6-13-2014

Hap Taylor & Sons v. Summerwind Partners Amicus Brief 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, LLC, a Nevada limited liability corporation,

Defendant-Cross Appellant,

v.

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

Supreme Court Docket No. 40514-2012
Canyon County Nos. 2008-4251
(2008-4252)(2008-1132)

Ref No. 14-178

BRIEF OF INTERVENOR-APPELLANT

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

Defendants-Counterdefendants-Cross Defendants-Respondents,

and

IDAHO GOLF PARTNERS, INC.,

Intervenor-Respondent-Cross-Appellant,

and

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF IDAHO,

Intervenor-Appellant.

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF IDAHO AMICUS CURIAE BRIEF

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Appeal from the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon (Case Nos. 2008-4251, 2008-4252, 2008-1132)

****

Honorable Juneal C. Kerrick, District Judge, Presiding

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STATEMENT OF THE CASE

Nature of the Case

This case involves the interpretation of Idaho's mechanic lien statutes pertaining to professional services. More particularly, the case involves the question of whether the lien priority for professional services is based upon the commencement of any professional services or if priority is limited to services furnished on-site.

Statement of Facts

On June 18, 2007, Stanley Consultants, Inc. ("Stanley"), an engineering company, entered into a contract with L222-2 ID Summerwind, LLC. ("Summerwind"), a developer, to provide professional engineering services toward the improvement of certain real property known as the Summerwind at Orchard Hills Subdivision. (R. Vol. V, p. 672, ¶¶3 &5, p. 676). The professional service contract provided for Stanley to perform certain engineering services, including a topographical map sufficient to design a golf club building, a parking lot, and drainage facilities as well as designing and preparing a grading and drainage plan for the club house and parking facilities and a potable water line and gravity flow sewer connection. (R. Vol. V. P. 678). These engineering services included project administration services descried as "initiat[ing] the project including setting up project files, preparing budgets and schedules." *Id.*

In accordance with the contract, Stanley commenced its professional services on June 26, 2007, by furnishing labor, materials, and engineering services to improve the Property. (R. Vol. V, p. 678). On July 19, 2007, Stanley began work involving on-site physical improvements to the

Property. (R. Vol. IX, p.519). On July 13, 2007, Integrated Financial Associates, Inc., recorded a Deed of Trust. (R. Vol. IV. p. 641)

Stanley last performed professional engineering services on the Property on or about January 9, 2008. (R. Vol. IV. p. 641). Summerwind failed to fully compensate Stanley for its professional engineering services. As a result, in accordance with Idaho Code §45-501, Stanley recorded a Notice and Claim of Lien on February 22, 2008 in Canyon County Recorder's Office as Instrument Number 2008009213. (R. Vol. IV. p. 653).

Course of Proceedings

The Course of Proceedings are set forth in the Appellant's Opening Brief. For convenience sake, however, the key event on appeal is the District Court's entry of Judgment on August 8, 2013, which asserted that Stanley's priority date was the date it first provided actual physical work on-site. The Judgement stated, in relevant part:

> That the priority date of Defendant Stanley Consultants, Inc.'s lien at issue in this lawsuit, filed on February 22, 2008, . . . , for the purposes of applying Idaho code Section 45-506, is July 19, 2007, is 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. P. 70)

ISSUE PRESENTED ON APPEAL

Did the District Court Commit Error in Interpreting Idaho Code Section 45-506 as Establishing Lien Priority Based upon the Date the Professional Services Were Provided On-site Rather than the First Date the Professional Provided Any Services?

STANDARD OF REVIEW

Given that there were no factual disputes at issue, the typical standard of review for summary judgment matters is not applicable in the case at bar. Instead, this case involves statutory construction to which this Court exercises free review. *Intermountain Real Props., L.L.C. v. Draw, L.L.C.,* 155 Idaho 313, 317–18, 311 P.3d 734, 738–39 (2013); *Guzman v. Piercy*, 155 Idaho 928, 318 P.3d 918, 924 (2014).

ARGUMENT

I. The District Court Erred When it Determined That Idaho Code 45-506's Lien Priority Date for Professional Services Was Based upon the Date the First On-Site Services Were Rendered Rather than the Date in Which Any Professional Services Were Commenced to Be Furnished.

The District Court committed reversible error when it improperly concluded that Stanley's lien priority date was the date in which it provided on-site services rather than the date in which it first provided any professional services. As set forth below, the District Court's conclusion was not supported by the plain meaning of the statute and nullified the Legislature's intent to provide Professional Engineers with the most lien protection.

A. Idaho's Mechanic's Lien Statutes.

The statutes at issue on appeal are Idaho Code §45-501 and §45-506. The former creates the lien right while the latter sets forth the lien preferences or the priority dates for when various liens attach.

Idaho first introduced the mechanic's lien in 1893 which provided that:

> Every person performing labor upon or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create

> hydraulic power or any other structure, or who performs labor in any mine or mining claim, has a lien upon the same for the work or labor done or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, sub-contractor, architect, builder or any person having charge of any mining or of the construction, alteration or repair either in whole or in part, of any building or other improvement, as aforesaid shall be held to be the agent of the owner for the purpose of this chapter: Provided, that the lessee or lessees of many mining claim shall be considered as the agent or agents of the owner under the provisions of this chapter.

1893 Sess. Laws, ch. 1 §1, p.49-50.

The lien statute remained unchanged until 1951 when the lien right was extended to any person who "grades, fills in, levels, surfaces or otherwise improves any land." 1951 Sess. Laws, ch. 199, §1, p. 422-23. The statute, codified as I.C. §45-501, was again modified in 1971 to provide lien rights to professional engineers and land surveyors who render professional services under contract for which they are legally authorized to perform. The revised statute reads as follows:

> **45-501. Right to lien.** – Every person performing labor upon or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power or any other structure, or who grades, fills in, levels, surfaces or otherwise improves any land, or who performs labor in any mine or mining claim, ***and 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 the labor done ***or professional services*** or materials furnished....

1971 Sess. Laws, ch. 9,§1 p. 196-97 (emphasis added to new language within statute).

Concurrent with the 1971 amendment to I.C. §49-501, the Legislature amended I.C. §45-506 to incorporate professional services into lien preferences. The priority lien statute was amended to read, in relevant part, as follows:

> **45-506. Liens preferred claims**. – The liens provided for in this chapter 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, or materials **or professional services** were commenced to be furnished...

Idaho Code 45-506; 1971 Sess. Laws, ch. 91, §4, p. 198.

B. The District Court Incorrectly Interpreted Professional Service Liens to Commence on the Date the First Services Are Performed On-Site.

The District Court erred in its interpretation of Idaho Code §45-506 by holding that the priority date for liens arising from professional service contracts is the date in which actual physical work was performed on the subject property. The error is self evident given that Idaho Code §45-506 contains no language, whatsoever, that can be construed as restricting the priority date to work being physically performed on the building or property at issue. The statute is void of any language that differentiates the various types of professional services and, is void of any language which suggests that the priority date is dependent upon the nature of the professional services rendered. Instead, the statute, quite simply and unambiguously, states that for professional services, the priority date is the date in which the "professional services were commenced to be furnished." I.C. §45-506.

The District Court's interpretation essentially rewrites the lien priority statute by interposing restrictions for which the Legislature did not intend to include. As such, the District Court violated the first rule of statutory construction which states that, "[t]he interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *State v. Anderson*, 154 Idaho 54, 56, 294 P.3d 180, 182 (2013).

Idaho Code §45-506's statement that the mechanic's lien is "preferred to any lien, mortgage or other encumbrance, which may have attached **subsequent to the time when the... professional services were commenced to be furnished**" is not ambiguous. Moreover, the plain, usual, and ordinary meaning leaves only one rational interpretation which is that the priority date attaches to the first date in which any professional services are furnished.

Not only does the District Court's interpretation run contrary to the plain, unambiguous language of the priority statute but, also, it entirely ignores Idaho Code §45-501 and invalidates the Legislature's intention of providing maximum lien protection to professional engineers. Further, the District Court appears to have interpreted I.C. §45-506 in isolation, and without regard to, the language of I.C. §45-501. The two lien statutes were enacted as parts of the same act and must be construed *in pari materia*. *Boise Payette Lumber Co. v. Sharp*, 45 Idaho 611, 264 P. 665, 666 (1928). Accordingly, the two statutes "should be construed harmoniously, if possible, so as to further the legislative intent." *Bonner County. v. Cunningham*, 323 P.3d 1252, 1256 (Idaho Ct. App. 2014).

Reading the statues as a whole, there is no doubt that I.C. §45-506 does not restrict the professional engineer's lien priority to the date professional services are provided on-site. Instead, the priority date for professional services is clearly defined as the date when any professional services are "commenced to be furnished." Had the Legislature intended to restrict the type of professional services for lien priority purposes, as claimed by the District Court, it would simply have added the restrictive language. The Legislature was well aware of its ability to define or limit lienable activities to those occurring "on-site" as evidenced in I.C. §45-501 wherein the Legislature

specifically limited lien rights for engineers' supervisory activities to those occurring "on-site"[1]. The Legislature's decision to not include any language within I.C. §45-501 that limits the priority date for professional services to those performed "on-site" establishes that the Legislature did not intend for the priority date to be so limited.

As stated above, Idaho Code §§ 45-501 and 45-506 are to be read together and "should be construed harmoniously" to further the legislative intent. *Bonner County*, 323 P.3d at 1256. The District Court's interpretation fails in this mandate and nullifies the legislative intent. When the Legislature added professional engineering services to the lien statute, it treated engineers differently than other laborers with lien rights. Unlike other persons performing labor, in listing the lienable work available to engineers, the Legislature specifically included services that would occur off-site and even prior to any improvements or construction occurring. All other lien holders' activities are directly tied to the property or building at issue. Thus, the Legislature clearly intended to provide professional engineers and land surveyors with the most expansive protection for their work. It would be entirely inconsistent for the Legislature to grant such expansive lien rights to professional engineers within I.C. §45-501 by including preliminary design and off-site work only to then effectively void that protection by watering down the value or usefulness of the lien right by restricting the priority date to relate back only to physical work performed on-site. Clearly, no such inconsistency was intended by the Legislature and to interpret the statue to include such an inconsistency creates an absurdity.

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[1]I.C. §45-501 states, in relevant part that "every professional engineer ...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... (Emphasis added.)

C. Other Courts have Rejected the District Court's Interpretation of I.C. § 45-506.

Judge Kerrick's interpretation of Idaho Code §45-506 was rejected by U.S. District Court Judge B. Lynn Winmill in his decision in *Contractor's Equipment Supply Co., v. Prizm Group & Construction, LLC*, Case No. 1:10-CV-045-BLW, 2011 WL 6002462 (D. Idaho. Nov. 30, 2011). In *Prizm Group & Construction*, an engineering firm entered into a written agreement to provide professional engineering services for certain real properly located in Valley County, Idaho. The engineering company began providing professional services on March 7, 2007. The lender recorded a Deed of Trust upon the property on July 2, 2007. There were no physical improvements that were done to the property prior to the deed of trust being recorded. *Id.* The lender sought summary judgment to declare that its deed of trust was superior to the mechanic's lien recorded by the Engineer.

The lender sought an interpretation of I.C. §45-506 which gave it priority over any mechanic's liens, including that of a professional engineer, unless the mechanic's lien holder performed some visible work on the property before the lender recorded its deed of trust. In support of its position, the lender cited to Judge Kerrick's Order on Motions for Summary Judgment. The U.S. District Court, however, rejected Judge Kerrick's requirement that professional services must occur on-site before gaining priority.

Judge Winmill initially concluded that Judge Kerrick's reliance upon *Walker v. Lytton Savings*, 465 P.2d 497 (Cal. 1970) was misplaced since the California priority statute at issue in *Walker* was materially different than Idaho Code §45-506. Although similar in some respects, the California statute addressed in *Walker* does not contain some important language found in I.C. §45-506. While both statutes state that mechanic's liens are preferred to any mortgage which may have

attached after the building improvement or structure commenced, the Idaho statute adds the additional language that a mechanic's lien is also preferred over any mortgage which attached after "materials or professional services were commenced to be furnished."

Ultimately, the U.S. District Court concluded that the priority date for the professional service lien was based upon the first date in which the professional provided any services. In reaching this conclusion, Judge Winmill was persuaded by the holding in *Ultrawell, Inc. v. Washington Mutual Bank*, 135 Idaho 832, 25 P.3d 855 (Idaho 2001). The Court stated,

> In that case, [Ultrawell], the Idaho Supreme Court stated that in order for a particular claimant's lien to attach, the claimant must fit into one of three categories: (1) the claimant must have commenced to furnish professional services such as engineering or surveying; (2) the claimant must have commenced the physical construction of building, improvement or structure; or (3) if the claimant was not involved with either of the first two activities, it must have begun to work or furnish materials. *Ultrawall*, 25 P.3d at 859. The first category applies in this case. Thus the question before this Court is whether T-O 'commenced to furnish professional services' before the deed of trust was filed.

Id. at *3.

> To answer that question, the Court must first determine what is meant by 'commenced to furnish professional services.' It does not mean the commencement of the physical construction of the building, improvement or structure. Otherwise, the Idaho Supreme Court would not have created separate categories for these two events in the *Ultrawall* decision. In fact, the *Ultrawall* decision would have been meaningless unless the Idaho Supreme Court assumed there was a difference in the two.

Id.

In rejecting an interpretation of I.C. §45-506 which required on-site work, Judge Winmill again turned to *Ultrawall* for guidance, explaining that,

> [T]he question in Ultrawall was whether the lien claim for a drywall contractor attached when he commenced his work or whether it attached when another lien holder provided the earliest known work on the project. The Idaho Supreme Court accepted the fact that the earliest known work on the project was done by an engineer

> who provided design services for the project before the deed of trust was filed. Accordingly, this Court has no doubt that the Idaho Supreme Court recognized that an engineer 'commenced to furnish professional services' when he began the design services for the project before physical construction began.

Id.

Judge Winmill's conclusion that Idaho Code §45-506 does not require on-site work is well supported by both the plain language of the statute as well as this Court's holding in *Ultrawall*. This Court should adopt the U.S. District Court's interpretation as being correct.

D. A Review of Other State's Lien Statutes Establishes That the Idaho Legislature Would Have Included Restrictive Language Had it Intended to Limit the Priority Date for Professional Services to On-Site Work.

In the case at bar, the District Judge's improper reliance upon *Walker* highlights the risk in applying other state's interpretation of their lien statutes to ascertain the meaning of Idaho's lien statute. The problem lies in the fact that the language of state lien statutes varies greatly. As noted by Court in *PDS Engineering & Construction, Inc. v. Double RS*, CV 90 0378684S, 1991 WL 277359 (Conn. Super. Ct. Dec. 19, 1991), there is "a sharp conflict among the states on whether or not preliminary plans and drawings of architects and engineers, before visible work is done on the site, constitute commencement of services..." *Id.* The Connecticut Court analyzed the issue and found the disparity in the holdings to be explained by differences in the wording of the state mechanic lien statues. *Id.* at *3. A review of state lien statutes confirms the lack of uniformity in language. Despite the variations in drafting, a common thread among the states that require on-site labor for priority purposes is that their respective statutes actually include restrictive language. A sample of the limiting language used by other states include the following:

Arkansas: "All such liens *shall date from the time that the construction or repair first commenced. Construction or repair commences when there is a visible manifestation of activity on real estate...*" A.C.A. §18-44-10.

Arizona: "A notice and claim of lien for professional services shall not attach to the property for priority purposes *until labor has commenced on the property or until materials have commenced to be furnished to the property so that it is apparent to any person inspecting the property that construction, alteration or repair of any building or the structure or improvement has commenced.* A.R.S. § 33-992.

Florida: "Any architect...engineer, or surveyor who ... shall perform services...in connection with a specific parcel of real property...shall have a lien upon such real property... regardless of whether such real property is actually improved." F.S.A. §713.03. "Liens under 713.03... shall attach at the time of recordation of the claim of lien and shall take priority as of that time." F.S.A. §713.07.

Hawaii: "Any person or association of persons furnishing labor or material in the improvement of real property shall have a lien upon the improvement..." H.R.S §507-42. "*The lien shall* relate to and *take effect from the time of the visible commencement of operations for the improvements.*" H.R.S §507-46.

Kansas: "The lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor, equipment, material or supplies *at the site of the property subject to the lien.*" K.S.A §60-1101.

Minnesota: "Engineering or land surveying services with respect to real estate or improvement of real estate shall have a lien upon the improvement and upon land on which it is situated." 645.08(1) As to mortgagee, *no lien shall attach prior to the actual and visible beginning of the improvement on the ground.*"

Nevada: The lien provided for in NRS §108.221 to §108.246, inclusive, are preferred to, "any lien, mortgage or other encumbrance which may have attached to the property *after the commencement of construction of a work improvement.*" NRS §108.225.

North Carolina: "A claim of lien on real property granted by this Article shall relate to and take effect *from the time of the first furnishing of labor or materials at the site of the improvement by the person the claiming the lien on real property.*" N.C. Gen. Stat. § 44A-10.

Oklahoma: "Such liens shall be preferred to all other liens or encumbrances which may attach to or upon such land, buildings or improvements or either of them subsequent to the commencement of such building." 42 Okl. St. §141.

Oregon: "A lien ... upon any lot or parcel of land shall be preferred to any lien, mortgage or other encumbrance which attached to the land after or was unrecorded *at the time of commencement of the improvement.*" Or. Rev. Stat. § 87.025.

Pennsylvania: "The lien ..shall take effect and have priority...as of the date of the *visible commencement upon the ground of the work of erecting or constructing the improvement.* 49. P.S. §1508.

Neither Idaho Code §45-501 nor §45-506 include any of the limiting language that is found in the above statutes which restrict lien priority to on-site work. If the Idaho Legislature intended for such limitations, it could have followed the lead of other states and included similar language to make its intentions known. The lack of restrictive language evidences an intent not to include any such limitation. As such, the District Court's decision which ties the priority date for professional engineers to on-site work should be overturned.

E. States with Lien Statutes That Are Similar to Idaho's Lien Statutes Have Interpreted the Priority Date to Be the First Date in Which Any Professional Services Are Provided.

Idaho's lien laws pertaining to professional engineers are fairly unique in their language. Excluding supervisory activities, the Legislature did not restrict the type of professional services used to establish a priority date. Although differing somewhat in language, Colorado's lien statutes are similar to Idaho's provisions in that they do not include language which restricts the types of services that are considered in determining the lien priority. The Colorado statue which creates lien rights provides that,

> Every person who furnishes or supplies laborers, machinery...in the prosecution of work...or persons furnishing labor, laborers or materials to be used in construction, alteration, improvement, addition to or repair, either in whole or in part, of any building mill, bridge, ditch flume, aqueduct, reservoir, tunnel, fence, railroad, wagon, road, tramway, or any other structure or improvement upon land, including adjacent curb, gutter, and sidewalk and also architects, engineers, draftsmen and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of costs, surveys, or superintendence or who have rendered other professional or skilled service or bestowed labor in whole or in part....shall have a lien upon the property upon which they have furnished...

Colo. Rev. Stat. § 38-22-101(1)

Colorado's lien priority statute is similar to Idaho Code §45-506. It states,

> All liens established by virtue of this article shall relate back to the time of the *commencement of work under the contract* between the owner and the first contractor...

Colo. Rev. Stat. §38-22-106(1)

In *Bankers Trust Co. v. El Paso Pre-Cast Co.*, 560 P.2d 457 (Colo. 1977), the Colorado Supreme Court interpreted the phrase "commencement of work under the contract"when it addressed the question of priority between the beneficiary of a deed of trust and several mechanic's lien on the same piece of property. In that case, there was a dispute between several lien claimants and a bank which had made a loan to work on a project at an apartment complex. *Id.* at 459. The lien claimants sought to have their lien relate back to the date an engineering firm and an architectural firm first

began work on the project. The Trial Court ruled that all mechanic's liens related to a time prior to the date the deed of trust was filed. The bank appealed. *Id.* at 560 P.2d at 457. On appeal, the bank asserted that the date establishing priority was the date work commenced upon the structure or improvement. The bank argued that the term "work" meant "lienable work" and "commencement of work" meant the start of actual on-site construction. *Id.*, 560 P.2d at 460. Since the work of the architect or engineer was done prior to the recording of the deed of trust and was not done on the structure or improvement, the bank argued that it was not lienable work and on-site and actual construction did not begin until after the bank's deed of trust was filed. *Id.* at 460.

The Colorado Supreme Court disagreed with the Bank's interpretation, noting that the phrase "commencement of the work" was to be construed broadly in accord with the principal that mechanic's lien laws should be construed in favor of the lien claimants. The Court also considered the case of *Park Lane v. Fisher*, 5. P.2d 577, 579 (1931) which held that an architect's lien related back to the commencement of his work upon the plans and drawings. *Id.* at 461. Ultimately, the Colorado Supreme Court concluded that the architectural and engineering work performed constituted "commencement of work" and, as such, found the date the work started to have been before the record date of the deed of trust. *Id.* at 461.

The State of Washington's lien priority statute appears to be the most similar to Idaho Code § 45-506. It states, in relevant part,

> Any person furnishing labor, professional services, materials, or equipment for the improvement of real property [to] have a lien upon the improvement for the contract price of labor, professional services, material, or equipment furnished at the instance of the owner.

R.C.W. 60.04.021.

Claims of lien established under chapter 60.04 RCW "shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of *commencement of* labor or *professional services*...by lien claimant.

RCW §60.04.061.

The Washington lien provisions were interpreted by the Washington Court of Appeals in *Scott's Excavating Vancouver, LLC v. Winlock Properties, LLC*, 308 P.3d 791 (Wash. App. 2013). In *Winlock Properties*, an engineering firm entered into a contract with Winlock to perform engineering services, including preliminary design work, assisting in obtaining government approval for the project, and providing final design work. *Id.* at 795. The engineering company eventually stopped work for nonpayment and recorded a lien. It then filed a foreclosure action. The key issue at trial was the priority of the engineer's services. The Court ruled that the engineer's lien had priority over the deed of trust. The bank appealed that conclusion. *Id.*

The Washington Court of Appeals affirmed the Trial Court's findings. In doing so, it concluded that the engineer's lien for all its professional services related "back to the date if first began work." Thus, the Court interpreted the phrase "commencement of professional services" to mean the first date that the engineering services were provided.

Given the similarities between Colorado's, Washington's and Idaho's lien priority statutes, the interpretations arrived at by the Courts in *Winlock Properties* and *El Paso Pre-Cast* should be the same as the interpretation this Court should arrive at in the case at bar. Therefore, in the case at bar, this Court should conclude that the lien priority date for Stanley Consultants, Inc. is the first date in which it provided some professional engineering services.

CONCLUSION

Based upon the foregoing, ACEC respectfully requests this Court reverse the District Court's decision and hold that Stanley's lien priority relates back to the date it commenced to furnish professional services.

DATED this 9 day of June, 2014.

CLARK and FEENEY, LLP

By: _____
Jonathan D. Hally, a member of the firm
Attorneys for Intervenor-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of June, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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