

Court of Appeals No. 346951-III  
Franklin County Superior Court Cause No. 16-2-50035-1

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**WASHINGTON STATE COURT OF APPEALS**  
**DIVISION III**

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HNS, INC., an Oregon Corporation,

*Petitioner,*

vs.

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,

*Respondents.*

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**REPLY BRIEF OF RESPONDENT**

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## I. INTRODUCTION

Petitioner appeals the lower court's dismissal of its case pursuant to RCW 18.27.080. Despite failing to produce any evidence, Petitioner now begs the appellate court, under a theory of substantial compliance, to find that it met its obligation under the statutory scheme requiring registration as a prerequisite to suit.

## II. STATEMENT OF THE CASE

Petitioner/Plaintiff, HNS Inc. ("HNS"), an Oregon corporation, filed an Amended Complaint against the Defendant/Respondent ("Eagle Rock"), for money damages on March 22, 2016. CP 76-106. The Complaint alleges that the Defendant/Respondent was properly registered in Washington State. *Id.* Along these lines, Eagle Rock had been licensed and bonded at the time of the alleged contracting (i.e. 3/1/13). *Id.* The Amended Complaint fails, however, to allege Plaintiff HNS was properly registered to conduct business as a contractor in Washington State. *Id.*

After some discovery, on August 10, 2016, Eagle Rock filed a motion to dismiss and supporting declaration. CP 113-121. Counsel for Eagle Rock provided the court with a record from the Washington State Department of Labor & Industries showing HNS was not registered. CP 120. In other words, HNS was not a licensed or bonded contractor conducting business in Washington State. *Id.* In fact, any previously valid

registration held by HNS had been suspended since July 28, 2010. Id.  
HNS was not able to dispute the significant lapse such that the court  
dismissed its claim for breach of contract pursuant to RCW 18.27.080. CP  
157-158.

### III. ARGUMENT

HNS simply doesn't like the result which occurred. HNS may  
blame only HNS for the dismissal since HNS failed to follow Washington  
law, namely the Act that allows contractors to utilize courts for remedies.  
As an out-of-state contractor conducting business in Washington, HNS  
was required to comply with the requirements of Chapter 18.27 et seq. in  
registering with the Department of Labor and Industries. The Chapter is to  
be strictly enforced. RCW 18.27.005. Indeed, *anyone* engaged in the  
activities of a contractor is presumed to know the requirements of the  
chapter. Id.

Here, the lower court interpreted and correctly applied the  
Contractor Registration Act (CRA) standing provision:

**“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.” RCW 18.27.080. (Emphasis added).

The Washington Legislature was so adamant about every contractor registering with the department that failure to so register and perform work constituted a gross misdemeanor. RCW 18.27.020. The legislature further instructed the courts regarding ‘substantial compliance’ as follows:

“For the purposes of this section, **the court shall not find a contractor in 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 a **current bond or other security** as required by RCW 18.27.040; and 3) the contractor has **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.**” RCW 18.27.080.

The CRA requires a contractor to provide, allege and prove that he was a duly registered contractor and held a current and valid registration with the department including, a contractor’s bond and insured status. RCW 18.27.114; See *Williamson, Inc. v Calibre Homes, Inc.*, 106 Wn. App. 558, 564 (2001) (registration requires evidence of bond and liability insurance).

Regarding purpose, the CRA states: “It is the purpose of this chapter to afford protection to the public including all persons, firms, and

corporations furnishing labor, materials, or equipment to a contractor from unreliable, fraudulent, financially irresponsible, or incompetent contractors.” RCW 18.27.140. “The primary objective of RCW 18.27 is to require all contractors who offer to do work, submit a bid, or perform any work to register with the Department of Labor and Industries.” *Frank v Fischer*, 108 Wn.2d 468, 471 (1987). Effectively, an unregistered contractor has no standing to seek redress from the courts if the person benefiting from the fruits of his unlicensed labor refuses to pay. *Vedder v Spellman*, 78 Wn.2d 834, 838 (1971). Washington courts have held that the bar to recovery for unregistered contractors extends to alternative remedies such as unjust enrichment. *Stewart v Hammond*, 78 Wn.2d 216, 220 (1970). “This is the ‘teeth’ of the statute. *Vedder*, 78 Wn.2d at 838.

A. HNS did not provide the department with information required by RCW 18.27.030.

There are three (3) requirements of RCW 18.27.080. One requirement is to allow the department to have on file information required by RCW 18.27.030, entitled ‘grounds for denial and suspension’. Pursuant to RCW 18.27.030 (1)(c), HNS was required to have evidence of worker’s compensation coverage for the applicant’s employees working in Washington or proof that its state of domicile certifies that it had secured payment of compensation under the other state’s workers’ compensation

laws. The registration for HNS was suspended effective 7/28/10 showing no proof that workers compensation under Oregon were secured and acceptable to the Washington Department of Labor and Industries.

B. HNS did not have a current bond or other security as required by RCW 18.27.040.

HNS failed to provide the department with bonding information. Further, HNS allowed six (6) years to pass without concern that the department was supplied bonding information. RCW 18.27.040 requires a surety bond. “The bond shall have the state of Washington named as obligee with good and sufficient surety in a form to be approved by the department. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director.” RCW 18.27.040(1). To the extent HNS maintained a bond in Oregon, HNS did not adequately name Washington as the obligee for purposes of being approved by the department.

Records of the department show that HNS had no current bond account, no bond history, and no insurance accounts during the previous six (6) years. CP 120. A cancellation or revocation of the bond automatically suspends the registration issued to the contractor. Without more, HNS did show compliance with RCW 18.27.040.

C. HNS purports to have had current insurance but did not follow the requirements of RCW 18.27.050.

While HNS supplied a declarations page listing its premium amounts and purporting to suggest it maintained insurance during the alleged contractual period, statutory requirements were still not met. RCW 18.27.050 requires an applicant to furnish insurance or financial responsibility in the form of an assigned account. See CP 152. Additionally, an expiration or cancellation automatically suspends the registration. Evidence at the time of the dismissal hearing shows that the Department of Labor and Industries notified HNS on July 28, 2017 that it would need to reinstate (pay a fee) AND provide notice of reinstatement from its insurance company OR provide the new insurer's original certificate of general liability. CP 156. HNS failed to do either and therefore did not comply with RCW 18.27.050.

D. Substantial compliance has not been established.

HNS does not dispute that it failed to follow the CRA. HNS wishes this court to find substantial compliance but offers nothing more than argument to support its position. The plain language of the statute makes it clear that, in the event a contractor fails to comply, courts shall take into consideration the length of time the contractor did not hold a valid registration. The facts here show that HNS had maintained suspended status for six (6) years before filing suit. Having an expired registration for

the majority of a decade does not show a contractor ‘mistakenly’ or ‘without purpose’ failed to comply with the CRA. To the contrary, HNS had every intention to conduct business, generate profits, using Washington residents as employees, all knowing it was thumbing the Department of Labor and Industries. Consequently, as the lower court so eloquently stated:

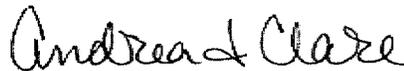
“What concerns me is this is obviously an experienced company that – I mean because of the nature of the business and they’re kind of blowing off the people here. They got a contract in Washington but they are not following Washington law. And then saying, well, they’re pretty much following Washington law. And a worker here or a party injured here shouldn’t have to go to Oregon to argue that the bond in Oregon covers – or argue that the liability policy issued in Oregon to meet Oregon law coverage and it seems to me that there hasn’t been substantial compliance.” TP 14-15, lines 16-1.

### III. CONCLUSION

Based on the foregoing reasons, the decision of the Superior Court should be affirmed.

Dated this 14<sup>th</sup> day of June, 2017.

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*Attorneys for Respondent*



By: \_\_\_\_\_  
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**CERTIFICATE OF FILING AND SERVICE**

The undersigned hereby declares, under penalty of perjury, under the laws of the State of Washington, that on June 14, 2017, I e-filed the foregoing document for filing with the Court of Appeals, Division III. I also caused a true and correct copy of the foregoing document to be served on the following counsel, via e-mail and first class U.S. Mail to:

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**DATED** this 14<sup>th</sup> day of June, 2017, at Richland, Washington.

TELQUIST McMILLEN CLARE, PLLC



By: \_\_\_\_\_  
Kristi Flyg, Legal Assistant

**TELQUIST MCMILLEN CLARE, PLLC**

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**Transmittal Information**

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