

IN THE SUPREME COURT OF THE STATE OF IDAHO

ASPIRE PROPERTIES, LLC,
an Idaho limited liability company

Plaintiff/Appellant,

v.

BLAINE HOWELL, an individual,

Defendant/Respondent.

Docket No. 46573-2018

APPELLANT'S BRIEF

Appeal from the District Court of the Sixth Judicial District of
the State of Idaho, in and for the County of Bannock

Honorable Stephen S. Dunn, District Judge, presiding.

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Respondent, *pro se*

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I. STATEMENT OF THE CASE

A. Nature of the Case

At its core, this case is about a real estate deal gone bad. Aspire Properties entered into contracts with Blaine Howell to lease a house with an option to purchase and then entered into a separate lease and option to purchase agreement with Jason and Jessica Paul. Mr. Howell also entered into his own lease and option to purchase agreement with Jason and Jessica Paul. Aspire Properties filed a complaint alleging breach of contract and other causes of action against both Howell and the Pauls.

B. The Course of Proceedings Below

On March 8, 2017, Aspire Properties filed a complaint against Howell and the Pauls. The co-Defendants filed a joint *pro se* answer on April 18, 2017. After conducting discovery, Aspire Properties filed a motion for summary judgment (which was granted in part) and a motion for reconsideration (which was denied). The Pauls retained counsel on September 21, 2017, and all three parties participated in mediation (which was unsuccessful) on October 20, 2017. The case proceeded to a bench trial on January 9, 2018. The day of trial it was discovered Mr. Howell had slipped and fallen the previous day on a patch of ice, so the trial was continued. On February 27, 2018, the parties appeared for trial, but the matter was continued for a second time.

Trial was finally conducted on May 1, 2018. After post-trial briefing, the district court issued its trial decision on July 10, 2018. Aspire Properties filed a memorandum of attorney fees and costs, which the court ruled on in an October 23, 2018 decision.

Aspire Properties filed a notice of appeal on November 26, 2018 and an amended notice of appeal on December 18, 2018.

C. Statement of the Facts

In February 2017, Aspire Properties entered into contacts with Blaine Howell to lease his home at 907 Ryan St. in Pocatello with an option to purchase. Aspire Properties then entered into contacts with Jason and Jessica Paul to lease 907 Ryan St. to them with an option to purchase. Both Howell and the Pauls breached their contracts with Aspire Properties.

II. ISSUES ON APPEAL

- A. Did the Court abuse its discretion in the amount of attorney fees awarded to Aspire Properties?
- B. Is Aspire Properties entitled to attorney's fees on appeal?

III. ARGUMENT

A. Standard of review

The calculation of a reasonable attorney fee is within the trial court's discretion. *Grease Spot, Inc. v. Harnes*, 148 Idaho 582, 586, 226 P.3d 524, 528 (2010) (citing I.R.C.P. 54(e)(3); *Johannsen v. Utterbeck*, 146 Idaho 423, 432, 196 P.3d 341, 350

(2008)). An alleged abuse of discretion is reviewed under a four-part test: whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 864, 421 P.3d 187, 195 (2018). “The burden is on the party opposing the award to demonstrate that the district court abused its discretion.” *Johannsen v. Utterbeck*, 146 Idaho 423, 432, 196 P.3d 341, 350 (citing *E. Idaho Agric. Credit Ass'n v. Neibaur*, 133 Idaho 402, 412, 987 P.2d 314, 324 (1999)).

B. The district court erred in limiting attorney fees awarded to Aspire Properties to a third of what was requested without adequate basis for denying the rest.

After approximately 15 months of litigation, which included several motions, mediation, and trial being re-set twice on the day of trial, Aspire Properties prevailed against all Defendants. Aspire Properties sought \$35,455 and was awarded \$22,995. Thereafter, Aspire Properties submitted its memorandum of fees and costs. There was no dispute that there was a contractual basis for attorney fees and that Aspire Properties was the prevailing party. Aspire Properties sought \$24,456.00 in attorney fees. The Pauls objected to approximately \$4,000 in fees. Ultimately the trial court awarded \$7,500 in fees. The crux of the Court’s analysis was this:

The Court has carefully reviewed all of the factors identified in Rule 54(e)(3) and determines that the sum requested by Aspire is unreasonable, and awards attorney

fees in the amount of \$7,500.00. Such an award is a reasonable fee for the litigation in this case, with an eye to the amount involved in the case, the result obtained, and prevailing charges for like work. (R., Vol. 1, pg. 260, lns 12-16)

At the hearing on Aspire's request for fees and the Pauls' objection, the trial court expressed its disdain for deciding requests for attorney fees:

I don't like attorney fees. I have to be frank about it. It's not my favorite subject; because it is difficult to evaluate what's fair, what's reasonable, is there a decent legal basis for it. . . . All I can do, and this is always true in attorney fee requests, is to sit down, look over the case, and decide what I think is reasonable. That's entirely within my discretion to do that. The courts of appeal are loathe -- in fact, you almost never see a reversal of a decision on award of attorney fees, because it's so discretionary. . . . But I will tell you this: I don't think in ten years that I've ever awarded the full amount requested. I don't think I ever have.
(Tr., Vol. 1, pg 15, lns 21- 24; pg 16, lns 3-9; and pg 16, lns 16-17)

The Idaho Supreme Court has addressed this type of decision on attorney fees twice in the past 11 years, deciding in both that an award of an arbitrary amount without reference to the factors of Idaho Rule of Civil Procedure 54(e)(3) was inappropriate.

In *Johannsen v. Utterbeck*, the Plaintiff prevailed at trial and requested attorney fees. The trial court judge determined that based on his experience on the bench and as an attorney who did litigation for 25 years that \$10,000 was a reasonable fee award. The trial court stated that he had reviewed the factors of Rule 54(e)(3), but did not specifically address the factors as they applied to the facts of the case. This Court held:

It is unclear why the district court determined that the attorney's fees submitted by Respondent were excessive, other than the judge's vague statement that he knows what is excessive and what is reasonable based on his litigation experience. In determining the case to be "about a \$10,000 project," the district court seems to pull the award of attorney's fees out of thin air. Basing attorney's fees on pure conjecture is inappropriate. It appears that the district court underestimated the work required of Respondent's attorney, but without more this Court does not

have the information necessary to determine what would be a reasonable award of attorney's fees.

Johannsen v. Utterbeck, 146 Idaho 423, 433, 196 P.3d 341, 351 (2008).

Johannsen is on all fours with the instant case, in which the trial court stated that it reviewed the factors of Rule 54(e)(3) and the plucked the figure \$7,500 out of thin air as a reasonable attorney fee. At no point in its decision did the trial court actually address any excessive hours spent on the case. The trial court in this case, as in *Johannsen*, recognized the issue as one of discretion and acted within the bounds of its discretion, but did not reach its decision through an exercise in reason or by applying the applicable legal standards.

Just eight months ago, the Idaho Supreme Court reiterated the holding in *Johannsen* in the case of *H2O Envtl., Inc. v. Farm Supply Distributors, Inc.*, 164 Idaho 295, 429 P.3d 183 (2018). In that case, the case proceeded through trial and the prevailing Plaintiff requested approximately \$53,000 in attorney fees for recovering less than \$8,000 it sought. The trial court awarded an amount of attorney fees equal to the amount of recovery.

Appellant recognizes that the trial court's failure to articulate each of the factors of Rule 54(e)(3) is not automatically make the trial court's decision on attorney fees incorrect. "Though it is not necessary for the court to address all of the I.R.C.P. 54(e)(3) factors in writing, the record must clearly indicate the court considered all of the

factors.” *H2O Emtl., Inc. v. Farm Supply Distributors, Inc.*, 164 Idaho 295, 299, 429 P.3d 183, 187 (2018)(internal citations omitted).

However, in the instant case the trial court acknowledged Rule 54(e)(3) in making its decision, but did not go beyond that, a process which did not satisfy the Supreme Court in *H2O Emtl., Inc.*:

Here, there is nothing in the record which explains the relationship between the magistrate court’s evaluation of the Idaho Rule of Civil Procedure 54(e)(3) factors and its decision regarding the amount to award for attorney’s fees. It is not enough for a trial court to acknowledge the existence of the Rule 54(e)(3) factors; rather, it must appear that there is a reasoned application of those factors in the trial court’s decision regarding the amount of attorney’s fees to be awarded. Stated differently, in the absence of a clear explanation from the trial court, we will find an abuse of discretion when a trial court acknowledges the governing legal standard and arrives at a decision that appears to be incongruent with the application of that standard. 164 Idaho 295, 429 P.3d 183, 188 (2018)

The court in *H2O Emtl., Inc.* and *Jobannsen* found that selecting a certain, arbitrary amount of attorney fees as being reasonable was inconsistent with the requirements of Rule 54(e)(3) and remanded the case for reevaluation of the reasonableness of attorney fees. Aspire Properties respectfully submits that the same outcome is appropriate in this case.

C. Appellant is entitled to attorney’s fees on appeal.

Aspire Properties requests an award of attorney’s fees under the contracts at issue in this case. Those contracts, between Aspire Properties and Blaine Howell, included a clause which stated:

ATTORNEY FEES AND COSTS. In the event of a legal dispute, the losing party agrees to pay all costs, expenses, including a reasonable attorney’s fee,

related to any default or breach of any of the terms of this Agreement to the prevailing party.

The lower court awarded attorney fees and costs pursuant to the contracts. By the plain language of the contract, Aspire Properties should also be able to recovery attorney fees and costs incurred in this appeal.

IV. CONCLUSION

Based on the argument above, Appellant requests this Court reverse the ruling of the district court denying Aspire Properties the majority of its requested attorney fees and remand for determination of an appropriate amount of attorney fees. Aspire Properties also requests fees and costs on appeal.

DATED this 13th day of June, 2019.

/s/ Ryan A. Ballard
Ryan A. Ballard
Attorney for Appellant