

BOISE, MONDAY, NOVEMBER 9, 2009 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

THE GREASE SPOT, INC.,)	
)	
Plaintiff/Respondents,)	
v.)	
)	
RICHARD AND SHARRY HARNES,)	Docket No. 35321
husband and wife,)	
)	
Defendants/Appellants.)	
)	
and)	
)	
BAKER COMMODITIES, INC., a Delaware)	
Corporation,)	
)	
Defendants.)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Hon. Charles W. Hossack, District Judge.

Ramsden & Lyons, LLP, Coeur d'Alene, for appellants.

Paine Hamblen, LLP, Coeur d'Alene, for respondent.

The Grease Spot is a small company that processes restaurant oil for use in food products and biodiesel fuel. In 2000, Sherry Harnes sold her shares in The Grease Spot to co-owner Scott Wessling, making him owner of nearly all of The Grease Spot's outstanding stock. The Agreement to Purchase contained an arbitration provision but no provision for attorney fees in the arbitration.

In 2005, The Grease Spot filed a complaint against the Harneses alleging various violations of the purchase agreement. The Harneses moved for and were granted an order staying litigation and compelling arbitration. After arbitration proceedings, the arbiter dismissed all of Grease Spot's claims against the Harneses. The Harneses subsequently obtained an order confirming the arbitration award. They then requested an award of attorney fees incurred in compelling, defending, and confirming the arbitration. The court stated that it was only awarding attorney fees "incurred in compelling arbitration." The court refused to award attorney fees from the actual arbitration proceedings because there was no agreement between the parties regarding fees. The court also refused to grant fees incurred after the arbitration, reasoning that

an award confirmation is a summary proceeding that does not automatically entitle the prevailing party to fees under I.C. § 7-914.

The Harneses contend that they are entitled to all attorney fees they incurred both during litigation and during arbitration. They rely on I.C. § 12-120(3), which states that the prevailing party is entitled to attorney fees in civil suits regarding commercial transactions.

BOISE, MONDAY, NOVEMBER 9, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

EVCO SOUND & ELECTRONICS, INC.,)
)
Plaintiff-Respondent,)
)
v.)
)
CEDAR STREET ELECTRIC AND)
CONTROL, INC.,)
)
Defendant,)
)
and)
)
SEABOARD SURETY COMPANY,)
)
Defendant-Appellant.)

Docket No. 34898

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Racine, Olsen, Nye, Budge & Bailey, Idaho Falls, for appellant.

Malcolm S. Dymkoski, Coeur d’Alene and Terry E. Miller, Kennewick, Washington, for respondent.

Ormond Builders, Inc. entered into a contract with Lakeland School District for construction of Timberlake Junior High School in Spirit Lake, Idaho. Ormond, as principal contractor, and Appellant-Defendant Seaboard Surety Company, as surety, provided a payment bond consistent with I.C. § 54-1925. Ormond entered into a written contract with Defendant Cedar Street Electronic and Control to perform all of the electrical work on the project. Plaintiff-Respondent Evco prepared and submitted a bid to Cedar Street to supply labor and materials for the fire alarm, intercom, telephone and television media section of the Project.

Cedar Street notified Evco of its “intent to enter into a contract” and requested that Evco supply materials to the Project “ASAP.” Evco provided labor and materials to the Project, however, an express agreement was never formalized between the parties. The Project was substantially completed on January 28, 2005 and the School District took occupancy. On April 15, Evco conducted Project training sessions for the School District, installed part of the Project television system on April 26, and completed its Project as-built drawings on June 15, 2005.

Evco received two payments for its work on the Project; one check for 3,325.00 and another check for \$50,000.00. Evco believed it was still owed \$76,105.00 for the materials and labor it supplied to the Project and served Notice of Claim on Ormond on June 13, 2005 and a claim on Seaboard on September 29, 2005. Evco then commenced the underlying action on March 10, 2006.

Seaboard filed a motion for summary judgment seeking dismissal arguing that there was no express contract and Ormond had fully compensated Evco for the equipment, materials and on-site labor in the amount of \$53,325.00. Seaboard also claimed that Evco's claim was untimely under I.C. § 54-1927 with respect to the 90-day notice provision as well as the one-year statute of limitations. The district court denied summary judgment holding that there were genuine issues of material fact relating to the scope of the work performed by Evco after the School District took occupancy of the Project as well as whether the parties intended to enter into a contract and whether their oral agreements were to be reduced to writing. The district court ultimately found that a contract existed between Evco and Cedar and that there was a balance of \$76,105.00 due to Evco.

Seaboard challenges the district court's determination that an express contract was formed between Evco and Cedar Street Electric and Control, Inc., that the action against the bond was timely, and that the agreement between the parties was not in violation of the statute of frauds.

BOISE, MONDAY, NOVEMBER 9, 2009 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

RAYMOND J. MELTON,)	
Petitioner-Appellant,)	
v.)	Docket No. 35855
STATE OF IDAHO,)	
Respondent.)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Gooding County. Hon. R. Barry Wood, District Judge.

Molly Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent.

Raymond J. Melton appeals from an order by the district court summarily dismissing his successive petition for post-conviction relief. In 2003, Melton was convicted and sentenced for lewd conduct with a child under the age of sixteen. His sentence was affirmed on direct appeal in 2004. He then filed a petition for post-conviction relief, which was denied following an evidentiary hearing. Melton filed a Notice of Appeal on February 9, 2005, and the State Appellate Public Defender was appointed to represent Melton in that appeal. On September 7, 2005, the SAPD moved to withdraw from its representation of Melton, having found no non-frivolous issues to present on appeal. The Idaho Supreme Court granted the motion to withdraw on November 2, 2005 and on January 25, 2006, the Supreme Court dismissed his appeal.

Melton filed his successive petition for post-conviction relief on April 24, 2006, alleging that his post-conviction counsel in the previous proceeding had failed to properly apprise the district court of the claims intended to be asserted or to present the evidence necessary to prove those claims. The district court summarily dismissed his successive petition. Melton contends that the district court erred in summarily dismissing his successive petition as well as in failing to grant, or even rule upon, his motion for appointment of counsel for the successive petition. He argues that these errors necessitate a remand of his case to the district court for appointment of counsel and an evidentiary hearing on his claims.