

6-10-2017

# Lincoln Land Co., LLC v. LP Broadband, Inc. Appellant's Reply Brief Dckt. 44612

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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

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**Supreme Court Case Number : 44612-2016**  
**Bonneville County District Court Number: CV-2015-3927**

**LINCOLN LAND COMPANY, LLC, an Idaho limited liability company,**  
PLAINTIFF-APPELLANT-CROSS RESPONDENT

vs.

**LP BROADBAND, INC., a Colorado corporation, successor by merger to**  
**MicroServ, Inc., an Idaho corporation,**  
DEFENDANT-RESPONDENT-CROSS APPELLANT

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Appeal from the District Court of the Seventh Judicial District of the State of Idaho,  
in and for Bonneville County

Hon. Dane H. Watkins, District Judge

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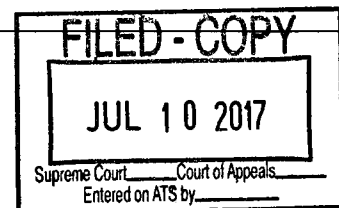
**DEFENDANT'S - RESPONDNET/CROSS-APPELLANTS' REPLY BRIEF**

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### **III. The District Court erred in denying LP Broadband's request for attorney fees.**

#### I.C. §12-121(3)

The awarding of attorney fees under I.C. 12–120(3) is reviewed for an abuse of discretion. *Fox v. Mountain West Elec., Inc.*, 137 Idaho 703, 711, 52 P.3d 848, 856 (2002). To prove an abuse of discretion this Court looks to three factors: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistent with legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason. *Id.* However, whether a statute awarding attorney fees applies to a given set of facts is a question of law and subject to free review. *Ransom v. Topaz Marketing, L.P.*, 143 Idaho 641, 644, 152 P.3d 2, 5 (2006). “Whether a district court has correctly determined that a case is based on a ‘commercial transaction’ for the purpose of I.C. § 12–120(3) is a question of law. This Court exercises free review over questions of law.” *Fritts v. Liddle & Moeller Const., Inc.*, 144 Idaho 171, 173, 158 P.3d 947, 949 (2007).

“An award of attorney fees under Idaho Code § 12–120(3) is proper if a ‘commercial transaction is integral to the claim, and constitutes the basis upon which the party is attempting to recover.’ ” *Meyers v. Hansen*, 148 Idaho 283, 292, 221 P.3d 81, 90 (2009) (quoting *Brower v. E.I. DuPont De Nemours & Co.*, 117 Idaho 780, 784, 792 P.2d 345, 349 (1990)). The analysis in this matter, therefore, must start with the “basis upon which the party is attempting to recover.”

Plaintiff in this matter asserted a claim for unjust enrichment. This is the basis for recovery. The Supreme Court has held, “Unjust enrichment is a non-contractual obligation that is treated procedurally as if it were a contract.” *Harrentsian v. Hill*, 161 Idaho 332, 385 P.3d 887,

893 (2016). Therefore, procedurally, the basis for this claim was a contract. Clearly a contract is a commercial transaction between parties.

It is also essential to examine the elements of unjust enrichment to determine if this claim is a commercial transaction. Unjust enrichment exists where “(1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof.”” *Id.* The initial element requires that the plaintiff confer a benefit on the defendant. This cannot occur if there is no interaction between the parties.

It is clear under this analysis that the claim alleged by the Plaintiff necessarily included a connection between it and the Defendant. This connection is the only basis for the claim of unjust enrichment. Plaintiff argues because it was unsuccessful in its claim, there can be no basis for recover of attorney fees. This is not correct. The statute and case law does not require that the transaction be proven and found in law, only that the basis of the claim be rooted in a commercial transaction.

Defendant is not now and has never argued that there was a connection between it and the Plaintiff. Defendant does argue that Plaintiff’s claim was based on a commercial transaction which required a connection between the parties and subjects this case to recovery of fees pursuant to I.C. §12-120(3). Defendant’s claim does not fail because the connection was never proven, as the allegation and basis for Plaintiff’s case required the connection.

I.C. §12-121 and I.R.C.P 54(e)(2)

An award of attorney fees under Idaho Code § 12–121 is not a matter of right to the prevailing party, but is appropriate only when the court, in its discretion, is left with the abiding

belief that the case was brought, pursued, or defended frivolously, unreasonably, or without foundation. *McGrew v. McGrew*, 139 Idaho 551, 562, 82 P.3d 833, 844 (2003). When deciding whether attorney fees should be awarded under I.C. § 12-121, the entire course of the litigation must be taken into account and if there is at least one legitimate issue presented, attorney fees may not be awarded even though the losing party has asserted other factual or legal claims that are frivolous, unreasonable, or without foundation. *Id.*

Plaintiff has argued that its claim was not frivolous, unreasonable and without foundation because it could, arguably, meet two of the three elements for unjust enrichment with a question of fact. This is not sufficient to show at least one legitimate issue in Plaintiff's case. A plaintiff cannot pick a random person and file a claim against that person for a breach of contract, simply because Plaintiff has a contract that was breached. It is ludicrous to think that the random person could not recover attorney fees and costs for a frivolous case brought against him simply because the plaintiff had a legitimate issue of a contract and its breach, even if the contract was not with the chosen random person. In order to have a legitimate issue, the entire issue must be legitimate, not just portions of that issue.

In this case, Plaintiff knew it had no connection to the Defendant. Plaintiff admitted this in its complaint. Despite knowing it could not have a connection to the Defendant, Plaintiff still filed the complaint and attempted to bully Defendant into giving Plaintiff over one-hundred thousand dollars. In so doing, Plaintiff cost Defendant thousands of dollars in attorney fees to battle and prevail against these unreasonable and baseless claims.

Two Idaho Supreme Court cases were directly on point in this matter, showing that Plaintiff was required to directly confer a benefit. Plaintiff knew it did not confer anything to the Defendant in its actions and should have known there was no basis for a claim.


If there is no factual basis or argument to meet one of the required elements for a cause of action, any suit on that cause of action is frivolous. The argument that on the other two elements there was a potential factual basis is insufficient to legitimize the claim.

In this matter, Plaintiff's knowledge of the actions of GM and the lack of a benefit it provided shown even in the *Complaint*, evidence that the case was brought and defended frivolously.

### **CONCLUSION**

Attorney fees both below and on appeal should be granted as this matter meets the clear and unambiguous language of I.C. § 12-120(3) and this matter has been brought and defended frivolously pursuant to I.C. § 12-121.

DATED this 6<sup>th</sup> day of July, 2017.

  
LARREN K. COVERT, ESQ.  
Attorney for Defendant/Respondent



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6<sup>th</sup> day of July, 2017, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

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