

FILED

MAR 14 2017

Court of Appeals No. 346951-III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

BRIEF OF PETITIONER

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Regulations and Rules

RCW 18.27.0803-4
RAP 2.42

A. IDENTITY OF PETITIONER

Petitioner, HNS, Inc., asks this court to review the decisions designated in Part B of this motion.

B. DECISION

Petitioner requests the Court review the Order to Dismiss entered on August 22, 2016 by the Superior Court for Franklin County. A copy of the Order is designated at CP pgs 157-158.

C. ASSIGNMENT OF ERROR

Assignment of Error

The issue on review is whether the trial court erred by entering an order granting dismissal of the Petitioner's case.

Issues Pertaining to Assignment of Error

Defendants/Respondents sought an order dismissing Petitioner's case. The order, which was granted, was signed August 22, 2016, and dismissed Petitioner's case outright. Did the Court error in dismissing the case when Petitioner substantially complied with the requirements of RCW 18.27.040? Did the Court take into consideration

the requirements of RCW 18.27.040? Did the Court dismiss to the case outside of the intent of RCW 18.27.040? (Assignment of Error 1).

D. STATEMENT OF CASE

The current case was filed by Petitioner, HNS, Inc. an Oregon Corporation, in Franklin County Superior Court on 1/19/16 against the defendants listed (collectively Eagle) concerning rock crushed by Petitioner alleging that Eagle had not paid for the work done (CP pgs 76-106). On 8/10/16 Eagle filed a Motion to Dismiss citing failure to register under RCW 18.27 (CP pgs 113-115). The trial court heard oral argument on the defendants' motion on August 22, 2016, announced its decision from the bench to grant the Motion to Dismiss, signing the proposed Order on August 22, 2016 (CP pgs 157-158) .

E. ARGUMENT

1) Scope of Review:

Under RAP 2.4, the appellate court will review the decision(s) designated in the Notice of Appeal. This matter was filed as a discretionary review, which was then turned into a final judgment, allowing for a conversion into a Notice of Appeal.

2) The lower Court did commit error.

RCW 18.27.080 states:

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 or she was a duly registered contractor and held a current and valid certificate of registration at the time he or she 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.* (emphasis added).

In argument, the Court reviewed *Murphy v. Campbell Inv. Col.* (RP pg 4), *Leon's Plumbing v. Aqua Drilling* (RP pg 5), *Northwest Cascade Construction, Inc. v. Custom Component* (RP pgs 6), and *Andrews Fixture Co., v. Olin* (RP pg 6) to support its analysis that RCW 18.27 would allow for the Petitioner's case to be dismissed for failure to register as a contractor in Washington. As this same statute has a specific provision which allows the Court to determine that a contractor, such as Petitioner in this matter, is in substantial compliance and allow their suit to move forward. Petitioner asserts that the Court's analysis is erroneous.

Under the substantial compliance doctrine a party complies with the statutory requirements where a party has

substantially complied with the requirements intended by the legislature. *Murphy v. Campbell Inv. Co.*, 79, Wn.2d 417, 422, 486 P.2d 1080 (1971) (CP pgs 125-152). The courts started using the substantial compliance doctrine where it can be shown that a strict construction would cause a gross injustice, such as RCW 18.27.080. *Id.* (CP pgs 125-152). RCW 18.27 was designed to prevent victimizing of the public as well as unreliable, fraudulent, and incompetent contractors. *Stewart v. Hammond*, 78 Wash.Dec.2d 209 (1970). *Leon's Plumbing & Heating Inc. v Aqua Drilling*, 26 Wn.App 789 (1980) (CP pgs 125-152). It has been said in case after case that the registration act is intended to prevent fraud against the public, to protect against victimization. *Northwest Cascade Construction v. Custom Component Structures, Inc.* 83 Wn.2d 453 (1974). The question becomes if the contractor in question has met the minimal security and financial responsibility standards as imposed under RCW 18.27. *Murphy v. Campbell Inv. Co.*, 79, Wn.2d 417, 422, 486 P.2d 1080 (1971). *Andrews Fixture Company v. Olin*, 2 Wn.App. 744 (1970). Substantial compliance can be found where the contractor has secured both the bond and the liability

insurance. *Murphy v. Campbell Inv. Co.*, 79, Wn.2d 417, 422, 486 P.2d 1080 (1971) (CP pgs 125-152). Where a contractor has substantially complied with the statute, the complaint can be allowed to move forward. *Id.* The statute should not be used for a Defendant to avoid his contractual obligations by claiming he does not have to pay due to the fact that Plaintiff has failed to register. *Andrews Fixture Company v. Olin*, 2 Wn.App. 744 (1970). (CP pgs 125-152). To deny plaintiff a recovery would transform the RCW from a social desirable registration act, which is the intent. *Id.* Where, such as this case, the Petitioner's work is not at issue, and was completed, the financial responsibility is not at issue. *Id.* Here there are no allegations that Petitioner 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).

A comprehensive analysis of the case law in this matter, inclusive of the cases cited above, contains clear indication of what constitutes “substantial compliance.”

Petitioner in this matter, HNS, Inc., was in fact a registered contractor in Washington until 9/17/2010. (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 Oregon information shows a first licensed date of 5/24/1991 with an expiration date of 6/23/2017. HNS, Inc. is shown to have the same address and phone number as what is shown on the Washington business detail. The requirements of RCW 18.27.030 have been previously met by HNS, Inc. The license itself may not be current, but the information on file with the Department of Labor and Industries is accurate.

Surety Bonds beginning in 2009 through 2015 covering HNS, Inc. in excess of what is required under RCW 18.27.040 (CP pgs 125-152). Commercial general liability coverage from

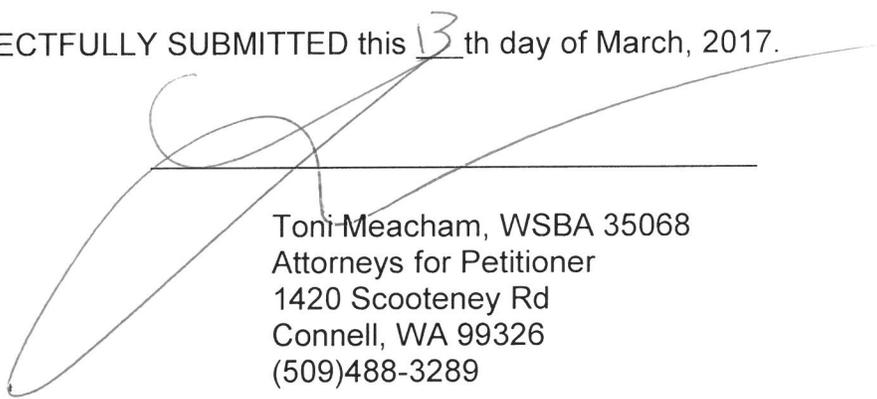
July 2010 through July 2017 which greatly exceeds what is required under RCW 18.27.050 (CP pgs 125-152). The bonding and insurance aspects of the RCW have been met. HNS, Inc. has met the minimal security and financial responsibility aspects of the RCW. Further, the information on file with the Department of Labor and Industries is also up to date. 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.

F. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that (1) the court improperly determined that the Petitioner was in violation of RCW 18.27; (2) the court did not take into consideration the substantial compliance aspect of the RCW 18.27; and 3) the court did not properly take into

consideration the intent of the statute allowing the statute to be applied in direct violation of the intent. 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 13th day of March, 2017.



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CERTIFICATE OF SERVICE

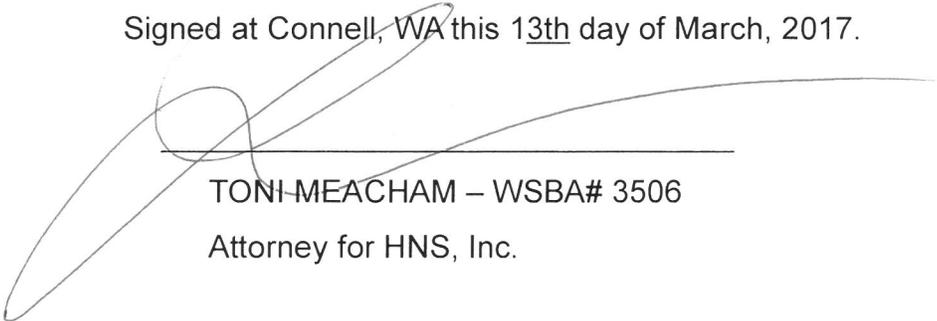
I hereby certify that on the 13th day of March, 2017 I caused a true and correct copy of the foregoing document to be filed with the Court of Appeals Division III, Court of Appeals, Division III, 500 North Cedar Street, Spokane, WA 99201-1905, by sending the same by U.S. Mail, first-class postage prepaid, 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
Andrea Clare, WSBA37889
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1321 Columbia Park Trail
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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 13th day of March, 2017.



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