FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

Court of Appeals No. 346951-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

HNS INC., an Oregon Corporation,

Petitioner,

v.

EAGLE ROCK QUARRY, a Washington Business; CACTUS QUARRY, a Washington Business; EAGLE ROCK QUARRY, INC., a Washington Corporation; EAGLE ROCK, LLC, a Washington Limited Liability Company; and PAUL RIEDINGER and TINA MURPHY, husband and wife, and the marital community composed thereof; and LEXON INSURANCE COMPANY,

Respondent

PETITIONER'S REPLY BRIEF

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I. ARGUMENT

Respondent's Response fails to address the proper and requisite analysis to determine this case on appeal. This Court must determine whether RCW 18.27 applies, and if said RCW does apply, has Petitioner, HNS, Inc. substantially complied with the RCW? In its response, however, Eagle, ignores the evidence produced at the trial court level and simply states that HNS, Inc. didn't meet their obligation. Here it is clear from the case file and materials submitted, that HNS, Inc. did provide adequate documentation of substantial compliance.

A. Eagle's argument simply ignores the substantial compliance aspect of the statute.

It is well accepted that there are two exceptions to RCW 18.27, either a) the contractor substantially complied with the requirements, showing financial responsibility, or b) registration was not required because the contractor fell under one of the exceptions set forth in the act. *Martinson v. Publishers Forest Products*, 521 P.3d 233 (Wash.App Div 1 1974). Respondent cites *Williamson, Inc. v. Calibre Homes, Inc.*, 106 Wn.App 558 (Wash.App Div 1 2001), a case that was overturned in 2002 by the Supreme Court in *Williamson, Inc. v. Calibre Homes, Inc.*, 54 P.3d

1186 (Wash.2002). The Supreme Court goes into great detail on the purpose of the contractor registration act which was designed to prevent victimization of a defenseless public. *Id.* The required documentation is the surety bond and insurance to be considered in substantial compliance. *Id.* The registration requirement was designed simply to make sure that these minimal requirements were met. *Id.* As stated in Petitioner's opening brief, and not to be repetitive, HNS, Inc., was in fact a registered contractor in Washington until 9/17/2010, and continued to be registered in Oregon. (CP pgs 125-152). Said expired license clearly states that HNS failed to renew their Washington license. Said license was not revoked, it expired. (CP pgs 125-152). The license business details as provided on the Washington document is exactly the same business details as shown on HNS, Inc. contractor's license for the State of Oregon (CP pgs 125-152). The requirements of RCW 18.27.030 have been previously met by HNS, Inc. Surety Bonds covering the time period worked in Washington, covering HNS, Inc. in excess of what is required under RCW 18.27.040 (CP pgs 125-152) were submitted. Commercial general liability coverage from July 2010 through July 2017 which greatly exceeds what is required under RCW 18.27.050 (CP pgs 125-152) was submitted.

The bonding and insurance aspects of the RCW have been met. HNS, Inc. has met the minimal security and financial responsibility aspects of the RCW.

The case law is very clear that an unregistered contractor may be permitted to access state courts to recover construction related debts if there is substantial compliance with the statute. *Stewart Carpet Service, Inc. v. Contractors Bonding and Insurance Company*, 715 P.2d 115, 105 Wn.2d 353 (Wash. 1986). The Murphy case has clearly stated, the statute is in place to "ensure minimum financial security for consumers who are the customers of building contractors." *Murphy v. Campbell Inv. Co,* 79 Wash.2d 417, 486 P.2d 1080 (1971). Compliance with the surety bond requirements and insurance is adequate to meet the substantial compliance. *Leon's Plumbing & Heating Inc. v Aqua Drilling,* 26 Wn.App 789 (1980); *Lobak Partitions v. Atlas Construction*, 749 P.2d 716, 50 Wn.App 493 (Wash.App Div 1 1988). HNS, Inc. has shown the Court that those requirements were met. HNS, Inc. provided sufficient information to be allowed to maintain their action for work performed. HNS, Inc. was merely required to raise a question of fact concerning substantial compliance, which they did,

to move forward. *Lobak Partitions v. Atlas Construction*, 749 P.2d 716, 50 Wn.App 493 (Wash.App Div 1 1988).

Respondent relies on the *Vedder* case, another case which is no longer followed. *Vedder v. Spellman,* 78 Wn.2d 834, 480 P.2d 207 (1971). *Vedder* was questioned in *Davidson v. Hensen*, where once again, the Supreme Court determined that an unregistered contractor may move forward if found in substantial compliance, failure to register does not void a contract. 954 P.2d 1327, 135 Wn.2d 112 (Wash. 1998).

Substantial compliance satisfies the purpose of the statute. *Bort v. Parker,* 42 P.3d 980, 110 Wn.App 561 (Wash.App 2002). It is simple, HNS, Inc. had to provide proof of insurance and proof of surety bond. BOTH were provided to the trial court (emphasis added). "If the nonregistered contractors that can demonstrate indicia of minimal financial responsibility, that is, bonding and insurance, it has substantially complied with the statutory scheme to protect the public." *Udall v. Elliott*, 573 P.2d 809, 18 Wn.App 850 (Wash.App Div 2 1977).

RCW 18.27 should not be used for a party to avoid his contractual obligations by claiming he does not have to pay due to the fact that Plaintiff has failed to register, which is all Eagle

is trying to do in this matter. *Andrews Fixture Company v. Olin*, 2 Wn.App. 744 (1970). (CP pgs 125-152). Here there are no allegations that HNS, Inc. did not do the work, Eagle has simply used this statute to refuse to pay, which is not the intended purpose of the statute. The Trial Court stated, "I'm sorry to say that because it sound like just based on your client that they're being kind of blown off by the defendant here, but they had an obligation and they haven't met it so...." (RP pg 12, lines 1-4).

HNS, Inc. clearly showed that they met the minimal financial obligations which are the purpose of the statute. The only item lacking is the actual renewal of the contractor's license. The Trial Court refused to acknowledge substantial compliance where in fact financial responsibility has been shown, which is the intent of the statute. The purpose of the statute was clearly met, Eagle brought the motion to dismiss under RCW 18.27 in an effort to avoid paying liabilities, which is not a legitimate purpose, and goes against the intent of the statute itself.

II. CONCLUSION

Petitioner therefore respectfully requests that the case should be remanded to the Superior Court for further

proceedings on the issues stated above. Dismissal was not proper and should be reversed.

RESPECTFULLY SUBMITTED this 12th day of July, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of July, 2017 I caused a true and correct copy of the foregoing document to be filed with the Court of Appeals Division III, Court of Appeals, Division III, 500 North Cedar Street, Spokane, WA 99201-1905, by sending the same by U.S. Mail, first-class postage prepaid, and copies of the foregoing document to be served upon counsel of records as follows:

Attorney for Respondent [x]
U.S. Mail

EAGLE ROCK QUARRY, CACTUS QUARRY, EAGLE ROCK QUARRY, INC., EAGLE ROCK, LLC, and PAUL RIEDINGER and TINA MURPHY
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A true and correct copy of the document to which this certificate is affixed to the parties shown above. I certify under penalty of perjury under the laws of Washington State that the foregoing is true and correct.

Signed at Connell, WA this 12 day of July, 2017.

TONI MEACHAM – WSBA# 3506
Attorney for HNS, Inc.