

Uldaho Law

## Digital Commons @ Uldaho Law

---

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

---

4-8-2020

### AgStar Financial Services v. Northwest Sand & Gravel Appellant's Reply Brief Dckt. 47140

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

#### Recommended Citation

"AgStar Financial Services v. Northwest Sand & Gravel Appellant's Reply Brief Dckt. 47140" (2020). *Idaho Supreme Court Records & Briefs, All*. 8073.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/8073](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/8073)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

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

Supreme Court Docket No. 47140-2019

---

COMPEER FINANCIAL FLCA fka AGSTAR FINANCIAL SERVICES, ACA  
Plaintiff-Appellant,

v.

NORTHWEST SAND & GRAVEL, INC., an Idaho corporation; GORDON PAVING  
COMPANY, INC., an Idaho corporation; BLACKROCK LAND HOLDINGS, LLC, an Idaho  
limited liability company,  
Defendants-Respondents.

---

**APPELLANT'S REPLY BRIEF**

---

Appeal from the District Court of the Fifth Judicial District in and for the County of Twin Falls  
Case No. CV 12-2731  
The Honorable Eric J. Wildman, presiding

---

Attorneys for Appellant

Bradley J. Dixon, ISB No. 6167  
Kersti H. Kennedy, ISB No. 9064  
GIVENS PURSLEY LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, Idaho 83701-2720  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300  
Email: [bradleydixon@givenspursley.com](mailto:bradleydixon@givenspursley.com)  
Email: [kerstikennedy@givenspursley.com](mailto:kerstikennedy@givenspursley.com)

Attorneys for Respondents

Brent T. Robinson, ISB No. 1932  
W. Reed Cotten, ISB No. 8976  
Paul C. Jefferies, ISB No. 9054  
ROBINSON & ASSOCIATES  
P.O. Box 396  
Rupert, Idaho 83350  
Telephone: (208) 436-4717  
Facsimile: (208) 436-6804  
Email: [btr@idlawfirm.com](mailto:btr@idlawfirm.com)  
Email: [wrc@idlawfirm.com](mailto:wrc@idlawfirm.com)

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. REPLY ARGUMENT ..... 2

    A. Compeer Was Not Unjustly Enriched by the Amount of Auction Expenses. .... 2

    B. The District Court’s Finding That Compeer Did Not Prove the Expenses Does Not Apply to the Auction Fees, and the Trial Exhibits and Testimony Show More Than Sufficient Evidence of Those Fees. .... 5

    C. The District Court Abused Its Discretion by Allowing Gordon Paving to Receive the Time-Value of Money for the Trial Delay That it Caused..... 6

    D. Compeer Objects to Gordon Paving’s Request for Attorney Fees and Costs..... 7

III. CONCLUSION..... 8

**TABLE OF AUTHORITIES**

**Cases**

*Assocs. Northwest, Inc. v. Beets*, 112 Idaho 603, 733 P.2d 824 (Ct. App. 1987)..... 7

*Backman v. Lawrence*, 147 Idaho 390, 210 P.3d 75 (2009)..... 7

*Ball v. City of Blackfoot*, 152 Idaho 673, 273 P.3d 1266 (2012)..... 8

*Campbell v. Kildew*, 141 Idaho 640, 115 P.3d 731 (2005)..... 7

*Credit Suisse AG v. Teufel Nursery, Inc.*, 156 Idaho 189, 321 P.3d 739 (2014) ..... 6

*Eagle Equity Fund, LLC v. TitleOne Corp.*, 161 Idaho 355, 386 P.3d 496 (2016) ..... 5

*Fox v. Mountain West Elec., Inc.*, 137 Idaho 703, 52 P.3d 848 (2002)..... 2

*Hoagland v. Ada Cty.*, 154 Idaho 900, 303 P.3d 587 (2013)..... 7

*Lincoln Land Co., LLC v. LP Broadband, Inc.*, 163 Idaho 105, 408 P.3d 465 (2017)..... 3

*Stoll v. Gottlieb*, 305 U.S. 165, 59 S.Ct. 134 (1938)..... 4

*Stueve v. N. Lights, Inc.*, 122 Idaho 720, 838 P.2d 323 (Ct. App. 1992)..... 6

**Statutes**

Idaho Code § 12-120(3)..... 7

Idaho Code § 12-121..... 7, 8

**Other Authorities**

Restatement (Third) on Restitution and Unjust Enrichment § 18..... 3, 4

**Rules**

I.A.R. 13..... 4

## I. INTRODUCTION

This appeal is about the amount of principal and interest due on an award of restitution after Appellant Compeer Financial FLCA fka AgStar Financial Services, ACA (“Compeer”) collected pursuant to an order that this Court later reversed. Compeer replies to three issues raised in Respondents’ (collectively, “Gordon Paving’s”) brief.

First, the district court erred in granting Gordon Paving the *gross* proceeds of the personal property auction even though Compeer was only enriched by the *net* proceeds. Because Compeer did not realize the amounts it spent on preparing the collateral for auction and on auctioneer fees, it was never unjustly enriched by those amounts. And, Compeer’s execution was not wrongful, but was rather done in pursuit of a final judgment in a case in which Gordon Paving had posted no bond. Gordon Paving should not receive the gross proceeds of an execution sale that it could have stayed.

Second, contrary to Gordon Paving’s statement, the district court did not find that Compeer failed to prove the Masters Auction Service fees that were directly deducted from its auction proceeds check—the court held only that Compeer was not legally entitled to an offset for those fees. This is an incorrect legal holding. At the very least, therefore, Compeer should receive an offset for the Masters Auction Service fees that were deducted from the check.

Third, Gordon Paving should not profit from the trial delay that it caused. Gordon Paving is not entitled to the time-value of money for this period because it willingly chose to put off trial for the chance to present evidence on fair market value damages. It represented that Compeer would not be prejudiced for the delay. Throughout this time, the claim remained unliquidated

from Compeer's perspective, as Gordon Paving continued to maintain its request for legal damages. Compeer should not be required to pay for Gordon Paving's delay of the trial while Compeer waited for a legal determination regarding whether it would be required to pay for legal damages or only restitution.

For the reasons stated in Compeer's briefing, Compeer requests that this Court vacate the judgment and direct the district court to amend the judgment in accordance with its arguments herein.

## **II. REPLY ARGUMENT**

### **A. Compeer Was Not Unjustly Enriched by the Amount of Auction Expenses.**

Although an award of restitution is reviewed for an abuse of discretion, the district court must still properly apply the law to the dispute. *Fox v. Mountain West Elec., Inc.*, 137 Idaho 703, 711, 52 P.3d 848, 856 (2002) (An element of the abuse of discretion test is "whether the trial court acted within the boundaries of its discretion and consistent with legal standards applicable to the specific choices available to it.") Here, the district court abused its discretion because it acted contrary to law in awarding Gordon Paving restitution in the amount of the gross proceeds of the auction.

Compeer prevails whether its position is characterized as an argument regarding the *prima facie* claim of unjust enrichment or as a defense to that claim. The Restatement provides that a claim for restitution on a reversed judgment sounds in unjust enrichment: "A transfer or taking of property, in compliance with or otherwise in consequence of a judgment that is subsequently reversed or avoided, gives the disadvantaged party a claim in restitution *as*

*necessary to avoid unjust enrichment.*” Restatement (Third) on Restitution and Unjust Enrichment (“Restatement”) § 18 (emphasis added). Under Idaho law, the elements of unjust enrichment are: “(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.” *Lincoln Land Co., LLC v. LP Broadband, Inc.*, 163 Idaho 105, 109, 408 P.3d 465, 469 (2017) (citations and internal quotations omitted).

Compeer simply was not unjustly enriched by the amounts it spent on auctioneer fees and on preparing the collateral for auction, as it never “appreciated” these amounts. The district court should have awarded only net proceeds of the auction, reducing the award of restitution by the amount of the auction expenses (\$43,747.43) and collateral preparation expenses (\$32,025.12). *See R.* at 455-57. Instead, the district court required Compeer to pay more than the benefit it realized. Under the district court’s judgment, Compeer is now required to pay those monies twice.

The Restatement illustration cited by the district court and Gordon Paving on appeal does not change this outcome and is in accordance with Compeer’s position. That illustration states:

A obtains a judgment against B for \$25,000. Property of B worth \$35,000 is sold at execution to C, a bona fide purchaser who is otherwise a stranger to the transaction. C is aware that B is prosecuting an appeal from A’s judgment. The sale, although properly conducted, brings only \$25,000: this amount is paid to A. A’s judgment against B is subsequently reversed on appeal. B has no claim to recover the property from C. B has a claim in restitution against A to the extent of A’s unjust enrichment. If A’s actions have been in good faith, B’s claim is for \$25,000 plus interest.

Restatement § 18, illustration 9. That illustration is to show the general rule that the aggrieved party's claim for an execution on a reversed judgment is limited to restitution plus interest. *See id.*, comment f. The example says nothing of execution expenses, but rather accords with the general rule on unjust enrichment: "B has a claim in restitution against A *to the extent of A's unjust enrichment.*" *Id.* (emphasis added). Again, Compeer was not unjustly enriched by the auction expenses it never received or immediately paid over to third parties. As this illustration shows, Gordon Paving's claim is limited to the extent of Compeer's unjust enrichment.

In sum, Compeer simply was not unjustly enriched by the amounts it spent on auctioneer fees and preparing the collateral for auction. Its "resulting liability in restitution" currently "exceed[s] the net enrichment attributable to the transaction with the claimant." Restatement § 65, cmt. a. Therefore, the principal of the award in restitution should be reduced in the amount of \$43,747.43 for auctioneer fees and in the amount of \$32,025.12 for LaserLine collateral preparation fees, and the prejudgment interest award should be adjusted accordingly.

Finally, awarding Gordon Paving only the net proceeds is consistent with the policy of the general proposition of the law that the court's judgment "is final until reversed in an appellate court, or modified or set aside in the court of its rendition." *Stoll v. Gottlieb*, 305 U.S. 165, 170, 59 S.Ct. 134 (1938). If a party wants to stay execution of a final judgment pending appeal, it should post a bond. I.A.R. 13. Gordon Paving did not post a bond and cannot complain that it was impacted as a result of the lawful execution.

**B. The District Court’s Finding That Compeer Did Not Prove the Expenses Does Not Apply to the Auction Fees, and the Trial Exhibits and Testimony Show More Than Sufficient Evidence of Those Fees.**

Gordon Paving’s argument that Compeer failed to prove its expenses is wrong on two accounts. Idaho law is well established that all damages must be proved with reasonable certainty. *See Eagle Equity Fund, LLC v. TitleOne Corp.*, 161 Idaho 355, 361, 386 P.3d 496, 502 (2016). Reasonable certainty does not require “absolute assurance nor mathematical exactitude,” and “there must be a reasonable foundation established by the evidence from which the factfinder can calculate the amount of damages.” *Id.* (citations omitted).

First, the district court *did* find that Compeer failed to prove its expenses as to LaserLine. R. at 455-57. Compeer disagrees with that finding. *See Appellant’s Brief*, pp. 13-17. However, the district court *did not* make that finding as to the Masters Auction Service fees (*see* R. at 455).

Second, even if the court had made this finding, such finding would be clearly unsupported by the evidence presented at trial. Compeer’s expenses related to the auctioneer fees were more than sufficiently proven. Plaintiff’s Trial Exhibit 8 is the settlement sheet from Masters Auction Service for its work conducting the auction. Exhibit 8 shows that the gross sales for the October 2, 2014 auction were \$279,834.50. *Id.* The auctioneer deducted its commission of \$41,975.18, as well as items of costs, including advertising. *Id.* The settlement sheet shows that Compeer netted \$236,087.07, paid in check number 18257. *Id.* Trial Exhibit 7, page two, is a copy of that check from Masters Auction Service to Compeer. Trial Exhibit 7; Tr. p. 64, l. 16—p. 65, l. 11. These exhibits show conclusively that the auctioneer fees and costs were paid directly from the auction proceeds and that Compeer never realized these amounts.

Therefore, the Masters Auction Service fees and costs were adequately proven, and the district court abused its discretion by failing to act within the bounds of the applicable legal authorities and grant Compeer an offset for these fees, as set forth in Section A, *supra*.

**C. The District Court Abused Its Discretion by Allowing Gordon Paving to Receive the Time-Value of Money for the Trial Delay That it Caused.**

Gordon Paving is correct that the purpose of prejudgment interest is to compensate the aggrieved party for the time-value of money. *Credit Suisse AG v. Teufel Nursery, Inc.*, 156 Idaho 189, 201, 321 P.3d 739, 751 (2014) (citing *Stueve v. N. Lights, Inc.*, 122 Idaho 720, 722–23, 838 P.2d 323, 325–26 (Ct. App. 1992)).

But, it is Gordon Paving’s fault that a judgment was delayed an additional seven months due to its requested trial delay. R. at 491, p. 40, ll. 15-19 (Transcript of April 27, 2018 Motion Hearing). It willingly chose to delay the entry of judgment and represented that Compeer would not be prejudiced for that delay. Moreover, the delay was requested for the very purpose of presenting an unliquidated claim—fair market value damages—to the district court. R. at 81-87. During the summary judgment proceedings that occurred during this timeframe, Gordon Paving continued to represent to the district court that it was entitled to unliquidated damages, not a liquidated claim for restitution. R. at 332-35. Compeer should not be required to pay for Gordon Paving’s requested delay of the trial while it waited for a legal determination regarding whether Compeer would be required to pay for legal damages or simply restitution. The district court did not arrive at its decision by an exercise of reason in approving prejudgment interest for the trial delay. Instead, it rewarded Gordon Paving for its failure to follow the scheduling order and

failure to timely disclose its experts. Compeer therefore requests that this Court reverse the judgment of the district court and, therefore, at the very least, suspend the running of prejudgment interest for this time period from May 1, 2018 (the original trial date) to December 11, 2018 (the reset trial date).

**D. Compeer Objects to Gordon Paving’s Request for Attorney Fees and Costs.**

Compeer objects to Gordon Paving’s request for fees under Idaho Code § 12-120(3), because Compeer should be declared the prevailing party on appeal. *See* Appellant’s Brief, p. 25.

Compeer further objects to Gordon Paving’s request for fees under Idaho Code § 12-121. Idaho Code § 12-121 states: “attorney fees under Idaho Code Section 12-121 may be awarded by the court only when it finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation, which finding must be in writing and include the basis and reasons for the award.” Attorney fees under section 121 are not appropriate unless “the position advocated by the nonprevailing party is plainly fallacious and, therefore, not fairly debatable.” *Assocs. Northwest, Inc. v. Beets*, 112 Idaho 603, 605, 733 P.2d 824, 826 (Ct. App. 1987) (emphasis added). Attorney fees will not be awarded for positions that are based on a good faith argument, even if those arguments are unsuccessful. *Backman v. Lawrence*, 147 Idaho 390, 401, 210 P.3d 75, 86 (2009). Further, “[w]here a case involves a novel legal question, attorney fees should not be granted under I.C. § 12–121.” *Campbell v. Kildew*, 141 Idaho 640, 651, 115 P.3d 731, 742 (2005); *see also Hoagland v. Ada Cty.*, 154 Idaho 900, 303 P.3d 587 (2013) (declining to award attorney fees under Section 12-121 even through much of the appellant’s appeal “was

riddled with mischaracterizations of the law and frivolous argument,” since the “case presented a novel issue” of constitutional law).

Here, Gordon Paving has presented the Court with only legal authority regarding attorney fees and does not provide any factual argument supporting the request for fees under Idaho Code § 12–121, and the request should be disregarded. *Ball v. City of Blackfoot*, 152 Idaho 673, 678, 273 P.3d 1266, 1271 (2012) (prevailing party waived any claim to attorney fees as a result of failing to present any argument in support of its request).

Moreover, unlike the case cited by Gordon Paving, this case does not involve the application of well-established law, nor has Compeer asked this Court to reweigh the evidence. This case has presented numerous issues of first impression. In particular, no Idaho case has dealt with restitution on a reversed judgment under the Restatement; no case has dealt with the offset of expenses on restitution on a reversed judgment, and no case has dealt with prejudgment interest on restitution on a reversed judgment. Moreover, Compeer argued for a good faith change in the law of prejudgment interest. Compeer further does not request that this Court reweigh the evidence; rather, it asks this Court to review the findings of the district court for an abuse of discretion. Therefore, fees under Idaho Code § 12–121 are not warranted.

### **III. CONCLUSION**

Compeer was not unjustly enriched by the expenses it paid for executing on the collateral. It should not be required to pay over money to Gordon Paving that it never realized, particularly where Gordon Paving failed to post a bond. It adequately proved these expenses with an auction settlement sheet and auction check showing that the expenses were deducted directly

from the check. The district court erred in awarding these amounts in restitution. This Court should at the very least vacate the judgment to grant Compeer an offset of the auction expenses and adjust the award of prejudgment interest accordingly. The Court should also stop the running of prejudgment interest to avoid awarding Gordon Paving for causing a seven-month trial delay. For these reasons, Compeer requests that the Court vacate the judgment of the district court and direct that it amend the judgment accordingly.

Respectfully submitted this 8<sup>th</sup> day of April, 2020.

GIVENS PURSLEY LLP

*/s/ Bradley J. Dixon*

Bradley J. Dixon

Kersti H. Kennedy

*Attorneys for Plaintiff/Appellant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of April, 2020, I filed and served the foregoing document electronically through the iCourt E-Filing System, which caused the following parties to be served by electronic means:

Brent T. Robinson  
William Cotten  
ROBINSON & TRIBE  
Email: BTR@idlawfirm.com  
Email: WRC@idlawfirm.com

*Attorneys for Gordon Paving-Respondents:  
Northwest Sand & Gravel, Inc.  
Gordon Paving Company, Inc.  
Blackrock Land Holdings, LLC*

By: /s/ Bradley J. Dixon  
Bradley J. Dixon  
Kersti H. Kennedy