

10-14-2014

# Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC Appellant's Brief Dckt. 42216

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**TABLE OF CONTENTS**

**STATEMENT OF THE CASE**..... 1

**I. Nature of the Case**..... 1

**II. Statement of Facts**..... 2

**III. Course of Proceedings Below** ..... 2

**ISSUE PRESENTED ON APPEAL**..... 5

**ARGUMENT**..... 5

**I. Standard of Review**..... 6

**II. The District Court Erred When It Held That the Language of Sky Canyon Prohibited It From Awarding Fees to Appellants.** ..... 6

**CONCLUSION** ..... 10

**REQUEST FOR ATTORNEY’S FEES**..... 11

## TABLE OF AUTHORITIES

### CASES:

<i>AED, Inc. v. KDC Investments, LLC</i> , 155 Idaho 159, 307 P.3d 176 (2013).....	9
<i>Am. West Enters., Inc. v. CNH, LLC</i> , 155 Idaho 746, 316 P.3d 662 (2013).....	6
<i>Great Plains Equip., Inc. v. Nw. Pipeline Corp. (Great Plains I)</i> , 7 132 Idaho 754, 979 P.2d 627 (1991).....	7
<i>Great Plains Equip., Inc. v. Nw. Pipeline Corp. (Great Plains II)</i> , 136 Idaho 466, 36 P.3d 218 (2001).....	7–8
<i>Hummer v. Evans</i> , 132 Idaho 830, 979 P.2d 1188 (1999).....	7
<i>Merrill v. Gibson</i> , 139 Idaho 840, 87 P.3d 949 (2004).....	6
<i>Meyers v. Hansen</i> , 148 Idaho 283, 221 P.3d 81 (2009) .....	9
<i>Robertson Supply, Inc. v. Nicholls</i> , 131 Idaho 99, 952 P.2d 914 (Ct. App. 1998) .....	9
<i>Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP</i> , 148 Idaho 479, 224 P.3d 1068 (2009).....	11
<i>Shore v. Peterson</i> , 146 Idaho 903, 204 P.3d 1114 (2009) .....	6
<i>Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC</i> , 155 Idaho 604, 315 P.3d 792 (2013).....	<i>passim</i>
<i>Star Phoenix v. Hecla</i> , 130 Idaho 223, 939 P.2d 542 (1997) .....	5, 9

### STATUTES:

Idaho Code § 12-120(3).....	6, 9–10
-----------------------------	---------

### RULES:

Idaho Rule of Civil Procedure 54(d)(1).....	9
Idaho Rule of Civil Procedure 54(d)(5).....	5, 8–9
Idaho Rule of Civil Procedure 54(e)(1) .....	9
Idaho Appellate Rule 40 .....	11

## STATEMENT OF THE CASE

### **I. Nature of the Case**

This case is an appeal of a denial of attorneys' fees and costs by the Idaho District Court for the First Judicial District Court, Kootenai County.

Appellants Sky Canyon Properties, LLC, Robert C. Samuel, Joe K. Donald and Lisbeth Lillemore Donald, Wayne A. Gianotti and Carolyn M. Gianotti, Russell M. Wicks and Evelyn L. Wicks, Buddy C. Stanley and Judith L. Stanley, and Craig R. Fallon and M. Ellen Fallon (collectively "Sky Canyon") are all residential lot owners in the Black Rock development and members of Black Rock Homeowner's Association, Inc. ("Association"). Respondent The Club at Black Rock, LLC ("Golf Club") is the owner of a golf club and other recreational property within the Black Rock development.

This case previously came before this Court on appeal in *Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC*, 155 Idaho 604, 315 P.3d 792 (2013), which centered around a dispute over the exercise of Declarant Rights pursuant to the Declaration of Covenants, Conditions and Restrictions for Coeur d'Alene Black Rock. The Golf Club claimed status as the Successor Declarant of Black Rock and asserted the right to exercise Declarant Rights, including the right to unilaterally control the Association.

Sky Canyon appealed the District Court's denial of their motion for summary judgment and the granting of Respondent's cross-motion for summary judgment. On November 26, 2013, this Court issued its decision ruling in favor of Appellants and held:

We reverse the judgment of the district court and its award of court costs and attorney fees. We remand this case with directions to enter a judgment consistent with this opinion. We award costs and attorney fees on appeal to the appellants.

*Id.* at 610, 315 P.3d at 798.

Following remand to the District Court and entry of a judgment consistent with this Court's opinion in *Sky Canyon*, Sky Canyon filed a Memorandum of Attorneys' Fees and Costs. The Golf Club moved to disallow the fees, and the District Court denied the fee request. Sky Canyon appeals the District Court's ruling denying its request for fees and costs incurred at the trial court level and award Sky Canyon attorneys' fees in the amount of \$40,546.50 and costs in the amount of \$802.15.

## **II. Statement of Facts**

The relevant facts are set forth by this Court in *Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC*, 155 Idaho 604, 315 P.3d 792 (2013), and are also described in detail in the briefing submitted in that case which are part of the record here. The facts germane to this appeal are set forth infra in the *Course of Proceedings Below*.

## **III. Course of Proceedings Below**

Sky Canyon filed suit in Kootenai County District Court on April 1, 2011 seeking a declaratory judgment pursuant to Idaho Code § 10-1201 that the Golf Club did not qualify as a Successor Declarant under the Declaration and thus did not have the rights of the Declarant as provided in the Declaration. R. Vol. I, p. 1–6. The Golf Club answered and counterclaimed for declaratory relief that it did qualify as a Successor Declarant under the Declaration and was entitled to exercise the rights of the Declarant. *Id.* p. 18–28.

The parties filed cross-motions for summary judgment that went before the District Court for hearing on November 16, 2011. *Id.* p. 79–99; R. Vol. II, p. 447–65. Sky Canyon's argument was based on the language of Section 27.7 which places a clear limitation on who can qualify as a Successor Declarant—only one who “takes title to all or part of the Property in a bulk purchase for the purpose of development and sale.” In sum, Sky Canyon argued that the Golf Club did not

qualify as Successor Declaration because it did not acquire the Club Property in a bulk purchase for the purpose of developing and selling the real property. *Id.* p. 90–97.

In support of its cross motion, the Golf Club also relied on Section 27.7 of the Declaration and asserted that development and sale of golf course memberships satisfied Section 27.7's requirement that the Property be acquired for the purposes of development and sale. R. Vol. II, p. 463. The cross-motions for summary judgment went on for hearing before the district court on November 16, 2011. R. Vol. III, p. 754. In a written decision filed on December 13, 2011, the District Court interpreted the Declaration and ruled that the Golf Club qualified as the Successor Declarant pursuant to Section 27.7. *Id.* p. 752–69. As a result, the District Court denied summary judgment in favor of Sky Canyon and granted summary judgment in favor of the Golf Club. Attorneys' fees and costs were also awarded to the Golf Club as the prevailing party. R. Vo. III, p.787-791.

Sky Canyon filed its Notice of Appeal on March 16, 2012 appealing both the District Court's denial of its motion for summary judgment and the grant of summary judgment to the Golf Club. R. Vol. III, p. 974–80. Sky Canyon did not request that this Court issue an order awarding fees and costs incurred before the district court. *Id.* Oral arguments were held on September 12, 2013, and this Court issued its written opinion on November 26, 2013. *Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC*, 155 Idaho 604, 315 P.3d 792 (2013). This Court reversed the ruling of the District Court and ordered that the case be remanded to the District Court for entry of a judgment consistent with the opinion and awarded costs on appeal to Sky Canyon. *Id.* at 610, 315 P.3d at 798.

On January 10, 2014, the District Court entered its *Judgment on Remand*. Suppl. R., p. 31–34. Eleven (11) days later, Sky Canyon filed the *Plaintiffs' Memorandum of Costs and*

*Attorney's Fees* and a supporting affidavit with the District Court. *Id.* p. 36–64. Sky Canyon sought \$41,348.65 in fees and costs from the proceedings before the District Court as the prevailing party pursuant to Idaho Rule of Civil Procedure 54(d) and (e) and Section 24.8 of the Declaration. *Id.* p. 63.

The Golf Club filed its *Objection to Plaintiffs' Memorandum of Costs and Attorney's Fees* on February 4, 2014 and argued against an award of fees and costs on the following grounds:

1. Plaintiffs did not preserve a claim to attorney fees under the Declaration;
2. Plaintiffs (as Appellants) did not preserve the issue of attorney fees at trial as an appealable issue;
3. This Court did not remand the case for purposes of awarding pre-appeal fees to Plaintiffs;
4. The “prevailing party” determination was mixed; and
5. The sums requested by Plaintiffs were not “reasonable.”

*Id.* p. 81– 90.

The District Court issued its *Memorandum Decision and Order Denying Plaintiffs' Memorandum of Attorney Fees and Costs on Remand* on May 1, 2014 denying Sky Canyon's request for fees and costs based on the Golf Club's third argument. *Id.* p. 102–14. Although the District Court acknowledged that Sky Canyon was now the prevailing party and had made a sufficient request pursuant to law, it ultimately held that it could not grant an award of fees and costs on remand due to the language of this Court's ruling in *Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC*, 155 Idaho 604, 315 P.3d 792 (2013). *Id.* p. 106–11. Specifically, the District Court found that this Court “was silent on the issue of whether Sky Canyon is now entitled to fees at the district court level,” and that

this silence by the Idaho Supreme Court was intentional and has significance when compared with the specific directive by the Idaho Supreme Court in *Star Phoenix* [*v. Hecla*, 130 Idaho 223, 939 P.2d 542 (1997)]. In light of that silence and in light of the Idaho Supreme Court's decision in *Star Phoenix*, this Court finds it would be error to award costs and attorney fees to Sky Canyon for work before the district court.

*Id.* p. 110–11.

Sky Canyon filed a timely Notice of Appeal following the entry of the *Memorandum Decision and Order Denying Plaintiffs' Memorandum of Attorney Fees and Costs on Remand* pursuant to Idaho Appellate Rule 11(a)(7). *Id.* p. 118–22.

### **ISSUE PRESENTED ON APPEAL**

Did the District Court err when it denied Sky Canyon's request for trial level attorneys' fees and costs on the grounds that the Idaho Supreme Court's decision prevented it from awarding fees on remand?

### **ARGUMENT**

Sky Canyon is fully eligible for an award of trial level attorneys' fees and costs following this Court's remand for a judgment consistent with the opinion in *Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC*, 155 Idaho 604, 315 P.3d 792 (2013). Sky Canyon's request for fees and costs was based on its status as the prevailing party, and it did not acquire that status until after the judgment on remand was entered. Thus it was entirely proper for Sky Canyon to defer making a request for fees and costs incurred before the district court until after the judgment proclaiming it as the prevailing party was entered, as that is the procedure called for by Idaho Rule of Civil Procedure 54(d)(5). The District Court placed undue importance on *Star Phoenix v. Hecla*, 130 Idaho 223, 939 P.2d 542 (1997) when ruling that it could not award Sky Canyon fees and costs incurred before the district court following a remand from this Court. Other authority from this Court reveals that district court judges have the authority and discretion

to award fees and costs following remand from an appellate court, even if the appellate court did not specifically order that they be awarded.

### **I. Standard of Review**

“The language of I.C. § 12–120(3) is mandatory and requires a trial court to award attorney fees to the prevailing party.” *Merrill v. Gibson*, 139 Idaho 840, 845, 87 P.3d 949, 954 (2004). While a district court’s determination of a prevailing party and reasonable fees is a matter of discretion reviewed on an abuse of discretion basis, the question of whether there is a basis for an award of fees is a question of law over which this Court exercises free review. *See Am. West Enters., Inc. v. CNH, LLC*, 155 Idaho 746, \_\_\_, 316 P.3d 662, 670–71 (2013); *Shore v. Peterson*, 146 Idaho 903, 915, 204 P.3d 1114, 1126 (2009) (setting forth abuse of discretion standard).

The portions of a district court’s award of attorneys’ fees that are subject to discretion are reviewed by considering whether the district court: “(1) perceived the issue as one of discretion; (2) acted within the outer boundaries of this discretion and consistently within the applicable legal standards; and (3) reached its decision by an exercise of reason.” *Shore*, 146 Idaho at 915; 204 P.3d at 1126.

The District Court properly exercised its discretion to determine that Sky Canyon was the prevailing party for an award of attorneys’ fees pursuant to Idaho Code § 12-120(3); however, it erred as a matter of law when it held that this Court’s silence on remand regarding trial court fees precluded it from entering an award of fees and costs.

### **II. The District Court Erred When It Held That the Language of Sky Canyon Prohibited It From Awarding Fees to Appellants.**

The decisions of this Court firmly establish that it is entirely proper for a district court to make an award of fees and costs on remand, even if the appellate court decision was silent on the

issue. The best example of this is *Great Plains Equip., Inc. v. Nw. Pipeline Corp. (Great Plains II)*, 136 Idaho 466, 36 P.3d 218 (2001). That case specifically addressed a district court's award of fees and costs following remand from *Great Plains Equip., Inc. v. Nw. Pipeline Corp. (Great Plains I)*, 132 Idaho 754, 979 P.2d 627 (1991).

After losing at summary judgment and trial, the defendant appealed and this Court reversed the decision of the district court, vacated the award of fees and costs to the plaintiffs, and remanded for entry of a judgment consistent with the opinion. *Great Plains I* at 775, 979 P.2d at 648. The decision was silent regarding any additional award of fees and costs incurred in the district court. After entry of the judgment on remand, the defendant filed a memorandum of fees and costs with the district court. *Great Plains II* at 469, 36 P.2d at 221. The district court awarded fees and costs to the defendant over the objection of the plaintiffs, who then appealed, resulting in the *Great Plains II* decision. *Id.* at 470, 36 P.3d at 220.

This Court explicitly stated in *Great Plains II* that it was deciding the following questions:

(1) whether the district court had post-appeal jurisdiction to determine the prevailing party and award costs and attorney fees; [and] (2) whether the language of the Court's remittitur in *Great Plains I* precluded any further award of costs . . . ."

*Id.* at 473, 36 P.3d at 225.

In regards to the first issue, this Court in *Great Plains II* answered in the affirmative and held that "the district court had jurisdiction to make post-appeal determinations concerning costs which were otherwise unresolved." *Id.* at 474, 36 P.3d at 226. This was true because *Great Plains I* changed the prevailing party, and "[w]here the reversal of a verdict in an appeal changed the prevailing party, the district judge had jurisdiction to address any issue, like attorney fees, that was related to the result in the appeal." *Hummer v. Evans*, 132 Idaho 830, 833, 979 P.2d 1188, 1191 (1999) (quoted in *Great Plains II* at 474, 36 P.3d at 226).

And as to the second issue, although the *Great Plains I* decision awarded fees and costs on appeal, the fact that it was silent as to any additional award of fees and costs before the district court was inconsequential. *See Great Plains II* at 474, 36 P.3d at 226. (“The opinion of *Great Plains I* established that the awards of costs and fees to the certain plaintiffs were to be vacated and that no attorney fees or costs were to be awarded on appeal. The remittitur did not preclude the district court from making an award of costs and attorney fees.”).

In both *Great Plains* and this case, the prevailing appellant waited until the judgment on remand was entered before filing its memorandum of fees and costs, in accordance with Idaho Rule of Civil Procedure 54(d)(5). In this case, the District Court questioned whether it had the authority to grant Sky Canyon’s fee request on remand due to this Court’s ruling, which addressed fees on appeal but not trial fees on remand. *Great Plains II* is directly on point as it answers both of those questions definitely. When an appellate decision changes the prevailing party, the district court has jurisdiction to address any issue related to the appeal, including the award of attorneys’ fees in light of the changed prevailing party. Furthermore, the appellate court’s decision to expressly address fees and costs on appeal has no bearing on the award of fees incurred before the district court. An appellate court’s silence regarding the award of district court fees is not to be read as a prohibition.

The District Court’s ruling in this case is the complete antithesis of *Great Plains II*. Despite this Court’s 2001 ruling that the language of an appellate court’s remittitur should not be read as a prohibition on an award of district court fees and costs on remand, the District Court relied on a 1997 case to hold that a remittitur’s silence regarding district court fees on remand was an effective prohibition on such an award.

The District Court's ruling also penalizes Sky Canyon for following the appropriate procedure for requesting an award of fees and costs. Idaho Rule of Civil Procedure 54(d)(5) reads as follows:

At any time after the verdict of a jury or a decision of the court, any party who claims costs may file and serve on adverse parties a memorandum of costs, itemizing each claimed expense, but such memorandum of costs may not be filed later than fourteen (14) days after entry of judgment.

I.R.C.P. 54(d)(5) (emphasis added).

A request for fees is only to be submitted after a decision has been reached or a judgment entered because, as a matter of law, fees and costs pursuant to Idaho Code § 12-120(3) are only available to the prevailing party. Idaho Code § 12-120(3); I.R.C.P. (d)(1) and (e)(1); *see also AED, Inc. v. KDC Investments, LLC*, 155 Idaho 159, 307 P.3d 176 (2013) (“Under section 12-120(3), attorney fees are available only to the prevailing party.”). Thus, until a party has been determined to be the prevailing party in the litigation, it has no claim to attorneys’ fees and costs. Sky Canyon was entirely justified in waiting to make its request for fees until the judgment on remand had been entered.

Furthermore, this Court has held that “[t]he court must always award attorney fees to the prevailing party in commercial transactions.” *Meyers v. Hansen*, 148 Idaho 283, 292, 221 P.3d 81, 90 (2009) (emphasis added); *see also Robertson Supply, Inc. v. Nicholls*, 131 Idaho 99, 103, 952 P.2d 914, 918 (Ct. App. 1998) (holding that an award of fees to the prevailing party is “mandatory” pursuant to Idaho Code § 12-120(3)). The District Court’s interpretation of the *Star Phoenix* case would conflict with this well-established rule by relieving district courts of their duty to award fees to a recently declared prevailing party unless expressly directed to do so by an appellate court.

For all of the following reasons, whether reviewed under either a de novo standard or an abuse of discretion standard, the District Court erred when it ruled that it could not award Sky Canyon attorneys' fees in spite of a proper fee request and its status as the prevailing party. The District Court showed no such reluctance when issuing an award of attorneys' fees and costs to the Golf Club, and thus its refusal to make a similar grant in this case is inconsistent. The District Court's disallowance of Sky Canyon's request for fees must be reversed and its request for fees granted.

### CONCLUSION

Sky Canyon was determined to be the prevailing party by both this Court in *Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC*, 155 Idaho 604, 315 P.3d 792 (2013) and by the District Court following remand. The District Court also found that Sky Canyon had made a sufficient request for an award of fees and costs pursuant to Section 24.8 of the Black Rock Declaration (and Idaho Code § 12-120(3)).

The Court's holding in *Great Plains I* establishes that the District Court had the jurisdiction and authority to enter a post-remand award of fees and costs incurred on the trial court level, despite the lack of specific direction from this Court in the *Sky Canyon* decision. As a result, Sky Canyon was entitled to an award of reasonable attorneys' fees in the requested amount. Sky Canyon respectfully requests that this Court reverse the District Court's *Memorandum Decision and Order Denying Plaintiffs' Memorandum of Attorney Fees and Costs on Remand* and enter an order awarding Sky Canyon attorneys' fees in the amount of \$40,546.50 and costs in the amount of \$802.15.

**REQUEST FOR ATTORNEY'S FEES**

“[C]osts can be awarded to the prevailing party on the appeal . . . .” *Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 148 Idaho 479, 501, 224 P.3d 1068, 1090 (2009).

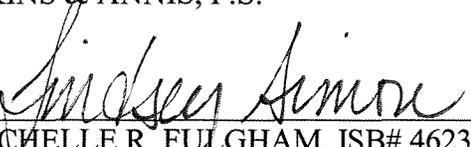
Sky Canyon requests that it be awarded attorneys’ fees and costs on appeal pursuant to Idaho Appellate Rules 40, as well as the plain language of the Declaration. Section 24.8 of the Declaration provides:

24.8. **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the Black Rock Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Black Rock Documents or the restraint of violations of the Black Rock Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys’ fees and legal assistants’ fees as may be incurred, or if suit is brought, as may be determined by the court.

As this action was brought to enforce the Black Rock Documents, Sky Canyon is entitled to an award of attorneys’ fees on appeal, in addition to the \$41,348.65 in district court fees and costs sought in this appeal.

DATED this 9<sup>th</sup> day of October, 2014.

LUKINS & ANNIS, P.S.

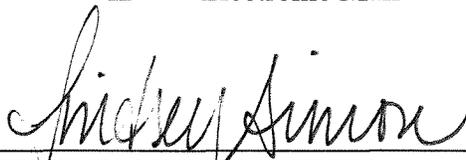
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9<sup>th</sup> day of October, 2014, I caused to be served two (2) true and correct copy of this APPELLANTS' REPLY BRIEF by the method indicated below, and addressed to all counsel of record as follows:

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