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COURT OF APPEALS
STATE OF WASHINGTON
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IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION I

No. 65728-3

R&R CONCRETE, INC

Appellant/ Cross Respondent

v.

MICHAEL AND MARILEE COAKER ET AL,

Respondent/Cross Appellant

APPEALED FROM KING COUNTY SUPERIOR COURT
THE HONORABLE CAROL SCHAPIRA

CROSS-APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. LAW AND ARGUMENT	2
III. CONCLUSION	4
APPENDIX	

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Bort v. Parker</i> , 110 Wn. App. 561, 42 P.3d 980 (2002)	3
<i>Hansen v. Friend</i> , 118 Wn.2d 476, 824 P.2d 483 (1992)	2
<i>Williamson, Inc. v. Calibre Homes, Inc.</i> , 106 Wn. App. 558, 23 P.2d 1118 (2001)	3

Statutes:

RCW 18.27.080	1, 4
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Court Rules:

RAP 2.5	2
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I. INTRODUCTION

The trial court erred when it refused to grant a motion to dismiss the appellant's claims in their entirety for lack of sufficient proof of a valid contractor registration held at the time of the parties' contract. Contrary to R&R's assertion, it is not the burden of the Coakers to prove that R&R was not a properly registered contractor at the time it contracted with the Coakers. The burden to affirmatively prove proper registration is properly placed with R&R pursuant to the plain language of the Contractor's Registration Act, RCW 18.27.080, and the case law interpreting the effect of this statute.

R&R's response to the Coakers' cross-appeal necessarily concedes this issue by arguing that R&R substantially complied with the Contractor Registration Act, when this argument was never asserted or considered at trial and only applies to contractors who are *unregistered* under the statute. Even if R&R's argument were to be considered now, R&R has offered no evidence that it was a properly registered contractor or that it substantially complied with the statute's requirements.

II. LAW AND ARGUMENT

R&R asserts for the first time in its response to the Coakers' cross-appeal that any question regarding R&R's registration should be answered by reference to whether R&R has substantially complied with the registration act, and not whether R&R has alleged and proven that it was a duly registered contractor at the time the work was contracted for. The question of whether or not R&R substantially complied with the statute was never presented to or considered by the trial court, and should not be considered by this court on appeal. See RAP 2.5.

"The appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5. Arguments or theories not presented to the trial court will generally not be considered on appeal. *Hansen v. Friend*, 118 Wn.2d 476, 485, 824 P.2d 483 (1992). Because R&R's current assertion that it has "substantially complied" with the Contractor Registration Act was never presented or argued below, it should not be considered by the court now.

Even if the court were to consider R&R's argument that it substantially complied with the statute, R&R's argument necessarily concedes that it was not a properly registered contractor at the time

of the contract and that it failed to affirmatively “allege and prove” the same. Substantial compliance allows an **unregistered contractor** to maintain an action for compensation if he or she has substantially complied with the Contractor Registration Act; in other words, satisfied the legislative purpose of the statute. *Bort v. Parker*, 110 Wn. App. 561, 571, 42 P.3d 980 (2002) *citing Williamson, Inc. v. Calibre Homes, Inc.*, 106 Wn. App. 558, 564, 23 P.2d 1118 (2001) (emphasis added). If substantial compliance only applies to allow an unregistered contractor to maintain suit, R&R, by making this argument now, is admitting that it failed to meet its initial burden under the statute, and that the issue should be interpreted by reference to the statute’s alternative theory of recovery. This alternative theory of recovery allows an unregistered contractor to maintain a suit if they are able to prove substantial compliance with the statute, which R&R has not done.

There simply was no evidence put forth or cited by R&R which would meet either burden imposed upon R&R by the Contractor Registration Act. R&R cites no evidence which would affirmatively prove that it was a properly registered contractor, or that it had substantially complied with the statute’s requirements.

No evidence was put forth at trial, and no evidence has been presented or cited to in any of R&R's briefings to this court.

R&R, under the statute, had the duty to affirmatively "allege and prove that it was a duly registered contractor and held a valid certificate of registration at the time he contracted for the performance of such work or entered into such contract." RCW 18.27.080. R&R's response cites to examples and evidence of what the Coakers apparently did to meet this burden for R&R – i.e., bringing a claim upon R&R's bond, which necessarily presumed the existence of R&R as a valid contractor under the statute. See R&R Response, pg. 4-5. But this is not the Coakers burden to prove. The Coakers do not have the burden to ask R&R if it held a valid contractor's license at all relevant times as R&R's argument would impose upon them to do. The statute's plain language makes this the burden of R&R, and without citing examples of what R&R specifically did in this matter to meet either burden imposed by the statute, the trial court should have granted the Coakers' Motion to Dismiss R&R's claims in their entirety.

III. CONCLUSION

R&R failed to submit any proof, as required by the Contractor Registration Statutes, that it held a valid contractor's

license at the time it contracted with the Coakers. Because proof of a valid contractor's license is a prerequisite to any subsequent suit on the same contract, the trial court should have granted the Coakers' motion to dismiss the claim asserted by R&R in this matter.

DATED this 15th day of April, 2011.

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APPENDIX

11918.0002 / 4852-6618-5481, v. 1



West's Revised Code of Washington Annotated Currentness
Title 18. Businesses and Professions (Refs & Annos)
 ▣ Chapter 18.27. Registration of Contractors (Refs & Annos)
 → **18.27.080. Registration prerequisite to suit**

No person engaged in the business or acting in the capacity of a contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract for which registration is required under this chapter without alleging and proving that he was a duly registered contractor and held a current and valid certificate of registration at the time he contracted for the performance of such work or entered into such contract. For the purposes of this section, the court shall not find a contractor in substantial compliance with the registration requirements of this chapter unless: (1) The department has on file the information required by RCW 18.27.030; (2) the contractor has at all times had in force a current bond or other security as required by RCW 18.27.040; and (3) the contractor has at all times had in force current insurance as required by RCW 18.27.050. In determining under this section whether a contractor is in substantial compliance with the registration requirements of this chapter, the court shall take into consideration the length of time during which the contractor did not hold a valid certificate of registration.

CREDIT(S)

[2007 c 436 § 5, eff. July 22, 2007; 1988 c 285 § 2; 1972 ex.s. c 118 § 3; 1963 c 77 § 8.]

Current with 2011 Legislation effective through April 10, 2011

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