

IN THE SUPREME COURT OF THE STATE OF IDAHO

REGDAB, INC., an Idaho Corporation

Plaintiff/Respondent,

vs.

BUCK GRAYBILL and LAURIE
GRAYBILL,

Defendants/Appellants,

BORGES, LLC., an Idaho Limited
Liability Company; CHRISTOPHER B.
BORGES and ANNETTE E. GORGES,
husband and wife, and the marital
community comprised thereof;
PATRICK N. FERRICK and NATALIE
I. MAKEEVA thereof; and QUICKEN
LOANS, INC., a foreign corporation,

Defendants.

Supreme Court No: 45649

Bonner County No. CV-17-0582

Appeal from the District Court of the First Judicial District
Of the State of Idaho, in and for the County of Bonner

Honorable Barbara Buchanan, Presiding

APPELLANTS' BRIEF ON APPEAL

Arthur M. Bistline
BISTLINE LAW, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814
Attorney for Defendants/Appellants

Matthew T. Ries
Stamper Rubens, P.S.
West 720 Boone, Ste. 200
Spokane, WA 99201
Attorney for Plaintiff/Respondent

TABLE OF CONTENTS

I. STATEMENT OF THE CASE..... 1

A. Nature of the Case..... 1

B. Proceedings..... 1

C. Facts 1

II. ISSUES ON APPEAL..... 2

A. Did the District Court commit error when it determined that IRCP § 54(e) did not apply because it was inconsistent with Idaho Code § 45-513?..... 2

B. Is Greybill entitled to an award of attorney’s fees and costs on appeal pursuant to Idaho Code § 12-121 if this matter is defended? 2

III. ARGUMENT..... 2

A. It Was Error for the District Court to Award Regdab its Attorney’s Fees and Costs because Regdab Did Not Plead a Specific Amount They Were Entitled to in the Event of Default..... 2

B. If Regdab Defends This Appeal, This Court Should Award Greybill his Reasonable Attorney’s Fees and Costs Incurred because Prior Idaho Precedent is Directly on Point that Regdab Should Not Have Been Awarded Default Fees. 4

IV. CONCLUSION 4

TABLE OF AUTHORITY

Cases

Bailey v. Bailey, 153 Idaho 526, 531, 284 P.3d 970, 975 (2012) 2, 3, 4

Berkshire Investments, LLC v. Taylor, 153 Idaho 73, 87, 278 P.3d 943, 957 (2012) 4

Statutes

Idaho Code § 15–3–720 2, 3

Idaho Code § 45-513 2, 3, 4

Idaho Code, Title 45, Chapter 5 1

Rules

Idaho Rule of Civil Procedure 54(e)(4)(B) 1, 2, 3

Idaho Rules of Civil Procedure § 54(e) 1, 2, 3, 4

Idaho Rule 54(e)(8) 2

I. STATEMENT OF THE CASE

A. Nature of the Case

This case involves an action to collect a debt by the lien foreclosure process of Idaho's Materialmen's Lien Laws, Title 45, Chapter 5 of the Idaho Code. Plaintiff/Respondent, Regdab, Inc. (hereinafter "Regdab") filed suit against Defendant/Appellant, Buck Greybill (hereinafter "Greybill") to foreclose a lien Regdab had recorded on the Greybill property.

B. Proceedings

Regdab's Complaint alleged an entitlement to attorney's fees and costs, but failed to set forth an amount of fees to which it would be entitled to on default. Greybill allowed the matter to proceed by way of default and Regdab sought attorney's fees after default was entered.

Greybill objected to the request for attorney's fees on the grounds that Regdab had not plead an amount in the event of default as required by Idaho Rule of Civil Procedure 54(e)(4)(B). The District Court ruled that IRCP 54(e) did not control because it was in conflict with the Materialman Lien Statute that provides for an award of attorney's fees in such cases and awarded Regdab its attorney's fees.

C. Facts

Regdab filed suit against Greybill, amongst others, to collect a past due balance for construction materials it provided. (R.19-27). Regdab's Complaint requested an award of attorney's fees (R.26), but did not allege an amount of fees it should be awarded in the event of default.

The matter proceeded by way of default and the District Court awarded Regdab its attorney's fees and costs (R.414) in the amount of \$7,160.00 (R.416). Greybill timely appealed.

II. ISSUES ON APPEAL

- A. Did the District Court commit error when it determined that IRCP § 54(e) did not apply because it was inconsistent with Idaho Code § 45-513?
- B. Is Greybill entitled to an award of attorney's fees and costs on appeal pursuant to Idaho Code § 12-121 if this matter is defended?

III. ARGUMENT

- A. It Was Error for the District Court to Award Regdab its Attorney's Fees and Costs because Regdab Did Not Plead a Specific Amount They Were Entitled to in the Event of Default.

Idaho Rules of Civil Procedure § 54(e)(4)(B) requires that the amount of fees in the event of default be specifically plead and that the award of fees cannot exceed that amount. Regdab did not plead any amount but the District Court awarded default fees anyway because it found that Idaho Rules of Civil Procedure § 54(e)(4)(B) was inconsistent with Idaho Code § 45-513 so Idaho Rules of Civil Procedure § 54(e) did not apply. This is an error because Idaho Code § 45-513 does not provide any means to calculate a reasonable fee so it is not inconsistent with Idaho Rules of Civil Procedure § 54(e).

Idaho Rule of Civil Procedure § 54(e) provides that attorney's fees can be awarded as costs if allowed by contract or statute. "However, Rule 54(e)(8) provides that the attorney fee provisions of Rule 54(e) applies only to the extent they are not inconsistent with the statute or contract that entitles the claimant to the fee award." *Bailey v. Bailey*, 153 Idaho 526, 531, 284 P.3d 970, 975 (2012). If the statute pursuant to which fees are being sought does not provide a method to determine a reasonable amount of fees, then the statute is not inconsistent with Idaho Rules of Civil Procedure § 54(e).

The Idaho Supreme Court considered whether Idaho Code § 15-3-720 was inconsistent with Idaho Rules of Civil Procedure § 54(e) in *Bailey v. Bailey*, 153 Idaho 526, 284 P.3d 970

(2012). Idaho Code § 15-3-720 states that “[i]f any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred.” The Supreme Court found that the statute was not inconsistent with Idaho Rules of Civil Procedure § 54(e) because it did not provide a means for determining the fee. “The statute provides the authority for the award of fees, and Rule 54(e) is not inconsistent with Idaho Code § 15–3–720 because the statute does not provide a means of determining a reasonable amount of fees.” *Bailey v. Bailey*, 153 Idaho at 531 P.3d 975 (2012).

The statute which entitles Regdab to an award of attorney’s fees is Idaho Code § 45-513. That section provides, “[t]he court shall also allow as part of the costs the moneys paid for filing and recording the claim, and reasonable attorney's fees.” Similar to Idaho Code § 15-3-720, Idaho Code § 45-513 does not provide for any means to determine a reasonable fee, therefore, Idaho Code § 45-513 is not inconsistent with Idaho Rules of Civil Procedure § 54(e) and that procedural rule must be complied with in order to receive an award of attorney’s fees. Since Regdab did not comply with Idaho Rules of Civil Procedure § 54(e)(4)(b), Regdab was not entitled to an award of attorney’s upon default.

Any award of attorney’s fees must comply with Idaho Rules of Civil Procedure § 54(e) unless that rule is inconsistent with the statute pursuant to which fees are being sought. The statute at issue here is Idaho Code § 45-513 and that statute does not provide a means for determining a reasonable fees so it is not inconsistent with Idaho Rules of Civil Procedure § 54(e). Therefore, Idaho Rules of Civil Procedure § 54(e) applies and it was an error for the

District Court to hold otherwise. This Court should reserve the Order of the District Court awarding Regdab it's attorney's fee and remand this matter for proceeding consistent therewith.

B. If Regdab Defends This Appeal, This Court Should Award Greybill his Reasonable Attorney's Fees and Costs Incurred because Prior Idaho Precedent is Directly on Point that Regdab Should Not Have Been Awarded Default Fees.

Attorney's fees on appeal are awardable if the appeal brought or defended unreasonably, frivolously, or without foundation. *Berkshire Investments, LLC v. Taylor*, 153 Idaho 73, 87, 278 P.3d 943, 957 (2012).

Idaho Rules of Civil Procedure § 54(e) applies unless the relevant statute pursuant to which fees are sought is inconsistent with that rule. *Bailey v. Bailey*, 153 Idaho 526, 284 P.3d 970 (2012) is directly on point and holds that the statute must provide some other means to determine a reasonable fee in order to be inconsistent with Idaho Rules of Civil Procedure § 54(e). Idaho Code § 45-513 does not provide any such means and defending this appeal would be unreasonable and frivolous.

In the event that this appeal is defended this Court should award Greybill his reasonable attorney's and costs incurred in prosecuting this appeal.

IV. CONCLUSION

Based on the foregoing, this Court should reverse the Order of the District Court granting Regdab its default attorney's fees and remand this matter for proceeding consistent therewith and award Greybill his reasonable attorney's fees and costs incurred in pursuing this appeal should Regdab defend it.

DATED this 27th day of July, 2018.


ARTHUR M. BISTLINE
Attorney for Appellants/Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 27th of July, 2018, I served a true and correct copy of the following APPELLANTS' BRIEF by the method indicated below, and addressed to the following:

Matthew T. Ries
Stamper Rubens, P.S.
West 720 Boone, Ste. 200
Spokane, WA 99201

- U.S. Mail
- Certified Mail
- Facsimile: (509)326-4891
- iCourt: mries@stamperlaw.com

James Macdonald
Macdonald Law
123 South Third Avenue, Ste. 24
P.O. Box 1049
Sandpoint, ID 83864

- U.S. Mail
- Certified Mail
- Facsimile: (208)263-0759
- iCourt:
james@macdonaldlawoffices.com

_____/s
NICHOLE CANSINO