

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 2/13/09
AT 2:39 O'CLOCK P.M.
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
IDAHO IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking corporation,
Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho corporation; BRN INVESTMENTS, LLC, an Idaho limited liability company; LAKE VIEW AG, a Lichtenstein company; BRN-LAKE VIEW JOINT VENTURE, an Idaho general partnership; ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008; E. RYKER YOUNG, Trustee for the E. RYKER YOUNG REVOCABLE TRUST; MARSHALL CHESROWN, a single man; IDAHO ROOFING SPECIALIST, LLC, an Idaho limited liability company; THORCO, INC., an Idaho corporation; CONSOLIDATED SUPPLY COMPANY, an Oregon corporation; INTERSTATE CONCRETE & ASPHALT COMPANY, an Idaho corporation; CONCRETE FINISHING, INC., an Arizona corporation; THE TURF CORPORATION, an Idaho corporation; WADSWORTH GOLF CONSTRUCTION COMPANY OF THE SOUTHWEST, a

CASE NO. CV-09-2619
ORDER RE: PLAINTIFF AMERICAN BANK'S MOTION TO RECONSIDER AND PLAINTIFF AMERICAN BANK'S MOTION FOR PERMISSIVE APPEAL

Delaware corporation; POLIN & YOUNG)
CONSTRUCTION, INC., an Idaho)
corporation, TAYLOR ENGINEERING,)
INC., a Washington corporation;)
PRECISION IRRIGATION, INC., an)
Arizona corporation; and SPOKANE)
WILBERT VAULT CO., a Washington)
corporation, d/b/a WILBERT PRECAST,)

Defendants.)

And)

TAYLOR ENGINEERING, INC., a)
Washington corporation,)

Third-Party Plaintiff,)

vs.)

ACI NORTHWEST, INC., an Idaho)
corporation; STRATA, INC., an Idaho)
corporation; and SUNDANCE)
INVESTMENTS, LLP, a limited liability)
partnership,)

Third-Party Defendants.)

And)

ACI NORTHWEST, INC., an Idaho)
corporation,)

Cross-Claimant,)

vs.)

AMERICAN BANK, a Montana banking)
corporation; BRN DEVELOPMENT, INC.,)
an Idaho corporation; BRN)
INVESTMENTS, LLC, an Idaho limited)
liability company; LAKE VIEW AG, a)
Lichtenstein company; BRN-LAKE VIEW)
JOINT VENTURE, an Idaho general)
partnership; ROBERT LEVIN, Trustee for)
the ROLAND M. CASATI FAMILY)

TRUST, dated June 5, 2008; E. RYKER)
 YOUNG, Trustee for the E. RYKER)
 YOUNG REVOCABLE TRUST;)
 MARSHALL CHESROWN, a single man;)
 THORCO, INC., an Idaho corporation;)
 CONSOLIDATED SUPPLY COMPANY,)
 an Oregon corporation; THE TURF)
 CORPORATION, an Idaho corporation;)
 WADSWORTH GOLF CONSTRUCTION)
 COMPANY OF THE SOUTHWEST, a)
 Delaware corporation; POLIN & YOUNG)
 CONSTRUCTION, INC., an Idaho)
 corporation, TAYLOR ENGINEERING,)
 INC., a Washington corporation;)
 PRECISION IRRIGATION, INC., an)
 Arizona corporation,)
)
 Cross Claim Defendants.)
)
)

Plaintiff American Bank moves for reconsideration or permissive appeal of this Court’s February 2, 2011, “Memorandum Decision, Findings of Fact, and Conclusions of Law, and Order Re: American Bank’s and Wadsworth’s Golf Construction Company of the Southwest’s Cross Motions for Partial Summary Judgment.”

Tyler J. Anderson, MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., for Plaintiff/Counterdefendant American Bank

Edward J. Anson, WITHERSPOON KELLEY, for Defendant/Counterclaimant Wadsworth Golf Construction Company of the Southwest

I. FACTUAL SUMMARY AND COURSE OF PROCEDURE

On February 2, 2011, this Court issued its “Memorandum Decision, Findings of Fact, and Conclusions of Law, and Order Re: American Bank’s and Wadsworth Golf Construction Company of the Southwest’s Cross-Motions for Partial Summary Judgment” (“Memorandum Decision”). In the Memorandum Decision, this Court

granted the Defendant / Counterclaimant Wadsworth Golf Construction Company of the Southwest's ("Wadsworth") motion for summary judgment, concluding:

As a matter of law, this Court concludes that by American Bank posting the lien release bond and this Court entering its order releasing of record in its entirety and for all purposes Wadsworth's mechanic's lien, the issue of lien priority is not relevant. Further, the issue of validity and amount due and owing to Wadsworth remain issues for further argument.

(Memorandum Decision, pp. 16-17.)

On February 16, 2011, the Plaintiff filed "American Bank's Motion for Permissive Appeal from this Court's February 2, 2011, Memorandum Decision, Findings of Fact and Conclusions of Law, and Order Re: American Bank's and Wadsworth Golf Construction Company of the Southwest's Cross-Motions for Partial Summary Judgment" ("Motion for Permissive Appeal"). The Plaintiff also filed "American Bank's Motion for Reconsideration of this Court's February 2, 2011, Memorandum Decision, Findings of Fact and Conclusions of Law, and Order Re: American Bank's and Wadsworth Golf Construction Company of the Southwest's Cross-Motions for Partial Summary Judgment" ("Motion for Reconsideration"). In support of the motions, the Plaintiff submitted the Affidavit of Jeffrey Bo Davies.

Defendant Wadsworth responded with its "Memorandum in Opposition to Plaintiff's Motion for Permissive Appeal and Motion for Reconsideration" ("Memorandum in Opposition"). The Plaintiff then filed a "Reply Memorandum in Support of Motion for Reconsideration of and Motion for Permissive Appeal" ("Reply Memorandum"). This Court reviewed the parties' pleadings, and heard from the parties on March 22, 2011, before taking the matter under advisement.

II. ANALYSIS

A. Motion for Reconsideration

Rule 11(a)(20(B) provides: “A motion for reconsideration of the trial court may be made at any time before the entry of final judgment” A party making a motion for reconsideration may present new facts, but the trial court is not required to search the record to determine if there is new information. Coeur d’Alene Mining Co. v. First National Bank, 118 Idaho 812, 800 P.2d 1026 (1990). Granting or denying a motion to reconsider is a discretionary decision. Johnson v. Lambros, 143 Idaho 468, 473, 147 P.3d 100, 105 (Ct. App. 2006), *citing* Watson v. Navistar Int’l Transp. Corp., 121 Idaho 643, 654, 827 P.2d 656, 667 (1992) and Slaathaug v. Allstate Ins. Co., 132 Idaho 705, 979 P.2d 107 (1999).

The Plaintiff asks that this Court reconsider its Memorandum Decision. The Plaintiff first argues that this Court’s application of I.C. §§ 45-518 to 45-524 violates Idaho’s rules of statutory construction because the language of the statutes is ambiguous and the priority of Wadsworth’s materialmen’s lien remains relevant even though this Court entered an Order releasing the lien “for all purposes.” This Court notes that “where a statute is unambiguous, statutory construction is unnecessary and courts are free to apply the plain meaning.” Hayden Lake Fire Prot. Dist. v. Alcorn, 141 Idaho 307, 312, 109 P.3d 161, 166 (2005). “Ambiguity exists where reasonable minds might differ as to interpretations of the statute.” State v. Doe, 140 Idaho 271, 274, 92 P.3d 521, 524 (2004). A thorough reading of this Court’s Memorandum Decision shows that this Court declined to follow the Plaintiff’s lead and engage in statutory construction. This Court determined that the statutes in question are not ambiguous,

apply to materialmen's liens (not mortgages or deeds of trust) and the facts of this case, and that the priority of a lien released "for all purposes" after a bond is posted is irrelevant. After a thorough and thoughtful review of the Plaintiff's Motion to Reconsider, this Court declines to revisit its ruling.

The Plaintiff also claims that this Court's ruling is inconsistent with the language in this Court's Order Releasing Claim of Lien, entered on April 27, 2010. The Plaintiff has failed to show how this Court's ruling is inconsistent with this Court's Order Releasing Claim of Lien, and this Court previously considered the Plaintiff's arguments on this issue in its Memorandum Decision. This Court, after reviewing the issue a second time, declines to revisit its previous ruling.

The Plaintiff lastly argues that the Memorandum Decision is inconsistent with the authorities cited with approval by this Court in its Memorandum Decision. This Court engaged in a thoughtful and thorough review of the statutes the parties presented for comparison, as well as case law from multiple jurisdictions. While the Plaintiff again argues that this Court should adopt other authorities, the Plaintiff has not presented any new or additional argument that this Court finds persuasive. Therefore, this Court declines to reconsider its decision.

This Court recognizes that the issue raised is one of first impression, and that I.C. §§ 45-518 through 45-524 have not previously been interpreted. Given the Plaintiff's Motion for Reconsideration, this Court has not only reviewed and reconfirmed its previous findings and conclusions, but has collected the legislative history on the statutes in question. Notably, when HB 305 was considered by the House State Affairs

Committee on February 16, 1993, the sponsoring legislator noted that I.C. §§ 45-518 and 45-521:

eliminate the possibility for lawsuits. It allows someone who is grieved by a lien to post a bond and bond around the lien. In essence you start an action, you go into court because you have to have somebody look at the bond to make sure it is a legitimate bond, that the lien creditor is adequately protected by putting the bond as security instead of a lien on the [property].

(Minutes, House State Affairs Committee, February 16, 1993 (HB 305). This history shows that the purposes of the statutes are to protect materialmen and mechanics from the risk of nonpayment, for materialmen and mechanics, unlike banks and mortgage companies, are not in the business of assuming risk, but are in the business of performing work and receiving payment for that work. Additionally, it also recognizes the rights of property owners and the burdens of liens on real property, by allowing property owners the ability to free their property from the burdens of a materialmen's lien by posting a bond.

Based on the statutes in question, the legislative history therefore, as well as the arguments and pleadings of the parties, this Court declines to revisit its prior ruling. As a result, the Plaintiff's Motion for Reconsideration is denied.

B. Motion for Permissive Appeal

According to Idaho Appellate Rule 12(a),

Permission may be granted by the Supreme Court to appeal from an interlocutory order or judgment of a district court in a civil . . . action, . . . which is not otherwise appealable under these rules, but which involves a controlling question of law as to which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

This rule requires that the party first file its motion for permission to appeal in the district court and obtain an order approving or disapproving the appeal. I.A.R. 12(c). Then the

party may file a motion with the Idaho Supreme Court requesting acceptance of the appeal by permission. I.A.R. 12(c).

In Budell v. Todd, the Idaho Supreme Court addressed the factors that it will consider when accepting or declining a request for a permissive appeal:

It was the intent of I.A.R. 12 to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved. The Court also considers such factors as the impact of an immediate appeal upon the parties, the effect of the delay of the proceedings in the district court pending the appeal, the likelihood or possibility of a second appeal after judgment is finally entered by the district court, and the case workload of the appellate courts. No single factor is controlling in the Court's decision of acceptance or rejection of an appeal by certification, but the Court intends by Rule 12 to create an appeal in the exceptional case and does not intend by the rule to broaden the appeals which may be taken as a matter of right under I.A.R. 11.

105 Idaho 2, 4, 665 P.2d 701, 703 (1983) (emphasis added); *see also* Aardema v. U.S. Dairy Systems, Inc. 147 Idaho 785, 789, 215 P.3d 505, 509 (2009) (citing Budell and stating "Rule 12 appeals are only accepted in the most exceptional cases with the intent to resolve 'substantial legal issues of great public interest or legal questions of first impression.'")

The issue this Court decided in its Memorandum Decision was an issue of first impression and an issue of legal significance, but there is not great interest to the public, but only great interest is to the parties involved. Further, this Court only addressed one of the four issues that must be resolved, leaving the issues of whether Wadsworth Golf's lien is valid, the amount due under the lien, and Wadsworth's compliance with the Idaho Contractor Registration Act, for trial on May 2, 2011. As set forth in the briefing, the parties are certainly prepared for trial. It follows, then, that an appeal of only one of this Court's rulings would significantly delay determination of the

other issues involved for a substantial period of time. Given the value of the project and the number of parties involved, as well as the complex legal issues presented by this case as a whole, an appeal after trial is quite likely. It would be more efficient for an appellate court to address resolution of all the issues between the parties at one time, instead of piece meal over a long period of time.

Recognizing that granting or denying a motion for a permissive appeal is a discretionary decision, for the reasons stated above this Court hereby denies the Plaintiff's Motion for Permissive Appeal.

IV. CONCLUSION

The Plaintiff's Motion for Reconsideration is hereby DENIED, for the reasons given above. The Plaintiff's Motion for Permissive Appeal is similarly DENIED.

DATED this 13th day of April, 2011.



John Patrick Luster
John Patrick Luster
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 13 day of April, 2011 a true and correct copy of the ORDER RE: PLAINTIFF'S MOTION FOR RECONSIDERATION AND PLAINTIFF'S MOTION FOR PERMISSIVE APPEAL, was mailed, postage prepaid, faxed or sent by interoffice mail to:

Nancy Isserlis
Elizabeth A. Tellessen
Winston & Cashatt
Bank of America Financial Center
601 W. Riverside, Ste. 1900
Spokane, WA 99201-0695

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 509-838-1416

Randall A. Peterman, C. Clayton Gill
Tyler Anderson
Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
Boise, ID 83702

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-385-5384

Richard D. Campbell
Campbell, Bissell & Kirby, PLLC
7 South Howard Street, Ste. 416
Spokane, WA 99201

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 509-455-7111

Charles B. Lempesis
Attorney at Law
W 201 7th Ave.
Post Falls, ID 83854

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-773-1044

Robert J. Fasnacht
850 W. Ironwood Dr., Ste. 101
Coeur d'Alene, ID 83814

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-664-4789

Cory J. Rippee
Eberle, Berline, Kading, Turnbow & McKlveen
PO BOX 1368
Boise, ID 83701-1368

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-334-8542

John R. Layman
Layman, Layman & Robinson, PLLP
601 S. Division St.
Spokane, WA 99202

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 509-624-2902

Barry W. Davidson
Davidson Backman Medeiros, PLLC
1550 Bank of America Center
601 W. Riverside Ave.
Spokane, WA 99201

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-667-8470

Edward J. Anson
Witherspoon Kelley
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83814

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 509-458-2728

Terrance R. Harris for Maggie Lyons, Receiver
Ramsden & Lyons, LLP
PO BOX 1336
Coeur d'Alene, ID 83816-1336

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-664-5884

Steven C. Wetzel & Kevin P. Holt
Wetzel Wetzel & Holt, PLLC
616 N. 4th St., Ste. 3
Coeur d'Alene, ID 83814

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-664-6741

Douglas Marfice
Ramsden & Lyons, LLP
PO BOX 1336
Coeur d'Alene, ID 83816-1336

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-664-5884

Timothy M. Lawlor
M. Gregory Embrey
Witherspoon, Kelly, Davenport & Toole, PS
The Spokesman Review Bldg.
608 Northwest Blvd., Ste. 300
Coeur d'Alene, ID 83814

- US Mail
- Hand Delivered
- Overnight Mail
- Via Fax: 208-667-8470

JS

Clifford T. Hayes
Clerk of the District Court

By _____
Deputy Clerk

