol. 1, pp. 0074-0078; R. Vol. 1, pp. 0086-0090; R. Vol. 1, pp. 00164-00168; R. Vol. 3, pp. Augmentation-327-Augmentation-331.)

On August 21, 2012 Plaintiff files for Partial Summary Judgment seeking to get Schutte and Harrison's first Claim of Lien dismissed. (R. Vol. 3, pp. Augmentation-4–Augmentation-6.)

October 15, 2012, Hearing on Plaintiff's Motion for Partial Summary Judgment at which Plaintiff is successful in getting Schutte and Harrison's first Claim of Lien dismissed, completely ignoring the second or amended claim of lien. (Tr. Oct. 15, 2012, Vasquez, pp. 3 – 71.)

Chronology

09/23/02	Quitclaim Deed – Johnny & Lynn Urrutia and Scott & Lori Jackson deed the subject property to Sundance Arena LLC.
11/30/04	Deed of Trust – between Sundance Arena LLC and Gary & Donna Hibbard regarding the subject property.
11/21/07	Judgment and Decree of Divorce entered between Johnny and Lynn Urrutia.
12/04/07	Deed of Trust – between Johnny Urrutia personally, no mention of Sundance Arena LLC, and Lynn Urrutia purportedly on the subject arena property.

12/01/11 Claim of Lien – Harrison and Schutte on the arena property for the time period April 2005 through October 2011.

02/14/12 Complaint – Lynn Urrutia files against Johnny Urrutia, Rob Schutte and Ty Harrison.

02/29/12 Listing Resume from Land Title and Escrow, Inc – listing only the Quitclaim Deed #2002-019528 filed 09/23/02 in which the Urrutias and Jacksons deed the arena property to Sundance Arena LLC; and the Deed of Trust #2004-025612 between Sundance Arena LLC and the Hibbards filed 11/30/04.

05/16/12 Notice of Claim of Labor and Materialmen's Lien – Harrison and Schutte's second or amended lien on the arena property for the time period March 2008 and "ongoing".

08/21/12 Plaintiff files Motion for Partial Summary Judgment.

10/15/12 Hearing – Plaintiff's Motion for Partial Summary Judgment – Plaintiff is successful in getting Defendants Harrison and Schutte's Claim of Lien filed 12/01/11 dismissed, completely ignoring the second/amended Notice of Claim of Labor or Materialmen's Lien filed 05/16/12.

ISSUES ON APPEAL

1. Whether the district court erred in failing to determine whether Lynn Urrutia had standing to bring a claim to foreclose the deed of trust.
2. Whether the district court erred in determining that Lynn Urrutia was the prevailing party.
3. Whether the district court erred determining that the gravamen of the claim was a commercial transaction and awarding Lynn Urrutia attorney fees under Idaho Code section 12-120.

4. Whether the district court erred in determining that Defendants defended and pursued their claim frivolously, unreasonably and without foundation, awarding Lynn Urrutia attorney fees under Idaho Code section 12-121.

5. Whether the district court erred in determining that Defendants' conduct was frivolous and awarding attorney fees to Lynn Urrutia under Idaho Code section 12-123.

6. Whether the district court erred in finding that Defendants' counterclaim and unjust enrichment claim violates Rule 11.

7. Whether Defendants are entitled to attorney fees and costs on appeal.

STANDARD OF REVIEW

"The determination whether a party is a prevailing party is committed to the discretion of the trial court" and is reviewed for abuse of discretion. *Mihalka v. Shepard*, 145 Idaho 547, 549, 181 P.3d 473, 474 (2008). "The party appealing the trial court's award of attorney fees bears the burden of demonstrating a clear abuse of discretion." *Id.*

"Whether a district court has correctly determined that a case is based on a commercial transaction for the purpose of [Idaho Code section] 12-120(3) is a question of law over which th[e] Court exercises free review. *Garner v. Povey*, 151 Idaho 462, 469, 259 P.3d 608, 615 (2011).

"For an award of attorney fees under [Idaho Code section 12-121] to be appropriate, [the] entire defense of this action would have to have been frivolous, unreasonable or without foundation." *Thomas v. Madsen*, 142 Idaho 635, 639, 132 P.3d 392, 396 (2006). "If there is a legitimate, triable issue of fact or a legitimate issue of law, attorney fees may not be awarded under this statute even though the losing party has asserted factual or legal claims that are frivolous, unreasonable, or without foundation." *Id.* An award of attorney fees under Idaho Code section 12-121 is reviewed under an abuse of discretion standard. *Id.*

An award of attorney fees under Idaho Code section 12-123 is also reviewed for abuse of discretion. *Puckett v. Verska*, 144 Idaho 161, 170, 158 P.3d 937, 946 (2007).

Finally, an award of sanctions under Idaho Rule of Civil Procedure 11 is reviewed for abuse of discretion. *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P. 2d 993, 1000 (1991).

All issues reviewed for abuse of discretion require the application of a three-part test. *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P. 2d 993, 1000 (1991). The inquiry asks: "(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason." *Id.*

ARGUMENT

The Defendants, Mr. Harrison and Mr. Schutte are entitled to have Ms. Urrutia's award of attorney fees reversed. The Defendants worked for years, since 2005, improving the Arena and turning it into a usable property. The project was ongoing and they continued to make significant improvements until Ms. Urrutia sought to foreclose her deed of trust.

I. Lynn Urrutia did not have standing to bring a claim to foreclose the deed of trust.

Ms. Urrutia must have standing in order to bring a cause of action against the Defendants. "It is a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing." *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2001). "The doctrine of standing focuses on the party seeking relief and not the issues the party wishes to have adjudicated." *Id.*

The district court concluded that although it never determined the validity of the deed of

trust and that "[c]ertainly there are some technical difficulties with the chain of title and deed of trust," Ms. Urrutia had a basis for her claim and did not bring it frivolously. (R. Vol. 3, p. Augmentation-838.) The Hibbards foreclosed on their Deed of Trust by and through attorney John Ritchie. The foreclosure was in Sundance Arena LLC's name only, there was no mention of either Johnny or Lynn Urrutia. (R. Vol. 1, pp. 00209-00223.) The district also found that "Defendants never raised their 'lack of standing' argument until this case was settled and the fee claims asserted." (R. Vol. 3, p. Augmentation-839.)

"Because the issue of standing is jurisdictional, it may be raised at any time." *Beach Lateral Water Users Ass'n v. Harrison*, 142 Idaho 600, 603, 130 P.3d 1138, 1141 (2006). Thus, raising the issue that Lynn Urrutia lacked standing after the property was foreclosed and the suit dismissed was proper. Further, the district court erred in failing to address the issue of Lynn Urrutia's lack of standing when Defendants raised it.

Trust deeds in Idaho are governed by Idaho Code Sections 45-1502 – 45-1515, which allows for foreclosure of a deed of trust in a nonjudicial proceeding. It is an "express-lane alternative" to a judicial foreclosure. *Trotter v. Bank of New York Mellon*, 152 Idaho 842, 846, 257 P.3d 857, 862 (2012). When utilizing the nonjudicial foreclosure procedure in Idaho Code section 45-1505, the Supreme Court has held that proving standing or ownership of the note is not a requirement to foreclose a deed of trust. *Trotter v. Bank of New York Mellon*, 152 Idaho 842, 846, 257 P.3d 857, 862 (2012). Here, Ms. Urrutia did not elect to use the express lane, nonjudicial foreclosure procedures, but instituted a judicial proceeding by filing a complaint seeking to foreclose. Therefore, the holding in *Trotter* regarding standing in a nonjudicial foreclosure is inapplicable and Ms. Urrutia must have standing. *Id.*

The Idaho Uniform Limited Liability Company Act governs Limited Liability

Companies. I.C. § 30-6-101. Under Idaho Code section 30-6-705, a Limited Liability Company can be administratively dissolved in certain circumstances. In this case, Sundance Arena, LLC was administratively dissolved for failing to file an annual report and pay the yearly fee. The effect of an administrative dissolution is that the company "continues its legal existence but may not carry on any business except that necessary to wind up and liquidate its business affairs...." I.C. § 30-6-705(4). Idaho Code section 30-6-702 provides for the winding up of company activities after dissolution. Winding up includes, among others, discharging debts and distributing the assets of the company, I.C. § 30-6-702, as well as transferring the company's property. I.C. 30-6-702(2)(b)(iv).

The property was owned by Sundance Arena, LLC and the LLC was administratively dissolved. (R. Vol. 1, p. 00301.) Lynn and Johnny were the sole members. After the dissolution title to the property remained in the LLC's name. (R. Vol. 1, p. 00178; R. Vol. 1, p. 00224; R. Vol. 3, p. Augmentation-621.) The Urrutias split the property in their divorce settlement and executed a deed of trust to secure Johnny's obligation to pay Ms. Urrutia $59,000. (R. Vol. 1, pp. 00020-00038; R. Vol. 1, pp. 00113-00130; R. Vol. 3, pp. Augmentation-273-Augmentation 290.) Ms. Urrutia then brought the foreclosure action to foreclose the deed of trust upon Johnny's default. (R. Vol. 1, pp. 0014-0049; R. Vol. 1, pp. 00107-00122.) Under these provisions, the members, Johnny and Lynn Urrutia, were required to wind up the Sundance Arena, LLC. They did not. They continued to run it as they had before in violation of the statute allowing them only to continue running the business during the winding up period. They never transferred title to the arena out of the LLC's name. The LLC is the owner of record. (R. Vol. 1, p. 00178; R. Vol. 1, p. 00224; R. Vol. 3, p. Augmentation-621.)

Because the LLC is the owner of record, the deed of trust executed by Mr. Urrutia did not

convey title to Ms. Urrutia. A properly executed trust deed is a conveyance of real property. *Defendant A v. Idaho State Bar*, 132 Idaho 662, 664, 978 P.2d 222, 224 (1999); I.C. § 45-1513. Legal title to the property is conveyed to the trustee, but title to the real estate does not pass. *Id.* There is a presumption that "the holder of title to property is the legal owner of that property." *Luce v. Marble*, 142 Idaho 264, 270, 127 P.3d 167, 173 (2005). But, "[a] grantor can convey nothing more than he or she owns, and ordinarily a grantee acquires nothing more than the grantor owns and can convey." *Id.* Therefore, because Sundance Arena, LLC is still the record holder of title to the property and the Urrutias as sole members of the dissolved LLC never wound up the company business, Sundance Arena LLC is the presumed legal owner of the property. Johnny Urrutia did not have title to the property when he executed the deed of trust and therefore could not convey legal title to Lynn Urrutia with a deed of trust. *See id.*

"In order to fulfill the standing requirement, the plaintiff must 'allege such a personal stake in the outcome of the controversy' as to warrant *his* invocation of the court's jurisdiction." *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 375, 973 P.2d 142, 146 (1999). Because Johnny Urrutia did not convey a valid interest in the property, Lynn Urrutia does not have standing to assert a foreclosure of the deed of trust.

II. The district court erred in determining that Lynn Urrutia was the prevailing party for purposes of awarding attorney fees under Idaho Code sections 12-120 and 12-121 because the claim was dismissed and Lynn Urrutia did not obtain relief.

The Defendants are entitled to a reversal of the award of fees because Ms. Urrutia was not the prevailing party. Ms. Urrutia did not obtain the relief she sought and her claim was entirely dismissed.

The determination of the prevailing party is reviewed for abuse of discretion. *Mihalka v. Shepard*, 145 Idaho 547, 549, 181 P.3d 473, 474 (2008). The inquiry asks: "(1) whether the trial

court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason." *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P. 2d 993, 1000 (1991).

Idaho Rule of Civil Procedure provides:

> In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract.

Rule 54(d)(1)(B) guides the district court's inquiry in determining the prevailing party. It states:

> In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

The district court must apply these criteria when determining which party prevailed. The court determines who prevailed "in the action." That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis." *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 719, 117 P.3d 130, 133 (2005); *Jorgensen v. Coppedge*, 148 Idaho 536, 538, 224 P.3d 1125, 1127 (2010).

In this case, the district court erred in determining that Lynn Urrutia was the prevailing party because Ms. Urrutia obtained no relief and the entire suit was ultimately dismissed. It found that Lynn Urrutia was the primary prevailing party in this action. (R. Vol. 3, p. Augmentation-835.) Lynn obtained a partial summary judgment in her favor, and the district court concluded that "[b]ut for Hibbard's foreclosure, she would have obtained a judgment

foreclosing defendant's first lien claim in its entirety. She completely prevailed on her defense of the counterclaim as defendants obtained no relief against her."

The district court did properly perceive the issue as one of discretion. However, the district court did not act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it because it did not properly apply the Rule 54(d)(1)(B) criteria.

The rule requires that the district court consider the final judgment or result of the action in relation to the relief sought. The district court concluded that Ms. Urrutia succeeded in part and Defendants prevailed in part, but Ms. Urrutia was the primary prevailing party. Ms. Urrutia's claim was to foreclose the deed of trust on the arena. She did not succeed in foreclosing because Hibbard foreclosed on the arena owned by Sundance Arena LLC. (R. Vol. 3, p. Augmentation-835.) Defendants asserted a counterclaim against Ms. Urrutia. It sought to foreclose a mechanics lien and, in the alternative, damages for unjust enrichment. (R. Vol. 1, pp. 00068-00070.) Ms. Urrutia did succeed in obtaining a partial summary judgment dismissing Defendants' first mechanics lien, but the merits of unjust enrichment claim were not addressed before the case was dismissed. Further, the preliminary injunction issued against Defendants was dismissed. (R. Vol. 3, pp. Augmentation-654-Augmentation-655.) The final judgment, dismissal, in relation to the relief sought shows that the parties did not obtain any relief. (R. Vol. 1, pp. 00189-00191.) Each party succeeded in part, but ultimately Ms. Urrutia did not obtain the relief she sought.

In addition, the district court considered improper factors in determining that Ms. Urrutia was the prevailing party. It stated in its memorandum opinion: "But for Hibbard's foreclosure, she would have obtained a judgment foreclosing defendant's first lien claim in its entirety. She completely prevailed on her defense of the counterclaim as defendants obtained no relief against

her. Had this case progressed to trial, she would have clearly prevailed on defendants' second lien claim because it is undisputed that the priority of her deed of trust predated the second lien." (R. Vol. 3, p. Augmentation-835.) Rule 54(d)(1)(B) mandates that the district court consider the final judgment or result. Rule 54(d)(1)(B) does not provide for the consideration of what would have happened had the case gone to trial, or what would have happened if not for some other event. Here, the district court considered what would have happened had the Hibbards not foreclosed. It determined that had the Hibbards not foreclosed, Ms. Urrutia would have prevailed on her claims, therefore she is the prevailing party. These considerations are irrelevant under the Rule 54(d)(1)(B) analysis and it was error for the district court to base its decision on what might have happened.

Because the district court did not act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it, it abused its discretion in determining that Ms. Urrutia was the prevailing party.

III. The district court erred in determining that the gravamen of the claim was a commercial transaction and awarding Lynn Urrutia attorney fees under Idaho Code section 12-120 because there was never any contract between the Defendants and Lynn Urrutia.

Because the contract to improve the arena property and all transactions were between the Defendants and Johnny Urrutia, there was no commercial transaction entitling Ms. Urrutia to attorney fees under Idaho Code section 12-120. Idaho Code section 12-120(3) awards attorney fees to the prevailing party (see discussion *supra* section II) in a commercial transaction. A "commercial transaction" is defined as all transactions except transactions for personal and household purposes. *Id.*

"There must be a commercial transaction between the parties for attorney fees to be awarded." *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 136 Idaho 466, 471, 36

P.3d 218, 223 (2001). Determining whether the district court correctly determined whether there was a commercial transaction is a question of law of which the Court exercises free review. *Garner v. Povey*, 151 Idaho 462, 469, 259 P.3d 608, 615 (2011).

Whether a party can "avail itself of I.C. § 12-120(3)" is a two-step analysis. *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 136 Idaho at 471, 36 P.3d at 223. First, "there must be a commercial transaction that is integral to the claim," and second, "the commercial transaction must be the basis upon which recovery is sought." *Id.* A commercial transaction must be the gravamen of the lawsuit. *Id.* This means "the lawsuit and the causes of action must be based on a commercial transaction, not simply a situation that can be characterized as a commercial transaction." *Id.*

The first step, that there is a commercial transaction, requires that "each party to the transaction must enter the transaction for a commercial purpose." *Carrillo v. Boise Tire Co., Inc.*, 152 Idaho 741, 756, 274 P.3d 1256, 1271 (2012). In *Carrillo*, the Carrillos obtained services for their personal vehicle from Boise Tire Company and there was "no indication that they intended to use the benefit of those services for a commercial purpose." *Id.* Because both parties did not enter into the transaction for a commercial purpose, the Carrillos were not entitled to attorney fees under Idaho Code section 12-120 (3).

The second step, that the commercial transaction is the basis upon which recover is sought, requires a commercial transaction between the parties. *BECO Const. Co., Inc. v. J-U-B Engineers, Inc.*, 145 Idaho 719, 726, 184 P.3d 844, 851 (2008). In *BECO*, "the transaction was between the City and BECO and not between J-U-B and BECO." *Id.* Therefore, J-U-B was not entitled to attorney fees against BECO under Idaho Code section 12-120 (3) because there was no transaction between them. *Id.* Because there was no commercial transaction between the

parties, there was no basis for an award of fees under Idaho Code section 12-120(3). *Id.* Similarly, where the lender sought to foreclose a deed of trust and the mechanic's lien holder sought to foreclose its lien, the Court held that attorney fees are inappropriate under Idaho Code section 12-120(3) because there was no commercial transaction between the lender and the mechanic's lien holder. *Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC*, 151 Idaho 740, 748, 264 P.3d 379, 387 (2011). There was a transaction between the lender and the property developer and a transaction between the property developer and the mechanics lien holder. But the Court held that there was no transaction between the lender and the mechanics lien holder. *Id.* Thus, the mechanic's lien holder was not entitled to attorney fees under Idaho Code section 12-120(3). *Id.*

Here, the district court found that Lynn Urrutia was entitled to attorney fees under this statute because she was the prevailing party and because she established that a commercial transaction is the gravamen of the case. It found that because "Sundance Arena is a commercial property dedicated to horse related events and that the claim that Lynn and Johnny authorized work on the arena and that Lynn was unjustly enriched by the improvements defendants made i[t] a commercial transaction within the meaning of I.C. § 12-120(3)." (R. Vol. 3, p. Augmentation-837.)

In this case, there was no transaction between Lynn Urrutia and the Defendants. Ms. Urrutia sought to foreclose the deed of trust on the property while Defendants sought to recover for improvements made to the property and their personal property. (R. Vol. 1, pp. 0014-0049; R. Vol. 1, pp. 00107-00122; R. Vol. 1, pp. 0050-0061.)

As in *Hopkins*, Ms. Urrutia as the holder of the deed of trust had a contract with Johnny Urrutia. (R. Vol. 1, pp. 0032-0038; R. Vol. 1, pp. 00125-00130.) Defendants also had a contract

with Johnny Urrutia to improve the property. But, Lynn Urrutia and Defendants never had any agreement or transacted with each other. The testimony shows that the oral contract was between Defendants and Johnny. (R. Vol. 3, p. Augmentation-358, ll. 4-12.) The promissory note further shows that the agreement was between Defendants and Johnny. (R. Vol. 3, p. Augmentation-191.) There is no evidence of any commercial transaction between Defendants and Lynn Urrutia. So, because there was no agreement or transaction between Lynn Urrutia and Defendants, the commercial transaction is not the actual basis for Ms. Urrutia's claim against the Defendants and she should not be entitled to attorney fees under I.C. § 12-120.

IV. The district court erred in determining that the Defendants defended and pursued their claim frivolously, unreasonably and without foundation, awarding Lynn Urrutia attorney fees under Idaho Code section 12-121.

The Defendants did not pursue or defend this suit frivolously because their claims and defenses were based in law and supported by facts. Idaho Code section 12-121 provides that in a civil action, "the judge may award reasonable attorney's fees to the prevailing party or parties." Idaho Rule of Civil Procedure 54(e)(1) further provides that attorney fees under that statute "may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation." However, [f]or an award of attorney fees under that statute to be appropriate, [the] entire defense of th[e] action would have to have been frivolous, unreasonable, or without foundation." *Thomas v. Madsen*, 142 Idaho 635, 639, 132 P.3d 392, 396 (2006). "If there is a legitimate, triable issue of fact or a legitimate issue of law, attorney fees may not be awarded under this statute even though the losing party has asserted factual or legal claims that are frivolous, unreasonable or without foundation." *Id.* The district court's disagreement with the assertions made, or finding that there

is no merit to the defenses does not provide a basis for an award of attorney fees under this statute. *Id.*

The district court found that an award of attorney fees under Idaho Code section 12-121 was appropriate because defending the amount claimed in the mechanic's lien and pursuing the claim was frivolous. The district court also found that the counterclaim was frivolous because of the priority date claimed in the second lien and the claim of unjust enrichment. (Memorandum Opinion Re Attorney Fees and Costs, pp. 19 – 20.) This decision is reviewed for abuse of discretion. *Thomas v. Madsen*, 142 Idaho at 639, 132 P.3d at 396.

A. Amount of Mechanic's Lien.

The Defendants were not frivolous in bringing or pursuing the mechanic's lien for the amount claimed because they substantially complied with the statute. Mechanics liens are governed by Idaho Code section(s) 45-501, *et seq.* It provides that "[e]very person performing labor upon, or furnishing materials to be used in the construction, alteration or repair" has a right to a lien on the property. I.C. § 45-501. Idaho Code section 45-501 "is available to those who 'perform labor' or 'furnish materials to be used in the construction' of a project." *Electrical Wholesale Supply Co., Inc. v. Nielson*, 136 Idaho 814, 821, 41 P.3d 242, 249 (2001). In order to create a valid lien there must only be "substantial compliance with the requirements of the statute." *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 850, 87 P. 3d 955, 959 (2003). Compliance with the statutes are liberally construed in favor of the party performing the work. *ParkWest Homes LLC v. Barnson*, 149 Idaho 603, 605, 238 P.3d 203, 206 (2010).

The district court found that it is "rudimentary law that a mechanics lien is for the purpose of collecting compensation for improvements to real property" and the Defendants claimed compensation for things other than improvements. Thus, defending the foreclosure of

the amount claimed in the first mechanic's lien caused the pursuit of that claim to be frivolous, unreasonable or without foundation. (R. Vol. 3, p. Augmentation-838.)

A lien is not invalidated simply because the claimant is not entitled to the amount due in the claim of lien, even when the discrepancy is substantial. *Electrical Wholesale Supply Co., Inc. v. Nielson*, 136 Idaho at 825, 41 P.3d at 253. In *Electrical Wholesale Supply*, the district court "dramatically reduced the final award," and the Supreme Court found that the claimant "provided materials to the project and was entitled to compensation." *Id.* Claiming an incorrect amount and the district court's disagreement with the amount claimed in the lien does not invalidate the lien. The district court has the discretion to award a lesser amount. *Id.*

Here, the Defendants' first mechanics lien claimed $230,279.65. (R. Vol. 1, pp. 0059-0061.) The district court found that $100,000 of the sum was not for improvements and therefore the amount claimed was frivolous. (R. Vol. 3, p. Augmentation-839.) As in *ParkWest Homes* and *Electrical Wholesale Supply*, the amount claimed was higher than the amount the district court found was due. Because this would not invalidate the claim, it is incongruous to find that claiming an excessive amount would amount to a frivolous claim.

The amount claimed in the lien is a triable issue of fact. Simply because the district court disagrees with the assertion of the amount or finds the claimed amount meritless does not rise to the level of being frivolous, unreasonable, or without foundation. ." *Thomas v. Madsen*, 142 Idaho at 639, 132 P.3d at 396. Therefore, the district court erred in finding that Defendants defended the amount of the first mechanics lien frivolously, unreasonably, or without foundation because an excessive claim does not invalidate a lien.

B. Mechanic's Lien Time for Filing

Because Defendants presented a basis for defending the validity of the mechanic's lien in claiming that the work was ongoing, they did not pursue the claim of lien frivolously. A mechanic's claim of lien must be filed within 90 days after completion of labor or services, or furnishing material. I.C. § 45-507. This means that the claim of lien must be filed within 90 days of the date the work contracted for is substantially completed. Trivial labor completed after the last substantial work under the contract does not extend the time for filing. *Mitchell v. Flandro*, 95 Idaho 228, 231, 506 P.2d 455, 458 (1972).

Here, the district court found that the Defendants pursued the first mechanic's lien that facially appeared valid, but after the depositions of the defendants, clearly showed that "any work done by defendants on the arena did not extend the time for filing the lien." R. Vol. 3, p. Augmentation-839.) Thus, the court found that the Defendants pursued the mechanic's lien after it was revealed to be frivolous. *Id.*

The district court abused its discretion in determining that the pursuit of the mechanic's lien was frivolous, because the Defendants claimed in their depositions that the contract and the work were continuous and thus had not been substantially completed. Mr. Schutte testified in his deposition that "[t]here isn't an end to it. There never has been an end to it, as you well know. It's an ongoing, continuous, it's something you do every day." (R. Vol. 3, p. Augmentation-197, ll. 7 – 10.) He also testified that they started finalizing the arena stall are in 2010 and began building the hay barn. (R. Vol. 3, p. Augmentation-200, ll. 6 – 25). They put in new lighting in December 2011 or January 2012 and hauled in more gravel. They also planned to move the north outdoor arena and had already begun the leveling and grading. (R. Vol. 3, p. Augmentation-211, ll. 11-25, Augmentation-212, ll. 1-5.) Mr. Harrison also testified that the work was an ongoing

since they started. (R. Vol. 3, pp. Augmentation-143-Augmentation-145.) Thus, the testimony by the Defendants provide a factual basis to defend the time for filing the mechanic's lien. Even if the district court disagrees with the merits of Defendants' position and could find that the work done was trivial and that the contracted work was substantially completed, the Defendants nevertheless presented issues of triable fact. Thus, their pursuit of the mechanic's lien after the depositions is not frivolous and the district court abused its discretion.

C. Priority of Mechanic's Lien.

The district court erred in finding that the Defendants actions in pursuing the second mechanic's lien were frivolous, unreasonable, and without foundation because the work began in 2005 and was continuous until Ms. Urrutia sought to foreclose the deed of trust. A mechanics lien has preference to any other lien or encumbrance which attached after the time when the improvement was commenced to be furnished. I.C. § 45-506. The date of priority is set when the claimant begins improvement. *Ultrawall, Inc. v. Washington Mut. Bank, FSB*, 135 Idaho 832, 836, 25 P.3d 855, 859 (2001); *Metropolitan Life Ins. Co. v. First Sec. Bank of Idaho*, 94 Idaho 489, 492, 491 P.2d 1261, 1264 (1971).

A claimant can file a subsequent lien claiming work in a previous invalid lien. *Terra-West, Inc. v. Idaho Mutual Trust, LLC*, 150 Idaho 393, 400, 247 P.3d 620, 627 (2010). "A mechanic's lien, 'if any exists at all, relates back to the date of commencement of the work or improvement or the commencement to furnish the material.'" *Id.* (quoting *White v. Constitution Mining & Mill Co.*, 56 Idaho 403, 420, 55 P.2d 152, 160 (1936)). There, the work was completed under a continuous employment contract, thus the lien "attached at the time the work began and encompassed all work subsequently done under the contract." *Id.* As long as the lien substantially complies with the statute and is timely filed, the lien may encompass all labor or

services performed under one contract. *Id.* "The fact that a lien claimant previously attempted, but failed, to file a lien under the same contract does not prohibit that same party from filing and foreclosing a second lien." *Id.*

The district court found that Defendants were frivolous, unreasonably, and without foundation in pursuing a claim of lien with a priority date subsequent to the recording of the deed of trust. (R. Vol. 3, p. Augmentation-840.) However, in this case, Defendants' original lien stated that the work began in 2006. (R. Vol. 1, pp. 0059-0061.) That lien was dismissed for not having been filed within 90 days after the work was completed. A second lien was filed alleging that the work began in 2008. ((R. Vol. 1, pp. 0074-0078; R. Vol. 1, pp. 0086-0090; R. Vol. 1, pp. 00164-00168; R. Vol. 3, pp. Augmentation-327-Augmentation-331.) Although the second lien states that work began in 2008, according to the depositions of the Defendants and the contract between Mr. Urrutia and the Defendants, the work began in 2006. (R. Vol. 3, p. Augmentation-358, ll. 13 – 16.) There is no evidence of a subsequent contract. Rather, this was one continuous contract. As in *Terra-West*, a prior invalid lien is irrelevant to the determination of whether a second lien is valid. Here, the work claimed was everything under the contract beginning in 2006. The work had not yet been substantially completed. This is evidenced by the equipment, tools and supplies for improving the property that were still at the Arena when Ms. Urrutia sought a Temporary Injunction. (R. Vol. 3, pp. Augmentation-632-Augmentation-639.) The second claim of lien relates back to when the Defendants began the labor and furnishing of materials under the contract.

Pursuing the second mechanics lien was not frivolous because the second mechanic's lien relates back to the start of performance under the contract and therefore has priority over the trust

deed. Thus, there was a triable issue of fact and the district court abused its discretion in awarding attorney fees.

D. Unjust Enrichment.

The district court abused its discretion in determining that Defendants' unjust enrichment claim was frivolous, unreasonable and without foundation because Ms. Urrutia had a deed of trust and was seeking to foreclose significantly improved property.

Unjust enrichment "is the measure of recovery under a contract implied in law. *Barry v. Pacific West Const., Inc.*, 140 Idaho 827, 834, 103 P.3d 440, 447 (2004). A contract implied in law "is not a contract at all, but an obligation imposed by law for the purpose of bringing about justice and equity without reference to the intent of the agreement of the parties, and, in some cases, in spite of an agreement between the parties." *Id.* "Unjust enrichment occurs where a defendant receives a benefit which would be inequitable to retain without compensating the plaintiff to the extent that retention is unjust." *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 557, 165 P.3d 261, 271 (2007). There are three elements to an unjust enrichment claim: "(1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof." *Id.* at 558, 165 P.3d at 272.

Here, the Defendants asserted the counterclaim for unjust enrichment as an alternative argument in the event that Lynn Urrutia was successful in foreclosing the deed of trust and the mechanic's lien was unsuccessful. (R. Vol. 1, pp. 0068-0078.)The district court concluded that Defendants' unjust enrichment claim was frivolous because Lynn lost her interest in the arena in 2007 when it was awarded to Johnny and Defendants seek compensation for improvements to

the property after Lynn no longer had an interest. (R. Vol. 3, pp. Augmentation-840-Augmentation-841.)

All of the elements of an unjust enrichment claim are met. There is no requirement in the elements of an unjust enrichment claim for a party to have a vested interest in the property for the entire time the benefit was conferred. It only requires that there be a benefit conferred, appreciation of the benefit, and acceptance. In this case, it is undisputed that Defendants made improvements to the property over several years. (R. Vol. 3, pp. Augmentation-154, Augmentation-169, Augmentation-181-Augmentation-183; R. Vol. 3, p. Augmentation-358.) Thus, if Lynn foreclosed the deed of trust, she would receive the property at a greater value and those who improved the property would not have been compensated. Lynn appreciated the benefit as evidenced by her filing of a Preliminary Injunction to prevent the Defendants' from removing any of their property. In receiving the property she would be accepting the benefit. Failure to compensate defendants would be unjust.

The elements of the cause of action can be met. Whether it is meritorious or not is not relevant to a determination of frivolity. *Thomas v. Madsen*, 142 Idaho 635, 639, 132 P.3d 392, 396 (2006). "If there is a legitimate, triable issue of fact or a legitimate issue of law, attorney fees may not be awarded under this statute even though the losing party has asserted factual or legal claims that are frivolous, unreasonable or without foundation." *Id.* Simply because the district court disagrees with the assertions made, or there is no merit to the defenses does not mean they are frivolous, unreasonable or without foundation. *Id.*

E. Personal Property.

The defendants were not frivolous in defending the preliminary injunction by arguing that they had removable personal property because personal property can be the subject of a

mechanic's lien and they are entitled to remove their leftover, unincorporated materials. Idaho Code section 45-501 for materials that are furnished for the improvement of property. Thus, personal property can be the subject of a mechanic's lien. *See BMC West Corp. v. Horkley*, 144 Idaho 890, 896, 174 P.3d 399, 405 (2007) There is nothing which states that movable, portable chattel cannot qualify as furnished materials under Idaho Code section 45-501. *Id.* Although personal property can the subject of a mechanic's lien as materials furnished, if those materials were not incorporated into the improvements of construction of the structure then no lien attaches. *Chief Indus. V. Schwendiman*, 99 Idaho 682, 687, 587 P.2d 823, 828 (1978).

The district court found that it was an unreasonable position for Defendants to defend the preliminary injunction by arguing that the improvements were not fixtures, but rather removable property. (R. Vol. 3, p. Augmentation-841.) It found that this argument and the claim for a mechanics lien are "diametrically opposed." "Even though they ultimately prevailed on much of this issue because the injunction was quashed when the case settled, an enormous amount of attorney time was spent in this case on what the Court finds is an unreasonable position."

Here, the Defendants' lien not only claims labor and improvements, but materials furnished. (R. Vol. 1, pp. 0059-0061.) Materials furnished is portable property used to improve the arena and can be subject to a lien. However, the leftover materials claimed in the opposition to the preliminary injunction were not incorporated into the improvements and therefore are not subject to the lien. Thus, the Defendants' defense of the preliminary injunction was based in law. They sought to prevent Ms. Urrutia from holding their personal property and leftover materials that had not been paid for. (R. Vol. 2, pp. 0019-0055; R. Vol. 3, pp. Augmentation-390-Augmentation-391; R. Vol. 3, pp. Augmentation-530-Augmentation-531; R. Vol. 3, pp. Augmentation-632-Augmentation-639.) Further, it is an untenable position to not allow

Defendants to defend against a preliminary injunction and to recover their personal property when the mechanic's lien was found to be invalid.

The Defendants did not bring or pursue their claims and arguments frivolously, unreasonably, or without foundation and therefore the district court abused its discretion in awarding attorney fees under Idaho Code section 12-121. The Defendants are entitled to a reversal.

V. The district court erred in determining that Defendants' conduct was frivolous and awarding attorney fees to Lynn Urrutia under Idaho Code section 12-123 because the claims were supported in fact and warranted under existing law.

The Defendants were not frivolous in defending the motion for summary judgment, the motion for an injunction, or in filing the counterclaim because they continuously worked on the improvements, sought to remove their remaining tools and personal property, and Ms. Urrutia would have received a greatly improved piece of property along with their personal property.

Idaho Code section 12-123 (2)(a) provides:

> In accordance with the provisions of this section, at any time prior to the commencement of the trial in a civil action or within twenty-one (21) days after the entry of judgment in a civil action, the court may award reasonable attorney's fees to any party to that action adversely affected by frivolous conduct.

The statute defines "conduct" as "filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action." I.C. § 12-123(1)(a). "Frivolous conduct" is defined as:

> [C]onduct of a party to a civil action or of his counsel of record that satisfies either of the following:
>
> (i) it obviously serves merely to harass or maliciously injure another party to the civil action;
>
> (ii) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

I.C. § 12-123(1)(b). An award of attorney fees under Idaho Code section 12-123 is reviewed for abuse of discretion. *Puckett v. Verska*, 144 Idaho 161, 170, 158 P.3d 937, 946 (2007). Whether there is an abuse of discretion is determined by a three-part inquiry. *Mihalka v. Shepard*, 145 Idaho 547, 549, 181 P.3d 473, 474 (2008). The inquiry asks whether the district court: "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason." *Id.* at 550, 181 P.3d at 476.

Here, the district court abused its discretion in determining that Defendants' conduct was frivolous because the Defendants' claims were based in law and supported by good faith arguments. The district court found that Defendants' conduct was frivolous under the statute. It stated, "Continuing to defend the summary judgment motion regarding the first lien, opposing the injunction request which asserted personal property in the face of the argument that it was an improvement to property pursuant to the lien statute, and filing and pursuing the counterclaim were frivolous acts." (R. Vol. 3, pp. Augmentation-842-Augmentation-843.)

First, the defense of the summary judgment motion with regard to the first lien was not frivolous. The district court does not specify what it means by "continuing to defend the motion for summary judgment." It refers to its discussion regarding Idaho Code section 12-121 where it finds that it was frivolous to pursue the mechanics lien after the depositions show that there was no work done within ninety days of filing. However, the mechanics lien was pursued in good faith because the testimony in the depositions claim that the work and improvements were ongoing. (R. Vol. 3, pp. Augmentation-154, Augmentation-169, Augmentation-181-Augmentation-183; R. Vol. 3, pp. Augmentation-198-Augmentation-200, Augmentation-211-Augmentation-212.) They had an open, though verbal, contract with Johnny Urrutia. (R. Vol. 3,

p. Augmentation-358, ll. 4 – 12.) This claim for a mechanics lien to ensure compensation substantially complied with the statute as discussed in section IV(B)." *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 850, 87 P. 3d 955, 959 (2003). Further, Defendants only pursued this claim until the district court ruled that it was invalid. Thus, they made the mechanics lien claim with facts that substantially supported the requirements of the statute. Simply because the district court disagreed with Defendants' contention that the work was ongoing and invalidated the lien does not mean that the claim was pursued and defended frivolously. *Thomas v. Madsen*, 142 Idaho 635, 639, 132 P.3d 392, 396 (2006). Therefore, the district court acted outside the bounds of its discretion.

The second reason the district court found that the Defendants' were frivolous under Idaho Code section 12-123 was in opposing the plaintiff's motion for an injunction because they asserted personal property also claimed in the mechanic's lien. Idaho Code section 45-501 provides not just for labor and construction, but also for materials that are furnished for the improvement of property. Thus, personal property can be the subject of a mechanic's lien. *See BMC West Corp. v. Horkley*, 144 Idaho 890, 896, 174 P.3d 399, 405 (2007) There is nothing which states that movable, portable chattel cannot qualify as furnished materials under Idaho Code section 45-501. *Id.*

In opposing the preliminary injunction the Defendants sought to recover their personal tools and materials. (R. Vol. 2, pp. 0019-0055; R. Vol. 3, pp. Augmentation-390-Augmentation-391; R. Vol. 3, pp. Augmentation-530-Augmentation-531; R. Vol. 3, pp. Augmentation-632-Augmentation-639.) In their mechanic's lien, Defendants claimed materials furnished for the improvement of the Arena. (R. Vol. 1, pp. 0059-0061.) As in *Horkley*, these were proper claims. However, in their opposition to the motion for a preliminary injunction they sought recovery of

excess materials furnished as well as other personal property used in the improvements. (R. Vol. 3, pp. Augmentation-390-Augmentation-391; R. Vol. 3, pp. Augmentation-530-Augmentation-531; R. Vol. 3, pp. Augmentation-535-Augmentation-573; R. Vol. 3, pp. Augmentation-632-Augmentation-639.) A mechanic should be able to remove portable, personal property that has not been paid for. Further, the mechanic should also be able to remove his property and equipment, such as trailers, tools, and other construction equipment that was never intended to stay with the improved property. Thus, the district court abused its discretion in finding that the Defendants were frivolous in defending against the preliminary injunction and asserting a claim for their personal property because their defense had a basis in law and was a good faith argument.

Finally, the district court abused its discretion in finding that Defendants filed and pursued the counterclaim frivolously. The counterclaim alleges unjust enrichment. (R. Vol. 1, pp. 0068-0078.) As discussed in section IV(C) this claim was filed based on facts and with a good faith argument based on existing law. This was an alternative argument for Defendants made in the event that Lynn Urrutia was successful in foreclosing the deed of trust and obtaining the arena property. If she was successful, she would have received the benefit of a greatly improved property without compensating Defendants for their work or expenses. Further, the district court allowed this claim and counsel for Defendants specified in a hearing that it was an alternative argument. (Tr. Oct. 15, 2012, Vasquez, pp. 36-37.) Defendants made a good faith argument that the elements of unjust enrichment would have been met had Lynn Urrutia succeeded in her foreclosure.

Therefore, because all of Defendants argument were made with a factual basis and made good faith arguments based on existing law, the district court abused its discretion in awarding attorney fees to Lynn Urrutia under Idaho Code section 12-123.

VI. The district court erred in finding that defendants' counterclaim and unjust enrichment claim violates Rule 11 because it applied the wrong standard.

The district court found that Defendants violated Idaho Rule of Civil Procedure. 11 for three reasons. First, the district court found that Defendants acknowledged that the first mechanic's lien was seeking inappropriate compensation, but did not "withdraw the claims or correct the record." (R. Vol. 3, p. Augmentation-843.) Second, the district court found that filing the counterclaim violated Rule 11 because there was no factual or legal basis for the assertion that the second mechanic's lien had priority over Lynn's deed of trust. Third, the district court found that there was no basis for Defendants' unjust enrichment claim because Lynn's interest in the property was "divested in 2007 more than 5 years before the counterclaim was filed." The district court concluded that signing the counterclaim violated Rule 11. (R. Vol. 1, p. Augmentation-844.)

An award of sanctions under Idaho Rule of Civil Procedure 11 is reviewed for abuse of discretion. *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P. 2d 993, 1000 (1991). Abuse of discretion requires the application of a three-part test. *Id.* The inquiry is: "(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason." *Id.*

The district court abused its discretion by failing to act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it, and by failing to reach its decision by an exercise of reason. Idaho Rule of Civil Procedure 11(a)(1) provides:

> The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose. . . . If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it. . . an appropriate sanction.

The "language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule." *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho at 95, 803 P.2d at 1001. It requires reasonableness under the circumstances. *Id.* Further, "[t]he court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted." *Id.* The Supreme Court identified factors to consider in determining what constitutes a reasonable inquiry. *Id.* These factors include: "how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar." *Id.*

In *Sun Valley*, the trial court focused its inquiry on the "reasonable chance of success and on sufficient factual foundation to sign and reasonably believe a cause of action existed." *Id.* In doing so the trial court did not conduct the proper inquiry for sanctions under Rule 11 (a)(1). The Court found that the trial court should have focused on whether the plaintiff "made a proper

investigation upon reasonable inquiry." *Id.* Because the trial court did not conduct the proper inquiry, it abused its discretion by not acting consistently with the legal standards applicable to the choice it had to make. *Id.*

Here, as in *Sun Valley*, the district court did not conduct the proper inquiry which requires it to consider whether Defendant "made a proper investigation upon reasonable inquiry." The court first found that in Defendants' Response to Partial Summary Judgment, a signed memorandum, "counsel is clearly acknowledging that the first lien seeks inappropriate compensation, yet fails to either withdraw the claims or correct the record." (R. Vol. 3, p. Augmentation-843.) The Response states that "Defendants Harrison and Schutte seem to have taken an overly cautious approach to the lien and upon enforcement will properly adjust the amount." (R. Vol. 3, p. Augmentation-114.) The memorandum then cites to *Parkwest Homes LLC v. Barnson*, 149 Idaho 603, 238 P.3d 203 (2010), which holds that a lien is not invalid because of excessive amounts claimed in a mechanics lien. The relevant inquiry is whether Defendants made a proper investigation upon reasonable inquiry. In noting that the amount claimed in the lien may have been too high, Defendants cite to relevant law that supports the argument that the amount can be adjusted at trial. Thus, the district court did not make any finding as to this inquiry by Defendants. Rather, it mandated that Defendants should have withdrawn the lien. This is not required by Rule 11 (a)(1). Only that in signing documents, the attorney makes a reasonable inquiry, which was done here.

The district court next held that the counterclaim violated Rule 11. It found that "there is no factual or legal basis to assert that defendants' second lien had priority over Lynns previously recorded deed of trust." (R. Vol. 3, p. Augmentation-844.) Idaho law provides that a lien's priority date is when the work commenced not when it is filed. Again, the district court did not

find that Defendants failed to make a proper investigation upon reasonable inquiry in filing the counterclaim. As in *Sun Valley*, the district court focused on the factual basis. This is incorrect.

Finally, the district court held that the unjust enrichment counterclaim violated Rule 11 because Lynn's interest in the property was divested in 2007. There is no finding as to whether counsel for defendants made a reasonable inquiry, only that it did not think the claim was meritorious. This is also incorrect.

Because the district court did not apply the correct standard and consider whether Defendants made a proper investigation upon reasonable inquiry, the district court abused its discretion. It failed to act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it.

VII. Defendants are entitled to attorney fees and costs on appeal.

Schutte and Harrison claim attorney's fees and costs on appeal pursuant to Idaho Code §12-121. These attorney's fees and costs are proper in this case for the reasons stated in this brief. See I.A.R. 35(b)(5), 40 and 41; see also *De Wils Interiors v. Dines*, 106 Idaho 288 (Idaho Ct. App. 1984). Schutte and Harrison reserve the right to file further statements, and assert a claim for attorney's fee when this Court issues a decision on the merits in this appeal.

VIII. CONCLUSION

The Defendants respectfully request that this Court reverse the judgment awarding attorney fees and costs to Lynn Urrutia.

RESPECTFULLY SUBMITTED this 8th day of October, 2013.

ROCKSTAHL LAW OFFICE, Chtd.

By: _____
Joe Rockstahl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 8th day of October, 2013, I served a true and correct copy of the following-described document upon the person(s) listed below in the manner noted:

Attorney for Lynn Urrutia

Harry DeHaan
Daniel Plantz
Law Office of Harry DeHaan
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[X] First Class Mail
[ ] Hand Delivery
[ ] Facsimile

Joe Rockstahl