

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' CORRECTED REPLY BRIEF

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A. I.R.C.P. 54(e)(4)(b) is Not Inconsistent With Idaho Code 45-513 Because it Has No Effect on the Operation of That Statute.

Regdab argues that IRCP 54(e)(4)(b) is inconsistent with Idaho Code 45-513 because 45-513 mandates an award of fees. This argument fails because IRCP 54(e)(4)(b) does not prevent the award of attorneys fees in a mechanics lien case, it just sets forth a prerequisite to obtaining those fees in the matter proceeds by way of default.

When matters proceed by way of default, a prerequisite to receiving an award of fees is that the statute relied upon and the amount sought be set forth. “This Court has stated that the rule acts to “set out a different requirement for judgments by default-that the fee statute (other than section 12–121) or contract provision and amount of any fee award sought be specifically stated in the prayer of the complaint as a precondition to obtaining fees in a judgment by default.” *Magleby v. Garn*, 154 Idaho 194, 197, 296 P.3d 400, 403 (2013). Citing *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 720, 117 P.3d 130, 134 (2005). The purpose of this requirement is to put the opposing party on notice of its potential liability. *Id.*

Regdab also argues that requiring that the amount of fees be plead is too difficult in a mechanics lien case because it is difficult to know how much the fees will be. By the time a matter is filed, if the case goes by default, then the majority of fees were spent prior to drafting the complaint. It is not difficult to estimate the time to prepare default documents. No case has ever held that fees for a default for failure to plead or otherwise defend can be awarded if the amount of those fees are not specifically plead.

B. The Graybills Did Not Actively Defend the Suit, Other Than to Defend Against Judgment Being Entered Which Exceeded the Relief Sought in the Complaint.

Regdab argues that it is entitled to an award of attorney’s fees because the Graybill’s, “...defended against the substantive and procedural issues in the case and made numerous

arguments as to why default judgment should not be entered and defended the case before default was entered.” The Graybills did nothing to defend the suit other than to make sure that Regdab did not obtain a judgment which exceeded the relief prayed for in the complaint. If Regdab had not sought a Judgment that exceeded the relief it sought in the complaint, then Graybill would not have defended it.

Gary Finney put in an appearance for Graybill on June 8th, 2017. (R. Vol. 1, page 61). On June 12th, 2017, Regdab filed an Amended Complaint that still did not plead the amount of attorney’s fees in the event of default. (R. Vol. 1, page 73). Thereafter, Mr. Finney did not file an answer on behalf of Graybill and on July 27th, 2017, Regdab moved for the entry of default, (R. Vol. 1, page 111) which was granted. (R. Vol. 1, page 123). Presumably, Mr. Finney was relying on existing law which requires that default fees be plead. Otherwise, Mr. Finney would have tried to set aside the default.

It was only after Regdab attempted to secure a default judgment that exceeded the relief requested in its Complaint that Graybill took any action in the case. That is not defending the substance of the claim and does not take this case out of the operation of the rule pertaining to default fees.

C. **Allowing a Party to Amend its Complaint to Include an Amount of Fees in the Event of Default Defeats the Purpose of the Rule Requiring Default Fees be Plead.**

Regdab argues that this Court should affirm the District Court on the alternative grounds that the Complaint could have been amended to include default fees. If such a procedure were allowed the purpose of the rule requiring that fees be plead would be defeated.

As set forth above, the purpose of the rule requiring default fees be plead is to put the opposing party on notice of the potential liability if the party allows the matter to proceed by default. *Magleby v. Garn*, 154 Idaho 194, 197, 296 P.3d 400, 403 (2013). Allowing a party to amend the Complaint after default has been entered would defeat the purpose of this rule. The

amount of fees in the event of default would be a moving target and the opposing party would have no idea what its potential liability is if it allows the matter to proceed by default.

DATED this 17th day of October, 2018.



ARTHUR M. BISTLINE
Attorney for Appellants/Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 17th of October, 2018, I served a true and correct copy of the following APPELLANTS' CORRECTED REPLY BRIEF by the method indicated below, and addressed to the following:

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