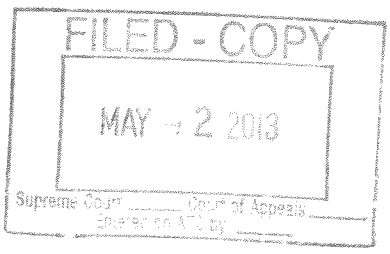
5-2-2013

DeGroot v. Standley Trenching, Inc. Appellant's Reply Brief Dckt. 39406

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES DeGROOT, and DeGROOT FARMS, LLC, Plaintiffs/Appellants, -vs- STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO., Defendant/Respondent.	)	**DOCKET NO. 39406-2011** Canyon County Case No. CV 2001-7777



APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Third Judicial District for Canyon County
Honorable Gregory M. Culet, District Judge presiding.

ATTORNEYS FOR APPELLANTS

Kevin E. Dinius
Michael J. Hanby II
Dinius & Associates, PLLC
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687

ATTORNEYS FOR RESPONDENT

M. Michael Sasser
SASSER & INGLIS, PC
P.O. Box 5880
Boise, ID 83705

Robert D. Lewis
CANTRILL, SULLIVAN & KING
P.O. Box 359
Boise, Idaho 83701

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THE TRIAL COURT ERRED IN GRANTING STANDLEY SUMMARY JUDGMENT ON DEGROOT'S AFFIRMATIVE CLAIMS AGAINST STANDLEY

A. DeGroot is a Third-Party Beneficiary

1. An issue of fact exists as to whether DeGroot is a third party beneficiary of the contract between Standley and Beltman

As noted in the Appellants' Brief, Idaho Code § 29-102 expressly provides that a contract made for the express benefit of a third person, may be enforced by that third person. The basic test for determining a party's status as a third party beneficiary is whether the agreement reflects an intent to directly benefit a third party.[1] If the written contract is ambiguous, intent may be gleaned from circumstances surrounding formation.[2]

In this case, the written bid expressly identifies the "DeGroot Dairy."[3] On the first page, after the word 'bid,' it states "Stan Beltman" and "DeGroot Dairy."[4] This fact alone raises an issue of material fact as to the intent of the parties.

In its Respondent's Brief, Standley argues that the only reference to "DeGroot" on the bid itself is on the first page of the bid "as a reference to the project name."[5] First, there is no indication from the bid itself that DeGroot Dairy refers to a 'project name' rather than a party. That is merely Standley's interpretation of the bid. DeGroot's position is that the bid refers to DeGroot as a party, not as a 'project name.' Further, the argument that because DeGroot is only

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[1] *Seubert Excavators, Inc. v. Eucon Corp.*, 125 Idaho 744, 874 P.2d 555 (Ct. App. 1993), aff'd in part, rev'd in part, 125 Idaho 409, 871, P.2d 826 (1994).
[2] *Just's Inc. v. Arrington Construction Co.*, 99 Idaho 462, 464, 583 P.2d 997 (1978).
[3] R. Vol. IV, p. 604.
[4] *Id.*
[5] Respondent's Brief, p. 11.

mentioned once demonstrates DeGroot is not a beneficiary holds no water because Stan Beltman is only mentioned once as well. Standley also tries to draw a distinction between the use of the term "DeGroot Dairy" rather than Charles DeGroot, Ernest DeGroot or DeGroot Farms, LLC.[6] Again, an examination of the bid notes that only "Stan Beltman" and not Beltman Construction, Inc. is mentioned.[7] It is signed by Kurt Standley without mention of Standley Trenching, Inc.[8] Clearly, the handwritten bid is informal and does not use the legal designation of any party to the contract. Thus, even the informal designation of "DeGroot Dairy" raises issues of fact as to the intent of the parties.

At the very least, the informal handwritten bid that identifies both DeGroot and Beltman is ambiguous. As such, the surrounding circumstances of the bid must be examined to determine the intent of the parties.[9] An examination of these circumstances leads to the inescapable conclusion that issues of material fact exist which prevents the entry of summary judgment.

As noted in the Appellants' Brief, Standley became a dealer of Houle equipment in 1998.[10] Standley attended the Tolero Agricultural Show in California in February 1999.[11] At that show, Kurt Standley was introduced to Charles DeGroot who informed Standley of his intention to construct a dairy in Nampa, Idaho.[12] After that meeting, Standley bid for the installation of the manure handling system.[13] Standley specifically designed the manure handling system for

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[6] *Id.*
[7] R. Vol. IV, p. 604.
[8] *Id.*
[9] *Just's Inc. v. Arrington Construction Co.*, 99 Idaho 462, 464, 583 P.2d 997 (1978).
[10] R. Vol. IV, p. 671.
[11] *Id.*, p.674.
[12] *Id.*
[13] *Id.*, pp. 604-07.

DeGroot by selecting the motor, the motor specifications including horsepower and voltage, the four-inch pump, pipe size, valves, as well as specifications for the flush system.[14] At the time the contract was entered into, Standley knew that DeGroot would be paying for the construction of the dairy, including installation of the manure handling system.[15] Thus, installation of the manure handling system would inure to the benefit of DeGroot upon completion.

The fact that DeGroot was also named as a customer on Standley's invoices and Houle's packing slips further evidence the intent of the parties.[16] Additionally, the equipment came with a warranty registration form.[17] Kurt Standley testified there was a warranty that he would have honored on the equipment at the DeGroot Dairy.[18] In fact, warranty work was performed on the dairy that DeGroot was not charged for, however, Standley did not keep specific records tracking that work.[19] These repeated references indicate the parties intended to directly benefit DeGroot with the design and installation of the custom manure handling system.

The repeated reference to DeGroot in these documents as well as the marketing, custom design and installation of the dairy components raise a genuine issue of material fact as to DeGroot's status as a third-party beneficiary of the Standley/Beltman contract.

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[14] *Id.*, pp. 674-76.
[15] *Id.*, pp. 674; p.703; p. 704; p. 706; p. 707; p. 709; p. 710; p. 712; p. 713; p. 714; p. 717; p. 718; p. 720; p. 721; p. 722; p. 723; p. 724.
[16] *Id.*, p.703; p. 704; p. 706; p. 707; p. 709; p. 710; p. 712; p. 713; p. 714; p. 717; p. 718; p. 720; p. 721; p. 722; p. 723; p. 724.
[17] R. Vol. IV,p. 569.
[18] R. Vol. II, p. 266.
[19] *Id.*

2. *Nelson v. Anderson Lumber Co.*[20] is distinguishable from the instant case

With this factual backdrop in mind, it becomes clear that Standley's reliance on *Nelson* is misplaced because this case is factually distinguishable. In *Nelson*, all of the contracts were oral with no identification of plaintiff Nelson as a beneficiary.[21] Here, not only was DeGroot identified in the initial bid (in the same manner and same number of times as Beltman), but DeGroot was also identified numerous times in packing slips and customer invoices. Additionally, DeGroot was provided warranty cards that Standley was willing to honor. Finally, the manure handling system was marketed to DeGroot directly, it was designed and customized for DeGroot, and it was installed on the DeGroot Dairy.

B. Standley Breached Express and Implied Warranties

1. DeGroot may seek damages for Standley's breach of express warranties

As stated in the Appellants' Brief, there is ample evidence showing that Standley did, in fact, make certain affirmations of fact that amount to express warranties. For example, Ernest DeGroot testified in his deposition that he recalled Jeff Griggs, a Standley employee, telling him (with respect to whether DeGroot should be performing any maintenance on the manure handling system), "You won't have to worry about it."[22] Moreover, Standley spoke with Charles DeGroot in February 1999 about Houle equipment and about installing such equipment in DeGroot's dairy. Indeed, Standley held itself out as having specific expertise in Houle's manure

[20] 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004).
[21] *Id.*, p. 708 (recognizing that "there is no written contract between any of the parties.")
[22] R. Vol. II, p. 238.

handling equipment, which is why DeGroot ultimately decided to have Standley involved in the project. Given these factors, it is clear that Standley did provide express warranties to DeGroot.

In response, Standley argues that in "the context of personal injury damages, 'UCC warranties apply only to those in privity of contract with the manufacturer and those who qualify as third party beneficiaries...'"[23] Obviously, this case does not involve any claim for personal injuries. Furthermore, DeGroot is seeking to claim damages for breach of warranties as a third party beneficiary to the contract between Standley and Beltman. Standley further argues that it would "make little commercial sense to permit a cause of action by a buyer against a seller for an express warranty in the absence of a contract."[24] In cases of a third party beneficiary, however, it does make sense to allow a beneficiary of a contract to enforce warranties and express representations by the seller of a product. In fact, it would make no sense to give sellers a blank check to provide whatever warranty or statement regarding their product to a buyer without allowing a buyer to rely on such statements.

2. DeGroot may seek damages for Standley's breach of implied warranties

Idaho Code § 28-2-314(1) provides that "unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind." To be merchantable, the goods must be at least such as (1) pass without objection in the trade under the contract description; (2) are fit for the ordinary purposes for which such goods are used; and (3) conform to the promises or affirmations made on the container or label, if any. Idaho Code § 28-2-314(2). DeGroot has alleged facts that, when

[23] Respondent's Brief, p. 14.
[24] *Id.*

viewed in a light most favorable to DeGroot, raise genuine issues of material fact as to the quality of the manure handling system designed, sold, and installed by Standley.

In response, Standley again states that DeGroot has no claim for breach of implied warranties because there is no privity of contract between it and DeGroot.[25] As argued above, however, DeGroot is a third-party beneficiary of the contract between Standley and Beltman. As such, DeGroot is entitled to seek damages against Standley for its breach of implied warranties.

In addition, the status on Idaho law regarding the requirement of privity in this context is less than clear. Specifically, the holding of *Salmon River Sportsman Camps, Inc. v. Cessna Aircraft Co.*, 97 Idaho 348, 544 P.2d 306 (1975) has been questioned by this Court on at least two occasions.[26] Based on the arguments expressed in these cases, *Salmon River* should be expressly overruled to the extent it requires privity to assert a breach of warranty claim. Therefore, the district court erred in granting Standley summary judgment on this issue.

C. DeGroot is Entitled to Seek Damages for Standley's Breach of the Covenant of Good Faith and Fair Dealing

The only argument expressed by Standley in response to DeGroot's claim for breach of the implied covenant of good faith and fair dealing is that because there was no privity of contract, Standley cannot be held liable for breaching the covenant of good faith and fair dealing.[27] This argument ignores the underlying principles of the duty to act in good faith.

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[25] *Id.*, pp. 15-16.
[26] *State v. Mitchell Construction Co.*, 108 Idaho 335, 699 P.2d 1349 (1984); *Tusch Enterprises v. Coffin*, 113 Idaho 37, 51, 740 P.2d 1022 (1987).
[27] Respondent's Brief, p. 18.

It is well settled that every contract imposes on all parties to the contract an obligation of good faith and fair dealing in its performance or enforcement.[28] "Goodfaith" means honesty in fact in the conduct or the transaction concerned.[29] Each party owes a duty to exercise good faith in its dealings and transactions with the other party.[30] If a party fails to deal honestly with the other party, it is liable for a breach of the duty of good faith.[31]

As argued above, DeGroot is a third-party beneficiary of the contract between Standley and Beltman. As such, Standley had a duty to act fairly and in good faith toward DeGroot. Standley's argument to the contrary is inconsistent with the well settled law that "the implied covenant of good faith and fair dealing cannot be inconsistent with the agreement exercised by the parties."[32] Because DeGroot was a third party beneficiary, the intent of the parties was to benefit DeGroot in the same manner as they would if DeGroot was a party to the contract. To not treat DeGroot as a party for purposes of the covenant of good faith and fair dealing would be inconsistent with the agreement of the parties. As such, DeGroot is entitled to seek damages for Standley's breach of the covenant of good faith and fair dealing.

D. DeGroot is Entitled to Seek Damages for Violation of the Idaho Consumer Protection Act

DeGroot has raised issues of material fact regarding the expertise and knowledge possessed by Standley as a dealer and marketer of Houle equipment, thereby giving rise to claims pursuant to the Idaho Consumer Protection Act.

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[28] *Idaho First National Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 824 P.2d 841 (1991).
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

Standley again argues because of a lack of contractual privity between Standley and DeGroot, such an action cannot be maintained.[33] Again, because DeGroot was a third party beneficiary of the contract, DeGroot can maintain this cause of action. As such, the district court erred in granting summary judgment to Standley on this issue.

E. DeGroot is Entitled to Seek Rescission

Standley again argues that the lack of contractual privity prevents DeGroot from maintaining an action for rescission.[34] As stated in the Appellants' Brief, pursuant to Idaho Code § 28-2-608 a buyer may revoke acceptance of goods if the non-conformity of the goods substantially impairs their value, and if the buyer has accepted the goods on the reasonable assumption that the non-conformity would be cured and it has not seasonably been cured.[35] Under the Uniform Commercial Code, a "buyer" is one who "buys or contracts to buy goods;" a "seller" is one who "sells or contracts to sell goods."[36] Acceptance can only be revoked within a reasonable time after the buyer discovers or should have discovered the ground for the revocation.[37] A buyer rejects non-conforming goods by taking affirmative action to avoid acceptance and by notifying the seller of the rejection within a reasonable time.[38]

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[33] Respondent's Brief, p. 19.
[34] *Id.*, 20-21.
[35] Idaho Code § 28-2-608(1)(a); *Beal v. Griffin*, 123 Idaho 445, 449, 849 P.2d 118 (Ct. App. 1993).
[36] Idaho Code § 28-2-103(a), (d) (emphasis added).
[37] Idaho Code § 28-2-608(2).
[38] Idaho Code § 28-2-602.

In the Respondent's Brief, Standley argues that the statute of frauds prevents DeGroot from claiming rescission.[39] This argument ignores DeGroots status as third party beneficiary, the numerous writings via the bid, customer invoices, and packing slips, as well as the performance that was rendered in designing, customizing, and installing the manure handling system. In short, DeGroot is entitled to seek rescission against Standley.

II.
THE TRIAL COURT ERRED IN DISMISSING DEGROOT'S AFFIRMATIVE CLAIMS AS AN ASSIGNEE OF BELTMAN

A. Issues of Material Fact Exist as to Degroot's Damages

On March 4, 2005, DeGroot filed its Complaint against Beltman which was consolidated with the case against Standley and Houle.[40] Beltman filed a Third Party Complaint against Standley and Houle.[41] Thereafter, DeGroot settled the litigation with Beltman and took an assignment of the claims against Standley.[42] In connection with the settlement, Beltman stipulated to a judgment in the amount of $964,255.36 DeGroot then filed a satisfaction of Judgment with district court.[43]

Standley repeatedly argues that the claims that were assigned from Beltman to DeGroot were properly dismissed on summary judgment because 1) Beltman did not pay a monetary amount to DeGroot, 2) the judgment was satisfied when the Satisfaction of Judgment was filed

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[39] Respondent's Brief, p. 21.
[40] Supp. R., pp. 43-52; 53-55; 67-71.
[41] *Id.*, p. 56-66.
[42] R. Vol. 5, p. 796; R. Vol. 3, pp. 525-26.
[43] *Id.*

with the district court, and 3) Beltman did not suffer damages separate from the damages DeGroot claims.[44]

Despite Standley's argument to the contrary, DeGroot (through its assigned claims from Beltman) is not asserting it is entitled to damages in excess of DeGroot's damages. The damages sought, including damages relating to repair costs, system improvement costs and future repair costs, derive directly from DeGroot's claims and damages against Beltman. These damages were incurred regardless of whether Beltman paid 'monetary damages' or a satisfaction of judgment was filed.

These damages were articulated specifically through the expert reports submitted by Burke and Hooper.[45] Therefore, genuine issues of material fact exist on the issue of damages and the trial court erred in granting Standley summary judgment.

Further, Standley argues that summary judgment was appropriate because damages were never liquidated. This argument puts the cart before the horse. The damages were never liquidated because the district court's decision granting Standley summary judgment deprived DeGroot of a trial and a chance to have the amount of damages liquidated. Standley also argues there was never "any determination of apportionment of fault between Beltman and Standley on Beltman's claims and causes of action."[46] DeGroot, however, did not have claims of negligence against Standley. As a breach of contract case, there would be no need to 'apportion fault' among the parties.

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[44] Respondent's Brief, pp. 22.
[45] R. Vol. II, pp. 290-328.
[46] Respondent's Brief, p. 25.

The order granting summary judgment to Standley despite the evidence presented is contrary to Idaho Code as well as established Idaho case law to exclude testimony and evidence regarding DeGroot's incidental and consequential damages. As such, this Court should reverse the decision of the trial court.

B. The District Court Erred in Granting Summary Judgment on the Issue of Rescission

In arguing that summary judgment was proper, Standley asserts that Beltman did not timely notify Standley of its claim of rescission.[47] However, issues of fact have been presented by DeGroot that make a determination of this issue on summary judgment inappropriate.

First, Standley was notified in June 2001 that DeGroot was unhappy with the manure handling system Standley provided and installed. It was only three months later that DeGroot filed suit against Standley for the defective manure handling system, which included a claim for rescission. By focusing on Beltman's actions, Standley conveniently overlooks these facts.

Second, DeGroot immediately filed its complaint against Beltman following the Court's order granting Standley's first motion for summary judgment – certainly well within the six month period established by Idaho Code § 28-2-725(3). Neither DeGroot nor Beltman had "slept on its rights" or otherwise neglected to "make complaint" against Standley. At the very least, the question of reasonableness is one for the jury. Therefore, the trial court's order granting Standley summary judgment on this issue should be reversed.

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[47] Respondent's Brief, p. 29.

C. The District Court Erred in Granting Summary Judgment on the Issue of Indemnity

Standley next argues that "Beltman never stated a claim for indemnity against Standley."[48] As demonstrated below, however, a claim for indemnity was stated. Further, issues of material fact exist that preclude summary judgment.

In the Beltman Complaint, the first two paragraphs set forth the theory and claim of indemnity against Standley:

> 1. Defendant/Third Party Plaintiff Beltman has been sued by plaintiffs Charles DeGroot and DeGroot Dairy, LLC ("DeGroot") for breach of contract, breach of implied covenant of good faith and fair dealing, rescission, breach of warranties, and negligence—all arising from subcontract work perfumed by Standley and equipment manufactured by Houle.
> 2. Standley and/or Houle are liable to Beltman for all of the plaintiffs' claims against Beltman.[49]

Idaho is a notice-pleading jurisdiction. Idaho Rule of Civil Procedure 8(a)(1) provides that a pleading setting forth a claim for relief shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "A complaint need only contain a concise statement of the facts constituting the cause of action and a demand for relief."[50] The Idaho Supreme Court has stated that such pleadings should be construed liberally so as to "secure a 'just, speedy and inexpensive' resolution of the case."[51] The focus is on insuring "that a just

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[48] *Id.*, p. 32.
[49] Supp. R. p. 57.
[50] *Clark v. Olsen,* 110 Idaho 323, 325, 715 P.2d 993, 995 (1986).
[51] *Gillespie v. Mountain Park Estates, L.L.C.,* 138 Idaho 27, 30, 56 P.3d 1277, 1280 (2002) (quoting *Christensen v. Rice,* 114 Idaho 929, 931, 763 P.2d 302, 304 (Ct.App.1988)).

result is accomplished, rather than requiring strict adherence to rigid forms of pleading."[52] To reach a just result, "[o]ur Rules of Civil Procedure establish a system of notice pleading."[53] Thus, the "key issue in determining the validity of a complaint is whether the adverse party is put on notice of the claims brought against it."[54]

Based upon Idaho's notice-pleading standard, it is clear that the Beltman Complaint sets forth a cognizable claim for indemnity. The pleading is unequivocally sufficient to put Standley on notice of the indemnity claim. Further, as described in the Appellants' Brief, DeGroot has raised issues of material fact regarding the damages suffered.

Based on the foregoing, the district court erred in granting summary judgment to Standley on the claim of indemnity. Therefore, the decision granting summary judgment should be reversed.

III.
SUMMARY JUDGMENT WAS IMPROPERLY GRANTED ON STANDLEY'S COUNTER-CLAIM

Standley asserts that the trial court correctly ruled that it was entitled to summary judgment and prejudgment interest on its counterclaim. For the following reasons, the district court erred in granting summary judgment to Standley on the counterclaim.

In support of their position, Standley asserts that it is "undisputed that DeGroot requested the parts and services; agreed to pay for them; and then failed to pay as agreed."[55] No citation is

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[52] *Seiniger Law Office, P.A. v. N. Pac. Ins. Co.,* 145 Idaho 241, 246, 178 P.3d 606, 611 (2008).
[53] *Youngblood v. Higbee,* 145 Idaho 665, 668, 182 P.3d 1199, 1202 (2008).
[54] *Vendelin v. Costco Wholesale Corp.,* 140 Idaho 416, 427, 95 P.3d 34, 45 (2004).
[55] Respondent's Brief (Counterclaim), p. 6.

provided for this assertion.[56] In fact, in response to Standley's Motion for Summary Judgment, DeGroot provided opposition to the Motion and asserted questions of fact with regard to Standley's counterclaim.[57] In addition, DeGroot asserted affirmative defenses such as breach of warranties, negligent installation of the manure system, statute of frauds, breach of the covenant of good faith, and offset.[58]

As set forth in the Appellant's Brief, DeGroot has asserted genuine issues of material fact with respect to the counterclaim brought by Standley. The factual issues surrounding the claims of offset, warranty, failure of consideration, breach of contract and breach of the implied covenant of good faith illustrate that the trial court erred in granting summary judgment in favor of Standley on the counterclaim. For these reasons, the decision of the trial court on this issue should be reversed.

IV.
ATTORNEY'S FEES

Because DeGroot believes that it will prevail on the issues argued above, DeGroot is entitled to its attorney's fees pursuant to Idaho Code 12-120(3) and I.A.R. 41. If it is found that DeGroot is a third-party beneficiary of the contract between Standley and Beltman, a clear contractual and commercial transaction has been identified, thereby giving rise to DeGroot's claim for attorney's fees. Standley, as the non-prevailing party, is not entitled to attorney's fees associated with the appeal.

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[56] *Id.*
[57] *Id.*, pp. 180-201; R. Vol. II, pp. 202-349.
[58] R. Vol. I, pp. 53-57; March 1, 2005 hearing, p. 44.

V.
CONCLUSION

Based on the foregoing, DeGroot respectfully requests this court reverse the decisions of the trial court, as argued above, vacate the judgment, and remand the case for trial.

DATED this 2nd day of May, 2013.

DINIUS LAW

By:_____
Kevin E. Dinius
Michael J. Hanby II
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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