

FILED
COURT OF APPEALS
DIVISION II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

**POINT RUSTON, LLC, a Washington
limited liability company.**

Appellant,

v.

**OLSON BROTHERS EXCAVATING,
INC., a Washington corporation**

Respondent.

STATE OF WASHINGTON
BY _____
DEPUTY

Cause No. 38367-5-II

**MOTION ON
THE MERITS**

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____
DEPUTY

1. IDENTITY OF MOVING PARTY

Olson Brothers Excavating, Inc. ("Olson"), Respondent asks for relief as designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Affirm the trial court's September 15th Order following a Show Cause hearing concluding that the Olson's lien on Point Ruston's property is not frivolous.

3. FACTS RELEVANT TO THE MOTION

On or about May 10, 2007, Point Ruston and Olson entered into a contract whereby Olson was to perform certain work at a large development called "Stack Hill." CP 58-70.

The original contract contemplated compensation of \$867,106.00. CP 58-70. As invariably the case for large construction projects, the contract provided for additional sums for work changes. Thus, for example, "Article 4, Changes" of the contract stated as follows:

Contractor without nullifying this Agreement may direct Subcontractor in writing to make changes to Subcontractor's Work. Adjustments, if any, in the contract price or contract time resulting from such

changes shall be set forth in Subcontract Change Order pursuant to the Contract Documents. ATTACHMENT B (if required) All change orders must be approved and signed by Project Manager.

CP 62, 68.1 The contract also included a legal description of the project as originally contemplated, although that legal description changed as time went by. Additionally, the contract included a site clean-up provision that put Olson in default if it did not clean up the site. CP 61.

Olson commenced work at Stack Hill on or about May 24, 2007. CP 53. Its work included hauling dirt from the property originally contemplated in the contract to adjacent and surrounding properties owned by Point Ruston. RP at 14. Point Ruston has never stated in what way Olson's work on the property it liened did not improve and benefit that property.

Throughout the duration of the Stack Hill job, at the request of Point Ruston Olson frequently performed work and supplied equipment and materials not contemplated in the original contract, as typical on large excavation and construction jobs. CP 53, RP 10-13. By the time it concluded its work, Olson had submitted to Point Ruston more than 140 change work orders. CP 53. Point Ruston does not deny that it approved each and every one of these change orders.

Fraught with financial difficulties as the Olson's work drew to a close, Point Ruston became late with its payments to Olson, and ultimately ceased payments altogether, at which point Olson ceased

¹ Change orders in large construction projects are so common that entire legal treatises are devoted to them. See, for example, Michael T. Callahan, *Construction Change Order Claims* (2nd ed. 2005), 591 pages, and its 2008 Supplement, 175 pages in length.

submitting further billing statements. CP 53. Olson filed a lien on the property it had improved and benefited for \$412,000.00, roughly the difference between payment it has received and the estimated value of the entire project plus the contract amount of 18% interest on sums due. CP 8-9, 53.

Point Ruston challenged the lien as frivolous, filing a Complaint as well as a Motion to Show Cause as to why the lien should not be found frivolous. CP 45-49.

In opposing Point Ruston's motion to show cause, Olson filed declarations of Scott Jamison, its Project Manager of the Stack Hill job; Steve Olson, Vice-President of Olson; and Larry Folden, the Foreman of the Stack Hill job. CP 74-91.

Foreman Larry Folden's declaration included a Daily Foreman's Report dated May 27, 2008. CP 90-91. This Daily Foreman's Report shows that three Olson employees worked a total of approximately 31 hours at the Stack Hill job on May 27, 2008. CP 90-91. Project Manager Scott Jamison's declaration included Daily Foreman's Reports for May 19, 2008 and June 20, 2008. CP 82-97. The May 19th daily foreman's report shows that four Olson employees worked a total of eight hours each, on May 19th, and the June 20th daily foreman's report shows that Larry Folden was at the Stack Hill site on June 10, 2008, in part to discuss billing and payment issues. CP 82-87. Mr. Jamison states in his declaration that he receives Daily Foreman's Reports from Olson's job foremen in the scope of his duties, and that he received the

two he attached to his declaration from Larry Folden, the foreman for the Stack Hill jobsite. CP 82. All three Daily Foreman's Reports show the job name as "Stack Hill," the foreman as Larry Folden, and the internal job number, 1065-07, and all are dated.

Steve Olson's declaration included as an attachment a spreadsheet given to him by Sue O'Neil, the construction manager for the Stack Hill job, and Mike Cohen, Point Ruston's owner, as the job was drawing to a close. CP 74-81. The invoice column on the spreadsheet reflected an invoice total of \$2,023,307.97. CP 76-81. The spreadsheet also shows a total of more than 140 change orders throughout the course of the job, all of which were approved in writing by Point Ruston prior to the change work. CP 76-81. Notwithstanding the fact that its own spreadsheet shows that Olson contributed a total of \$2,023,307.97 in labor and equipment to the project, Point Ruston now seeks to avoid payment. Appellant's Br. at 6.

At the show cause hearing on whether the lien was frivolous, the court concluded that Point Ruston had not met its burden of showing that the lien frivolous and determined that at the very least there were debatable issues of fact regarding it. RP at 13, 16-17.

Point Ruston appeals the trial court's conclusion that the lien was not frivolous.²

² Olson timely filed an Answer to Point Ruston's Complaint, (due after the Show Cause hearing). Exhibit A. It included the following language:

Defendant Olson Brothers also admits that this progress just wrote billing described all work as having been one hundred

4. GROUNDS FOR RELIEF AND ARGUMENT

RAP 18.14 provides that a party may request the court to affirm a decision on the merits.

As a preliminary matter, we note that it is irrelevant that Commissioner Jacqueline Rosenblatt was serving pro tempore or that she “heard this matter, in the middle of a calendar otherwise devoted to family law cases.” Appellant’s Br. at 9. Nothing in the record supports the appellant’s conclusion that because Commissioner Rosenblatt “demonstrated a clear misunderstanding” of lien law because she was pro tempore, or because she had family law cases on her September 15th docket. Appellant’s Br. at 9,12.

A. The trial court did not err when it found that it Point Ruston bore the burden of showing that Olson Brothers’ lien was frivolous.

Point Ruston assigns error to Finding No. 4, which states:

Point Ruston, LLC, as the party seeking the release of the lien, bore the burden of proving

percent completed. To the extent that this allegation is considered a factual assertion that all work was completed this allegation is hereby denied. Defendant Olson Brothers admit to the language in paragraph 3.4 discussing the certification of the front page on the progress billing, however, to the extent that this allegation is considered a factual assertion, it is hereby denied.

Exhibit A. The Answer also denied Point Ruston’s allegations that the lien was excessive or that it had liened any property on which it had not made improvements. Id.

that the lien was frivolous and without reasonable cause.

Finding No. 4 does nothing more than state well-settled Washington law. The party seeking the release of a lien bears the burden of proving that the lien was frivolous and without reasonable cause. *W.R.P. Lake Union v. Exterior*, 85 Wn.App. 744, 751, 934 P.2d 722 (1997). It was incumbent upon Point Ruston as the party seeking the release of the lien to “prove [the lien’s] invalidity beyond legitimate dispute.” *Williams v. Athletic Field*, 142 Wn. App. 753, 766, 139 P.3d 426 (2006). Debatable issues of fact are not to be resolved in a summary proceeding under the frivolous lien statute. *Id.* at 767. The court distinguishes show cause hearings and subsequent enforcement proceedings. “Unlike a proceeding for enforcement of a lien, in which [the party seeking the release of the lien] bears the burden of proving that all lien prerequisites were met, the ultimate burden to prove that the lien was frivolous at a show cause hearing to release the lien remains with ... the party challenging the lien.” *Lake Union*, 85 Wn.App. at 751-52 (emphasis added). The trial court did not err when it found that Point Ruston bore the burden of proving the lien was frivolous.

B. The trial court did not err when it found that a lien is frivolous only if it presents no debatable issues and is so devoid of merit that no possibility of reversal exists.

PR assigns error to Finding No. 5, which states:

A lien is frivolous only if it presents no debatable issues and is so devoid of merit that no possibility of reversal exists.

The bar to finding a lien frivolous is very high. “Every frivolous lien is invalid. But not every invalid lien is frivolous.” *Intermountain Elec., Inc. V. G-A-T Bros. Constr.*, 115 Wn.App. 384 394, 62 P.2d 548 (2003). This principle illustrates the fundamental importance Washington’s Legislature continues to place on the legal right of a person who improves the value of another’s property to be paid for that work.

Although Chapter 60.04 RCW does not define “frivolous,” lien cases define a frivolous lien as one “present[ing] no debatable issues and ... so devoid of merit that no possibility of reversal exists.” *Lake Union*, 85 Wn.App. at 752. For a lien to be frivolous, “the decision that the lien was improperly filed must be clear and beyond legitimate dispute.” *Intermountain Elec.*, 115 Wn.App. at 394; *Pacific Industries Inc. v. Singh*, 120 Wash.App. 1, 10, 86, P.3d 778 (2003). The trial court did not err when it found that “[a] lien is frivolous only if it presents no debatable issues and is so devoid of merit that no possibility of reversal exists.”

C. The trial court did not err when it found that Olson presented evidence that it had filed its lien within the ninety-day lien limitation period.

Point Ruston assigns error to Finding No. 3, which states:

Defendant Olson presented evidence demonstrating that its lien was filed well within the ninety-day (90) lien limitation period.

Olson Brothers was entitled to file its lien within ninety (90) days of the date of its last work under the contract. *Ed H. Friis v. Lester Brown, et al*, 37 Wn.2d 457, 460, 224 P.2d 330 (1950); *Heaton v. Imus*, 21 Wash.App. 914, 917, 587 P.2d 602 (1978). It is well-known in the construction industry that contractors patiently wait for promised payments for as long as possible before invoking legal rights to obtain compensation for improving another's property -- they file lien claims only at the point they believe they have no alternative. Olson waited for payment, and when they were not paid, filed their claim of lien on the eighty-sixth day after completing its final work under its contract. Thus, Olson filed within the ninety-day lien limitation period.

1. The work Olson performed on May 27th was within the 90 day limitation period.

It is an axiomatic principal of Washington mechanics lien law that all labor or materials within a contract is within the 90-days. No matter how seemingly insignificant a task or minuscule the amount of supplies, if labor and materials are part of the original contract, they are within the 90-days. (A corollary rule is that remedial work completed

under the original contract extends the 90 days.) *Intermountain Elec.*, 115 Wn.App. at 393.

It is not uncommon for a contractor to perform the bulk of work, and then return weeks or months later to finish minor details of a job. In *Rieflin v. Grafton*, 63 Wash. 387, 389, 115 P.851 (1911), the court upheld a lien based on delivery of three panes of glass to replace defective panes well after the bulk of the work was completed. In *Friis v. Brown*, 37 Wn.2d 457, 224 P.2d 330 (1950), a contractor worked through early April on a property. He then did no work until September, at which time he visited the property only to “make some adjustments,” and “started the furnace.” *Friis*, 37 Wn.2d at 460. The court on appeal reversed the trial court’s dismissal of his lien, explaining, “[u]nder the contract, it was the duty of Mr. Friis to see that the furnace was in proper operating condition. His obligation was not fully performed until this was done.” *Friis*, 37 Wn.2d at 460.

Similarly, in *Heaton*, 20 Wn.App at 918, well after all other work had been completed, an employee returned to the site merely to check and brace some cables. The *Heaton* court recited Washington’s well-settled test in finding that the lien survived: “When additional work is undertaken to remedy a defect in work already completed, the time for filing a lien runs from the date of the performance of the additional labor if the later

work was not done (1) under a new and independent contract, (2) for the purpose of prolonging the time for filing the lien, or (3) in an attempt to renew the right to file a lien that had been lost by the lapse of time.” *Heaton*, 20 Wn.App. at 917 (additional citations omitted). *See, also, Osten v. Curtis*, 133 Wash. 360, 233 P. 643 (1925) (holding that foundation repair taking less than a day, done two and a half months after completion of all other work, placed the lien within 90 day time limitation).

2. Work Olson performed on May 27th was required under the parties’ contract.

Olson does not dispute that its May 22nd bill contained boilerplate language stating its work was “100% complete.” Efficiency on large construction jobs dictates this industry practice to move things along. However, boilerplate language in large construction contracts is hardly dispositive of the date on which a contractor has completed its work in entirety. Invariably, punch list and clean up work are incomplete at the time final draws are submitted. This is the reason that such contracts contain retainage provisions (final payment withheld until after job complete).

Olson’s work on May 27th -- within the 90 days -- was in furtherance of its contract. CP 90-91. The court was not required to make

any specific findings as to the nature of Olson's May 27th work, and did not, but the cleanup work alone is enough to find the Olson's work at Stack Hill on May 27th was within the original contract. Olson would have been in default if it had not completed this work.³

The Daily Foreman's Reports attached to the Declarations of Larry Folden and Scott Jamison show the dates of the work, names of employees, and clearly identifies that the work was performed at "Stack Hill." CP 84-87, 90-91. Stack Hill was where Larry Folden worked as Olson's foreman at the time. The May 27th Daily Foreman's Report shows that four Olson employees performed approximately thirty one hours of work at Stack Hill that day. The description shows that part of the labor was cleanup work and part was other work -- all of the work was under the contract. Decl. of Larry Folden, CP at 90-91.

3. The court did not abuse its discretion when it allowed the Daily Foreman's Report in as business records.

Because Point Ruston cannot dispute that Olson's work on May 27th was in furtherance of its contract, it argues that the Daily Foreman's Reports were not business records and thus should not have been admitted as evidence that Olson performed work on that date.

³ Article 2 of contract states, "If the subcontractor does not clean up after himself, the subcontractor will be notified in writing from the Site Superintendent or Project Mgr of default...." CP at 61.

“The decision whether to admit or refuse evidence is within the sound discretion of the trial court and will not be reversed absent manifest abuse of discretion.” *State v. Iverson*, 126 Wn. App. 329, 336, 108 P.3d 799 (2005). “Admissibility hinges upon the opinion of the trial court that ‘the sources of information, method and time of preparation were such as to justify its admission.’ *State v. Quincy*, 122 Wn. App. 395, 401, 95 Wn. App. 353 (2005) quoting *State v. Ben-Neth*, 34 Wash.App. 600, 603, 663 P.2d 156 (quoting 5A Karl B. Tegland, *Washington Practice: Evidence Law and Practice*, § 372, at 240 (2d ed.1982)). Under the business records exception to the hearsay rule, when “the trial court is satisfied that sufficient testimony has been adduced regarding the manner in which certain records have been kept, and that their identity has been properly established in compliance with the act, no objection on the grounds of hearsay can be entertained.” *Iverson*, 126 Wn. App. at 338 (additional citations omitted).

Olson submitted Daily Foreman's Reports to refute Point Ruston's assertion that no work was performed after May 22nd. (May 22nd was the last of the dates Point Ruston variously offered up as Olson's last day of work.) After reviewing the pleadings and hearing argument from both sides, the trial court concluded that the Daily Foreman's Reports satisfied the business records exception to the hearsay rule. RP at 16. The court

also inquired into the differences between Point Ruston's records and Olson's records, and was satisfied that at the very least, the differences presented debatable issues of fact. RP at 12-13. "Debatable issues of fact are not to be resolved at a summary proceeding under the frivolous lien statute." *Williams*, 142 Wn. App. At 766

Point Ruston argues that Larry Folden did not testify that he was present at the jobsite at the time Olson's employees were working on May 27th, and that therefore the Daily Foreman's Reports should not be admitted. Appellant's Br. at 16. This is not required of custodians of business records. It is enough that Folden creates the records as a regular part of his job. *Iverson*, 126 Wn. App. at 329. A person who supervises the making of a record may testify; moreover, a party may present testimony of third party, as well, to demonstrate familiarity with the record-making. *State v. Garrett*, 76 Wn. App. 719, 887 P.2d 488 (1995) (physician not required to have personally supervised individuals who contributed to a victim's medical file to meet business records exception to the hearsay rule); *Accord, Ben-Neth*, 34 Wash.App. at 603 (upholding admission of bank records, even though not presented by records custodian).

The trial court was satisfied that the Daily Foreman's Reports met the statutory elements of a business record. The trial court did not abuse its discretion in admitting the Daily Foreman's Reports.

D. Olson complied with RCW 60.04.051 when it liened property it had improved.

Point Ruston also contends that Olson's lien was excessive.

Point Ruston does not state as an issue, but asserts in its Brief, that Olson's lien was excessive as to the amount of the lien. Appellant's Br. at 6. To support its argument, Point Ruston states that the contract amount was \$943,411.00, but that Olson unfairly now demands \$1,863,068.96 for its work. *Id.* As outlined above, the Stack Hill job entailed in excess of 140 work change orders, totaling \$1,079,896.90 above and beyond the original \$943,411.00. Doubling, even tripling, of initial cost is a frequent occurrence in large construction projects, and the reason that change provisions are included in such contracts. For multiple examples, *see, e.g., Michael T. Callahan, Construction Change Order Claims.* Point Ruston's own documents show that the total sum it owed Olson for is labor and materials totaled \$2,023,307.97. Steve Olson Decl., CP at 76-81. Point Ruston's suggestion that Olson has some rogue intent to double dip because the final bill exceeded the original contract amount is disingenuous and misleading. *See, e.g., Henifin Const., LLC v. Keystone*

Const., 136 Wn.App. 268, 145 P.3d 402 wherein the court rejected the owner's argument that the lien was excessive because it exceeded the contract price, finding that "the change orders modified the original contract." *Henifin Const., LLC*, 136 Wn. App. at 276.

Point Ruston also asserts that the lien was excessive as to the amount of land liened. But Washington law supports the trial court's determination that the Olson lien was not frivolous as to the amount of land liened. As Olson argued at the September 15th hearing, it liened land it had improved. RP at 15. *See, also*, Exhibit A, Answer, ¶ 3.2, 3.9.

RCW 60.04.051 does not require that a party state with specificity how property was improved – it only requires the party restrict its lien to property which was improved. (In fact, Washington's lien law does not even require a legal description be included in a claim of lien for the lien to be valid.) Olson complied with RCW 60.04.051 when it restricted its lien to property it had improved for Point Ruston.

In its complaint, Point Ruston made the bald, unsupported, and vague assertion that Olson's lien was on property on which it had not worked. CP at 4. Whereas Olson's Answer denies that it liened property it had not improved, Point Ruston submitted no declarations testifying that the land Olson liened had not been improved. In fact, it submitted no declarations whatsoever in support of its allegation that the lien was

excessive as to the amount of land liened. It did not offer to the court any map delineating what portion of the liened land had not been improved, nor state with any specificity exactly what portion of the property Olson liened had not been improved. To support its allegations that the liened land had not been improved, it merely states that the legal description of the liened land was "pages long." (But objected when Olson introduced a map – a visual representation of the land liened -- showing the legal description conformed to the land on which it had worked. RP at 8, 13.)

In its motion to find the lien frivolous, Point Ruston mischaracterized two cases, *Wilhite v. Ludwig* and *Dietz v. Bartell*, to urge the court to dismiss the lien as excessive to support its position. CP at 49.

But a careful reading of both cases supports Olson's position, not Point Ruston's position. In *Wilhite v. Ludwig*, 154 Wash. 541, 282 Pac. 847 (1929), the trial court *denied* a request to remove a lien as frivolous, allowing the lien to stand on two parcels, even though work had only been done on one of the parcels. On appeal, the court modified the lien by restricting it to only the parcel on which the work was done. *Wilhite* supports a finding that the lien should *not* be dismissed on two grounds: 1) *Wilhite* shows that dismissal of the lien is not appropriate at a show cause hearing when at a later enforcement proceeding the court may modify the lien; and 2) *Whilhite's* holding was based on the court's

conclusion about which of the parcels liened had been improved; Point Ruston submitted no evidence at the September 15th hearing to support its allegation that the property Olson liened had not been improved.

Likewise, *Dietz v. Bartell*, 120 Wash. 443, 207 Pac. 663 (1922), supports Olson's claim. *Dietz* was not a frivolous lien hearing; it was an enforcement proceeding. The court did not dismiss the lien. To the contrary, the court found that the lien *should* be foreclosed, and remanded with directions to the trial court to determine the amount of land necessary to satisfy lien and judgment." *Dietz*, 120 Wash. at 445-446.

Even assuming *arguendo* there is a mistake in the amount of land liened, a claimant who prepares a claim in good faith, but makes an error, will generally be allowed to correct the error or misstatement. *Westinghouse Electric Supply v. Hawthorne*, 21 Wn.2d 74, 150 P.2d 55 (1944). In *Westinghouse*, the trial court dismissed the lien. On appeal, the Supreme Court dismissed, finding no bad faith. *Westinghouse Electric*, 21 Wn.2d at 84. Point Ruston does not allege, much less prove, bad faith on Olson's part. It cannot do so, because there is no bad faith on Olson's part.

The courts also allow liens on property for work a contractor has done on parcels other than that on which the contractor worked. For example, in *Standard Lumber v. Fields*, 29 Wn.2d 327, 187 P.2d 283 (1947), the court found that construction of a bunkhouse, silo and shop on

a large farm supported a lien on the entire 160 acres, irrespective of the improvements to the overall value of the land liened.

In *Friis*, when Brown did not pay for work, Friis liened the property on which he had worked and additional lots, including all of block 11. Brown alleged he had lost a sale on Block 11 due to the lien and the lien was frivolous. Disagreeing, the court found that the lien was not frivolous or excessive. *Friis*, 37 Wn. App. at 460-461.

As explained before the trial court, the Olsons in good faith placed their lien on land they had improved for Point Ruston. Point Ruston presented no evidence whatsoever that Olson had not improved the land it had liened. Its assertion that Olson liened property not included in its original contract is not evidence that Olson did not improve and benefit the property it liened. "The trial court is not required to decide the merits of the dispute in a summary proceeding under RCW 60.04.081 when the facts do not clearly indicate the lien is excessive." *Pacific Industries*, 120 Wn.App. at 10. Dismissal of the lien as excessive by the trial court would therefore have been in error.

E. The trial court did not err when it found that PR had not met its burden of showing that Olson's lien was frivolous.

Point Ruston assigns error to Finding No. 6, which states:

Point Ruston has not met its burden of showing that Olson's lien is frivolous.

The trial court considered the evidence before it and determined that the lien was not frivolous. There is no legal or factual basis on which to find the trial court exceeded the parameters of its authority.

F. The trial court did not err in finding that Olson as the prevailing party should be awarded fees and costs.

Point Ruston assigns error to the trial court's decision that "Olson as the prevailing party be awarded reasonable fees and costs pursuant to RCW 60.04.081(4).

"Fees are mandatory under RCW 60.04.081(4)." *Lake Union*, 85 Wash.App. at 753. Olson requested fees and costs for having to defend its lien rights and requested that the court's decision as the amount be deferred to a hearing on enforcement of the lien. The trial court did not err when it ordered that the amount of fees and costs would be "reserved for trial," by which it meant a subsequent enforcement hearing.

G. This court should award Olson fees and costs pursuant to RAP 8.1.

Olson requests fees and costs pursuant to RAP 18.1.

III. CONCLUSION

The trial court did not err when it found that a lien is frivolous only if it presents no debatable issues and is so devoid of merit that no possibility of reversal exists. The trial court did not abuse its discretion

in allowing Olson's Daily Foreman's Reports as business records or in concluding that the Olson's lien was not frivolous. Because fees and costs are mandatory to the prevailing party under RCW 60.04.081(4), the trial court did not err in awarding Olson fees and costs.

DATED this the 5th day of December, 2008.

SPENCER LAW FIRM, LLC

By: Michelle Branigan
John R. Spencer, WSBA #32188
Michelle Branigan, WSBA #33252
Attorneys for Olson Brothers
Excavating, Inc.

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**THE COURT OF APPEALS OF THE STATE OF WASHINGTON
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**POINT RUSTON, LLC, a Washington
limited liability company.**

Appellant,

v.

**OLSON BROTHERS EXCAVATING,
INC., a Washington corporation**

Respondent.

Cause No. 38367-5-II

**CERTIFICATE OF
SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, I am not a party to or interested in the above-entitled and numbered cause of action, and I am competent to be a witness herein.

On the date given below, I served the following document(s) by the method indicated below:

Respondent Olson Brothers Excavating, Inc.'s Motion on the Merits, Errata and Certificate of Service

- VIA FACSIMILE
- VIA UNITED STATES POSTAL SERVICE
- VIA LEGAL MESSENGER
- VIA PERSONAL HAND DELIVERY
- VIA EXPRESS MAIL

Matt Edwards, Esq.
Owens Davies, PS
1115 West Bay Drive, Suite 32
Olympia, WA 98502
(360) 943-6150

DATED this 5th day of December, 2008, at Tacoma, Washington.

SPENCER LAW FIRM, LLC

By: Lisa Van Hagen
Lisa Van Hagen
Legal Assistant