2-20-2014

Hap Taylor & Sons v. Summerwind Partners Appellant's Reply Brief 1 Dckt. 40514

IN THE SUPREME COURT OF THE STATE OF IDAHO

HAP TAYLOR & SONS, Inc., d/b/a KNIFE RIVER, an Oregon corporation,

Plaintiff-Cross Respondent,

v.

SUMMERWIND PARTNERS, LLC, a Nevada limited liability corporation,

Defendant-Cross Appellant,

and

IDAHO GOLF PARTNERS, INC.,

Intervenor-Respondent-Cross Appellant.

CONGER MANAGEMENT GROUP, INC., an Idaho corporation,

Plaintiff-Counterdefendant-Cross Defendant-Respondent,

v.

STANLEY CONSULTANTS, INC.,

Defendant-Counterclaimant-Cross Claimant-Appellant,

and

INTEGRATED FINANCIAL ASSOCIATES, INC., a Nevada corporation,

Defendant-Counterdefendant-Cross Defendant-Respondent-Cross Appellant,

and

GENEVA EQUITIES, LLC, an Idaho limited liability company; and RIVERSIDE, INC., an Idaho corporation,

Supreme Court No. 40514-2012

Canyon County Nos. 2008-4251/2008-4252/2008-11321

Defendants-Counterdefendants-
Cross Defendants-Respondents,

and

IDAHO GOLF PARTNERS, INC.

Intervenor-Respondent-Cross-Appellant.

STANLEY CONSULTANTS, INC.'S REPLY BRIEF

**Appeal from the District Court of the Third Judicial District,
In and for the County of Canyon**

Honorable Juneal C. Kerrick, District Judge, Presiding

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I. INTRODUCTION

In its Respondent's Brief, IFA attempts to muddy the waters by clouding the issue and introducing confusion as to what type and amount of labor is sufficient for establishing priority, and whether the "project administration" is enough. Those factually intensive questions are improperly posed at this late juncture, as they were not before the District Court below, were not part of the stipulated issue on appeal, and are waived. The stipulated issue on appeal, and the subject of the District Court's decision in this regard was simply: does the priority date for an engineer's lien under Idaho Code § 45-506 relate back to the first date the engineer began providing professional services under contract, or only to the first date professional services were physically performed on-site at the property? The question presented not only is straightforward, but was stipulated to by the parties, and IFA never challenged the legitimacy of "project administration" as professional services in the district court below. The answer resides in the plain and reasonable reading of the statutory scheme defining professional services for which a lien will lie. The plain statutory language admits to only one reasonable and rational conclusion, engineers professional services under contract enjoy lien priority from the moment they are commenced to be furnished—i.e., when services start to be performed and provided under contract.

Defendant-Counterclaimant-Cross Claimant-Appellant Stanley Consultants, Inc. ("Stanley") began providing professional engineering services to improve the subject property on June 26, 2007, pursuant to its Professional Services Agreement ("PSA"). These services initially consisted of project administration services as specified in the PSA. Defendant-

Counterdefendant-Cross Defendant-Respondent-Cross Appellant Integrated Financial Associates, Inc. ("IFA") then recorded its deed of trust on July 13, 2007, with a priority date as of recording. Stanley's labor detail indicates that its physical on-site work at the property began on July 19, 2007.

The only dispute present here is whether Stanley's lien priority relates back to its first day of professional work (June 26, 2007), thus taking priority over IFA's deed of trust, or only to the date of physical on-site work at the property began (July 19, 2007), thus becoming inferior to IFA's deed of trust.

A rational and reasonable reading of Idaho Code § 45-506, providing for lien priority when "professional services were commenced to be furnished," directs that Stanley's lien relates back to the first date it began providing professional services related to the land development. Idaho Code § 45-506 has an expansive definition of "professional services," which includes off-site work. IFA's narrow interpretation improperly grafts on an on-site requirement not found in the statute by suggesting Stanley's priority relates back only to when professional services were commenced to be furnished on the property site. This argument disregards the time engineers spend in the office designing, planning, drawing, and platting—all of which are property-specific improvements that are necessary for, and increase the value of, a subject property development. Indeed, the holding urged by IFA would likely result in engineer's contracts including plans where the engineer puts at least one pin or one stake on the ground in the project from the inception, thereby satisfying the requirement of there being work on site for the lien to attach. This is irrational and absurd and does not accord with the plain language or legislative intent.

The more rational, reasoned and practical interpretation is the one urged by Stanley, namely that engineers enjoy lien priority from when they first begin rendering any professional services under contract, regardless of the location of where those services are rendered.

II. ARGUMENT

A. A Reasonable Interpretation of Idaho's Materialmen's Statute Directs that Stanley Commenced to Furnish Professional Services when it began Providing and Supplying such Services Pursuant to its Contract on June 26, 2007.

IFA argues that Idaho Code § 45-506 establishes priority when "materials or professional services were commenced to be furnished," but that § 45-501, in conveying who has a "Right to Lien", speaks in terms of "every professional engineer or licensed surveyor under contract who **prepares** or **furnishes** designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who **renders** any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or **professional services** or materials **furnished**." On this basis, IFA suggests that this "furnished" language "necessarily" means more than just "to render" or "to prepare." IFA goes on to assume only one interpretation of the work "furnish," and that is to deliver on-site. IFA's narrow and unreasonable interpretation would lead to unreasonable and absurd results, and should not be accepted here.

"The objective of statutory construction is to derive the intent of the legislature." *Hayden Lake Fire Protection District v. Alcorn*, 141 Idaho 307, 312, 109 P.3d 161, 166 (2005). And, "interpretations that could lead to absurd or unreasonably harsh results are disfavored." *Id. See*

also Idaho Code § 73-113(2) ("If a statute is capable of more than one (1) conflicting construction, the reasonableness of the proposed interpretations shall be considered, and the statute construed as a whole. Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored."). This Court has restated that the reasonableness of proposed statutory interpretations is crucial on many occasions over time. In 1978, this Court explained:

> In construing a statute, it is the duty of this court to ascertain the legislative intent, and give effect thereto. In ascertaining this intent, not only must the literal wording of the statute be examined, but also account must be taken of other matters, "such as the context, the object in view, the evils to be remedied, the history of the times and of the legislation upon the same subject, public policy, contemporaneous construction, and the like."

Local 1494 of the Intern. Ass'n of Firefighters v, City of Coeur d'Alene, 99 Idaho 630, 639, 586 P.2d 1346, 1355 (1978) (*citing In re Gem State Academy Bakery*, 70 Idaho 531, 541, 224 P.2d 529, 535 (1950)). If this Court finds ambiguity or if more than one construction of the statutory language is possible, "the consequences of a proposed interpretation should be considered," and "[r]esolution should be in favor of reasonable operation of the statute." *State ex rel. Evans v. Click*, 102 Idaho 443, 447-448, 631 P.2d 614, 618-619 (1981). Indeed, this Court has stated that it may even change the words to achieve the intent of the Legislature if the words chosen inartfully express that intent:

> We are entitled to, and must, look to the intention of the Legislature as gathered from the whole act, and when a literal reading of a provision will work an unreasonable or absurd result, if a reasonable intent of the Legislature can be arrived at, the court should so construe the act as to arrive at such intention rather than

> an absurdity. To accomplish this purpose, words may be changed, not to legislate, but to arrive at what the Legislature intended to enact.

Eberle v. Neilson, 78 Idaho 572, 581, 306 P.2d 1083, 1085 (1957); *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926) (same).

IFA takes a narrow and pinched reading of the statutory language, and one that ignores the fact that the Idaho Legislature does not deviate from conventional legal writing practice that often pairs synonyms together to make sure that all possibilities are covered, e.g., "aid and abet,"[1] "due and payable,"[2] "free and clear,"[3] "null and void,"[4] "indemnify and hold harmless,"[5] and "then and in that event"[6] to name just a few. For another example, one need look no further than another portion of the materialmen's lien statutes, Idaho Code § 45-507(5) to find a reference to a "true and correct copy of the claim of lien." By IFA's logic, "true" must mean something different than "correct." On the contrary, a more reasonable reading of the references in both Idaho § 45-501 ("professional services . . . furnished") and § 45-506 ("professional services were commenced to be furnished") is that the word furnished is being applied to the

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[1]A search of Idaho Code and Constitution in Westlaw generated 23 instances of use of the phrase, including Idaho Code § 14-501 and Idaho Code § 25-131. Const. Art. I, Section 4; Idaho Code § 18-204; Idaho Code § 18-2322.

[2]A search of Idaho Code and Constitution in Westlaw generated 124 instances of use of the phrase, including Idaho Code § 14-501 and Idaho Code § 25-131.

[3]A search of Idaho Code and Constitution in Westlaw generated 10 instances of use of the phrase, including Idaho Code § 28-12-309 and Idaho Code § 50-1823.

[4]A search of Idaho Code and Constitution in Westlaw generated 114 instances of use of the phrase, including Idaho Code § 19-503 and Idaho Code § 28-3-305.

[5]A search of Idaho Code and Constitution in Westlaw generated 5 instances of use of the phrase, including Idaho Code § 41-3927 and Idaho Code § 59-1326.

[6]A search of Idaho Code and Constitution in Westlaw generated 9 instances of use of the phrase, including Idaho Code § 25-1141 and Idaho Code § 42-3318.

entirety of the description of professional services that preceded it, i.e., to the actual provision of, or to the preparing to provide, what is earlier defined in Idaho § 45-501. Such an interpretation reasonably gives meaning to the broad definition of professional services implied by "who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform" in Idaho § 45-501. The definition of professional services in Idaho Code § 45-501 also includes the phrase "every professional engineer or licensed surveyor under contract." Indeed, IFA's own offered definition of "furnish" includes "providing, supplying, or giving." Respondent Br., p. 4. The fact that the professional services have to be under contract creates the means for the owner of the property to have an enforceable right to demand "surveys, site plans, drawings, or other specifications" even before any work has been done on the development site. The reasonable means to parse both these statutes is that the Legislature has set forth a broad definition of professional services and intends the corresponding lien to have priority from when the very first of those professional services began to be performed.

IFA's offered interpretation would render it pointless and absurd to have half of the described professional services described within Idaho § 45-501 "Right to Lien," become a nullity for purposes of the right to lien, as only those services actually "furnished" to and at the work site itself would comprise professional services.

Stanley's proffered interpretation is reasonable and protects the rights of materialmen just as the Idaho Legislature intended. The primary purpose and goal of Idaho's materialmen's law

"is to compensate persons who perform labor and provide materials for improvements to or upon real property." *Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC*, 151 Idaho 740, 744, 264 P.3d 379, 383 (2011). By performing project administration services under contract, Stanley is certainly providing professional services, supplying professional services, or giving professional services to its client. IFA seeks to impose a narrow application of Idaho Code § 45-506, which prohibits engineers from establishing a materialmen's lien until they set foot on the property. According to IFA's interpretation, an engineer who spends months in the office, at the drawing board, or attending meetings, and creating drawing and designing plans, plats, and other improvement structures based on legal descriptions, meetings with developers, and other maps, and who then later spends time flagging and marking the property on-site based on those prepared plans, cannot establish lien priority for the months of development work done prior to physically placing pins on the property. If Stanley's labor entry included additional detail that the project administration was done while meeting the client on-site, would it then be sufficient to IFA? What if the original plans are scrapped and a new set of plans are drafted, does the lienability of a claim for work under the original plans really depend if one pin was placed on the site pursuant to those plans from the onset? By its nature, engineering work requires a significant amount of off-site preparation, designing, and creation of plans and plats—all of which is lienable work according to Idaho Code § 45-501. IFA's offered interpretation does not create a bright line rule; but instead creates a complicated, factual mess, that would encourage the arbitrarily reward of engineers who camped out and worked on the project site instead of doing work in the office, or those engineers who made their first task putting a pin on site. To

suggest the engineer cannot establish priority, and thus no effective lien, for this work until setting foot on the property, results in a unreasonable, harsh, and unjust result, a result that requires case-by-case detailed factual analysis making for a difficult and uncertain lien to administer; and a result that was not intended by the Idaho Legislature.

The most reasonable interpretation of the Idaho materialmen's statutes is to allow an engineer to establish lien priority when he/she begins providing professional services under contract. Not some alternate time, which could be months later, when the engineer sets foot on the property to begin implementing his designs and plans. Utilizing this interpretation protects the work of such materialmen just as the Idaho Legislature intended. An intention this Court has acknowledged often, as this Court's "stated policy that lien statutes are to be liberally construed 'so as to effect their objects and promote justice.'" *Terra-W., Inc. v. Idaho Mut. Trust, LLC*, 150 Idaho 393, 401, 247 P.3d 620, 628 (2010) (citing *Metro. Life Ins. Co. v. First Security Bank of Idaho,* 94 Idaho 489, 493, 491 P.2d 1261, 1265 (1971)).[7] And, pursuant to this Court's decision in *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 87 P.3d 955 (2004), such liens are to be construed in favor of the person performing the labor or services—here, that is Stanley.[8]

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[7]*See also Chief Industries, Inc. v. Schwendiman,* 99 Idaho 682, 685, 587 P.2d 823, 826 (1978); *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975); *Ross v. Olson*, 95 Idaho 915, 523 P.2d 518 (1974); *Metro. Life Ins. Co. v. First Sec. Bank of Idaho*, 94 Idaho 489, 493, 491 P.2d 1261, 1265 (1971) ("It is clear that in Idaho lien statutes governing mechanic's and laborer's liens are to be liberally construed so as to effect their objects and to promote justice."); *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 53 P.2d 1166 (1936); *Fairfax v. Ramirez,* 133 Idaho 72, 77, 982 P.2d 375, 380 (Id. App. 1999).

[8]This Court has stated, "Idaho's mechanic's lien statute is constitutionally mandated (Idaho Const., art. XIII, § 6) and intended to be liberally construed in favor of lien claimants . . . ." This

For these reasons, IFA's interpretation of the statute is unreasonable, leads to absurd results and should not be applied to Stanley or allowed carry the day in this matter.

B. *BEALL PIPE* IS LIMITED TO SUPPLIERS OF TANGIBLE MATERIALS, ITS HOLDING PREDATES AMENDMENTS TO THE STATUTE DEFINING FURNISHING MATERIALS AND ITS HOLDING IS NOT APPLICABLE TO PROVISION OF ENGINEERING PROFESSIONAL SERVICES.

Idaho Code § 73-113 directs that "[t]he language of a statute should be given its plain, usual and ordinary meaning," and that "[w]here a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction" because "[t]he literal words of a statute are the best guide to determining legislative intent." This Court has "consistently adhered to the primary canon of statutory construction that where the language of the statute is unambiguous, the clear expressed intent of the legislature must be given effect and there is no occasion for construction." *Worley Highway Dist. v. Kootenai Cnty.*, 98 Idaho 925, 928, 576 P.2d 206, 209 (1978) (citing *State v. Riley*, 83 Idaho 346, 349, 362 P.2d 1075, 1076-1077 (1961)). If a statute is not ambiguous, the Court has a duty to follow the law as written. *Anstine v. Hawkins.*, 92 Idaho 561, 563, 447 P.2d 667, 679 (1968). The language of the Idaho Code establishing the priority of the engineer's lien is clear, and this Court has regularly recognized that when the statutory language is unambiguous, the Court does "not construe it but simply follows the law as written." *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007).

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notion alone is sufficient to allow Stanley's priority to relate back to the date it began providing services under the contract—June 26, 2007.

Idaho Code § 45-506 plainly provides that an engineer's lien takes priority for "professional services" at the time those "professional services were commenced to be furnished." There is no other language limiting or qualifying the time or place that priority-establishing services commence—the statute simply allows priority to relate to when the services begin. IFA seizes on the entire sentence of § 45-506, namely that "materials" seems to be in the same clause of the sentence with "professional services" and both are modified by "furnished":

> The liens provided for in this chapter shall be on equal footing with those liens within the same class of liens, without reference to the date of the filing of the lien claim or claims and are preferred to any lien, mortgage or other encumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or **materials** or **professional services** were commenced to be **furnished**;

Idaho Code of § 45-506 (emphasis added). From this, IFA argues that furnished must mean the same thing with respect to materials as it does to professional services. This argument ignores that facts that (a) intangible services are different from tangible materials and that to furnish one in context means something different than to furnish the other; (b) the statutes provide a specific definition of what it means to furnish professional materials; and (c) in 1990, the statute was amended so that furnishing materials, like furnishing professional services, now is afforded an express definition.

IFA cites to the Idaho Court of Appeals case, *Beall Pipe & Tank Corporation v. Tumac Intermountain, Inc.*, 108 Idaho 487, 700 P.2d 109 (Id. Ct. App. 1985), wherein it was held that a material supplier had to actually deliver the materials to the job site to "furnish" them. However,

the *Beall Pipe* court analyzed the priority of a lien for furnishing tangible materials, as opposed to a lien for professional services. The court cited the priority language of Idaho Code § 45-506 that "the priority date of a lien for materials is the date materials 'were commenced to be furnished,'" and concluded only that the priority of a lien for materials related back to the date the materials were first furnished. In analyzing the "commenced to be furnished" language from the statute for a supplier of materials, the *Beall Pipe* court determined that the language established priority as of the date those materials were first delivered to the site. IFA interpreted this decision to apply across the board and that any use of "commenced to be furnished" required on-site work in order to establish priority. But, at the time of *Beall* in 1990, there was no definition of "materials furnished" in the statutory scheme to guide the Court as to Legislative intent.[9] On the contrary, as has extensively been pointed out by Stanley, the statutory scheme contains a broad and expansive definition of professional services, a definition that clearly contemplates even services that constitute off site work preparing for a "development."

Such a requirement with regard to intangible professional services is unreasonable, however, because professional services similar to the engineering services provided by Stanley regularly occur off-site in some capacity. These services are usually unique to the property at issue. As such, engineering services still improve and add value the land well before they equate to breaking ground on-site. Hence the reference to rendering professional services "in

[9]In 2001, the Idaho Legislature amended the Act, including an addition to § 45-506 to the effect that "[f]or purposes of this chapter the term "furnishing material" shall also include, notwithstanding any other provision of law to the contrary, supplying, renting or leasing equipment, materials or fixtures . . .." *See* S.L. 2001, Ch. 152.

connection with any land or building development" and not just in connection with "any land or building improvement" in Idaho Code § 45-501. The intent of the Idaho Legislature to treat professional engineers as different in this respect is evident in the plain wording of the statutes.

C. IFA'S ARGUMENT THAT PROJECT ADMINISTRATION SERVICES ARE INSUFFICIENT TO QUALIFY FOR THE "COMMENCE TO FURNISH" STATUTORY LANGUAGE SHOULD BE DISREGARDED BECAUSE IT IS WITHOUT MERIT, CONTRARY TO THE STIPULATION AMONG THE PARTIES, AND IMPROPERLY RAISED FOR THE FIRST TIME ON APPEAL.

In an apparent attempt to give this Court as narrow ground as possible to issue its desired ruling, IFA tries to characterize the District Court's order as simply holding "that something more than 1.5 hours of off-site, pre-construction 'project administration' is required to establish the priority date for a professional services lien," in the Introduction to its brief, and then devotes time to this factual argument, going so far as to say that "the record contains no evidence that Stanley "commenced to furnish" professional services." Respondent's Brief at pp. 1 and 8-9. The sufficient level of work necessary to garner the title of "professional services" is not a question before this Court. IFA's argument is improper as it is without merit, contrary to the stipulation of the parties, and raised here for the first time on appeal.

The notion that "project administration" is somehow not of the proper dignity as an evidentiary or factual matter to comprise "commencing professional services" regardless of "exactly what it means to commence to furnish professional services" was no part of the holding of the District Court nor of IFA's argument to the District Court. Respondent's Brief at pp. 8-9. Instead, the District Court was clearly assuming and finding that the performance of professional services as a factual matter prior to the commencement of work on the project was not a material

fact precluding summary judgment under the District Court's interpretation of the law as to when priority attached. Not only is this a new factual argument that was not raised before the District Court, it is also contrary to multiple stipulations of the parties regarding summary judgment in this matter. For example, the stipulated Judgment in this matter provided that the priority date of Stanley's lien was "the date actual physical work was actually conducted within the boundaries of the legal description of the property at issue in this lawsuit, and *not the earlier day that Stanley commenced to furnish professional services* under its contract for the project at issue." Supp. R. at 55-56 (emphasis added). Even more poignant is the Stipulation for Reconsideration and Entry of Certified Judgment, wherein IFA stipulated:

> The relevant facts are explained at length, and undisputed, in Stanley's Motion and this Court's Order. Specifically, in its Order, this Court explained that "[i]t does not appear that any party challenges the validity of Stanley's lien on this motion." And, "*IFA and Geneva do not contest the factual allegations set forth in Stanley's motion, rather, IFA opposed Stanley's Motion claiming that Stanley's priority date related to work 'performed off-site and therefore [was] insufficient, as a matter of law, to establish' Stanley's priority.* Thus, *IFA did not dispute the facts contained in Stanley's Motion, but only contested the determination of Stanley's date of priority.* IFA argued Stanley's date of priority only related back to the day Stanley began performing physical work at the project. . . . The undersigned parties are still in agreement that: (1) Stanley has a valid lien, for a valid amount, consistent with the provisions of Idaho law; (2) IFA has a valid deed of trust on the property at issue, consistent with Idaho law, with a priority date equal to the date of recording in the real property records, and (3) *Stanley commenced offsite work on the property at issue, pursuant to its professional services agreement, on June 26, 2007.*

R, V. IX, at p. 1519 (emphasis added). To properly raise an issue on appeal, there must be either an adverse ruling by the court below or the issue must have been raised in the court below.

An issue cannot be raised for the first time on appeal. *Bank of Commerce v. Jefferson Enterprises, LLC*, 154 Idaho 824, 303 P.3d 183 (2013). *Cf. Everhart v. Washington County Rd. and Bridge Dep't*, 130 Idaho 273, 274, 939 P.2d 849, 850 (1997) (issue not raised in statement of issues or argued in briefing with citations to authority will not be considered on appeal). "To properly raise an issue on appeal there must either be an adverse ruling by the court below or the issue must have been raised in the court below", and "an issue cannot be raised for the first time on appeal." *Johannsen v. Utterbeck,* 146 Idaho 423, 429, 196 P.3d 341, 347 (2008). *See also Crowley v. Critchfield*, 145 Idaho 509, 512, 181 P.3d 435, 438 (2007) ("Substantive issues will not be considered the first time on appeal," and "[t]he longstanding rule of this Court is that [it] will not consider issues that are raised for the first time on appeal."); *Whitted v. Canyon City Bd. of Comm'rs*, 137 Idaho 118, 122, 44 P.3d 1173, 1177 (2002) ("It is well established that in order for an issue to be raised on appeal, the record must reveal an adverse ruling which forms the basis for an assignment of error.").

IFA never asked the District Court to rule that Stanley's project administration services were not enough labor, regardless of when they occurred, to comprise "professional services" to establish priority—only that the priority of Stanley's lien must relate to the time physical work began on the property location. Had IFA done so, the District Court (and Stanley) would have had an opportunity to address it, and Stanley could have had fair warning that the dignity of "project administration" as worthy of being deemed "professional services" was being challenged, and could have introduced evidence and argument on this point. This argument should also be disregarded because IFA failed to argue whether the type and amount of Stanley's

work is enough to create priority during the District Court proceedings. IFA improperly raises this argument now for the first time on appeal; an argument, which even if this Court sees fit to address on the merits, it should find the argument has none.

But even if this Court takes this argument on the merits, there should be little controversy that the project administration described counts as lienable professional services. Idaho Code § 45-501 provides a very broad definition of lienable professional services. There is no requirement in this statutory language that a certain amount of time must be spent or that certain types of labor would be excluded as not lienable. The statute broadly defines lienable professional services as including "preparing and furnishing designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or . . . any other professional service whatsoever for which he is legally authorized. . . ." Idaho Code § 45-501. Moreover, if there is any question as to whether project administration is covered in this list, Stanley was "legally authorized" to perform the project administration because such services are specifically authorized in its PSA and described as "initiat[ing] the project including setting up project files, preparing budgets and schedules." *See* Exhibit A to Affidavit of Steve Arnold, R. Vol. V, p. 678. By asking this Court to decide whether Stanley's project administration services so qualify, IFA seeks to create a sliding scale. Such a decision would require each engineer lien claimant in the future to seek judicial approval of their liened labor type for setting priority with any confidence. Rather, this Court is presented with, and the only issue on appeal is, the more straightforward question of whether a materialman's lien priority relates back to the

first day professional services were provided or the first day professional services were physically conducted on the property site.

III. CONCLUSION

The District Court's decision that Stanley's lien priority relates back only to July 19, 2007—the date Stanley's contracted engineering and professional services were physically performed on-site of the property—should be reversed, and this Court should hold that Stanley's lien priority relates back to June 26, 2007—the date Stanley commenced to furnish professional services under contract. The validity of Stanley's lien and the dignity of project administration described in the parties' contract as professional services has been stipulated to and is not at issue. Once the remaining legal question of the date to afford priority for such services is properly resolved, this Court should rule that Stanley's lien position, with the priority date of June 26, 2007, is prior to the recording of IFA's deed of trust, and the District Court should be directed to enter a foreclosure decree in favor of Stanley.

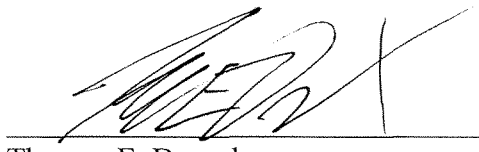
DATED this 20th day of February, 2014.

GIVENS PURSLEY, LLP

By: _____
Thomas E. Dvorak
Attorneys for Defendant-Counterclaimant-Cross Claimant-Appellant Stanley Consultants, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2014, I caused to be served two true and correct copies of the foregoing via hand delivery to the parties of record in compliance with Idaho Appellant Rule 34(d).



Thomas E. Dvorak